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Doc ID:

22 June 2023

Ms Sharon Edwards
Project Officer
Planning Panels Secretariat
32 Mann Street
GOSFORD NSW 2250

BY EMAIL sharon.edwards@planning.nsw.gov.au

Dear SWC Planning Panel Members

PPSSWC - 289- DA22/1080- 68 Lockwood Road, Erskine Park

The Council has provided a further Memorandum, dated 19 June 2023 in relation to the DA22/1080 which recommends refusal of the application on the basis of its review of plans lodged on 31 May 2023.

As the Council is aware through correspondence provided to the Court and to the Panel through the Panel Secretariat on 16 June 2023, the Applicant has made numerous concessions to the design and landscape treatment that answer all the points raised in the Council's most recent memorandum. These further concessions to the design, setback and landscaping which accommodate the planning and landscape officers' requests have not been acknowledged in the further Memorandum.

It is unfortunate that the Council did not take the opportunity to address those concessions so that the panel members could have a properly informed recommendation from Council. It is curious that the Council would refer to its knowledge of there being more and better information available in relation to the Applicant's proposal but not provide the Panel with its assessment of that information when it is aware that information has been provided to the Panel. The Applicant's letter to the Panel of 16 June 2023 including links to the amended plans is available on the Planning Portal and included at Annexure 3 to this letter.

The distinction between the amended plans we asked the Panel to consider in our letter of 16 June 2023 at Annexure 3 and those relied on in the Council's memorandum dated 19 June 2023 is set out at Annexure 2, attached to this letter.

The Applicant's position

The Applicant is in the process of updating plans previously lodged so that there is a single and final set of plans that is consistent with all concessions made to the date of this correspondence. The intention is to ensure that there is no distinction between the plans loaded on the planning portal and those provided to the Panel and the Land & Environment Court. It is anticipated that those plans will be available before Monday 26 June 2023.

However, in lieu of that final set of plans the panel should read:

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1. the attached table of concessions made by the Applicant in respect of the required further considerations that the Council informed the Applicant was suggested by the Panel;
2. the amended site plan dated 22 June 2023, Revision AA provided with this letter which introduces the step into the northern elevation and the set-back of the awning; and
3. the landscape plans dated 16 June 2023, Revision DA_02D which accommodate all the council landscape officers requirements to date.

Provided with this letter is the Amended Draft Conditions dated 22 June 2023 which illustrates the remaining issues further to the Applicant's concessions. Pursuant to the comment contained therein, the Applicant will amend the plan references once the final set of plans have been finalised and made available.

Council issues raised in the memorandum

Council recommends refusal of the Development Application for the four reasons set out in the memorandum dated 19 June as well as those set out in Appendix B of the memorandum.

We invite Council to accept the Applicant's concessions made in the table attached to this letter at Annexure 1 (provided to the Panel on 16 June 2023 and available on the Planning Portal) which leaves for consideration only minor intrusion into the building setbacks.

In relation to the items set out in Annexure B as updated recommended reasons for refusal:

- Point 1 – there is no explanation as to how the proposed development prejudices the sustainability of other enterprises or the environment.
- Point 2 – Lenore Drive setbacks are substantially respected and acceptable to the Department of Planning.
- Point 3 – there is no explanation as to the incompatibility of the proposed development.
- Point 4 – each of the referred to matters has been resolved by the amendments made to drawings and the further agreed amendments in respect of which updated drawings are being prepared.
- Point 5 – refer to the Applicant's response to point 4.
- Point 6 – the site is zoned IN1 and the proposed use of the site is IN1. The site is suitable for the proposed use.
- Point 7 – the development generates investment in the precinct / local government area, development of IN1 land and creates jobs. Each of these are listed as objectives of the zone and are in the public interest. The question is whether the streetscape of Lockwood Road, the only planning issue that remains in contention as between the parties, is one that overrides the above referred to public interest in approving the development application.

Please let us know if you have any queries before the next Panel briefing on 26 June 2023.

Yours faithfully,



Johnson Winter Slattery

Annexure 1: Table of Concessions provided to the Respondent, Panel Secretariat and Land and Environment Court on 16 June 2023

No.	Issue	Applicant's Response
(a) Corner of Lenore/Compass Drive		
(i)	A splay should be provided on the Lenore Drive/Compass Drive corner frontage. Further refinement should be made to the north-western portion of the building (i.e. splay and architectural feature).	Not Agreed. The Applicant has substantially increased the nature and extent of the proposed landscaping in accordance with the request of the Council's landscape officer. The purpose and intent of that additional treatment was to: (a) Be consistent with the landscaping on the opposite corner of Compass Dr; and (b) To screen the façade at the corner of the northern and western elevations. The landscaping revisions incorporated a signage zone at the Council's request. Accordingly, a splay would not be read from the street once the landscaping matures. Additionally, a splay would create internal operational inefficiencies having regard to racking and circulation.
(ii)	Signage zones should be reduced in area and not extend so far down the walls.	Agreed. The Applicant agrees to remove the signage from the application and proposes that any signage will be the subject of a separate development application.
(b) Lenore Drive		
(i)	The Lenore Drive setback is non-compliant. A step should be introduced in the building to provide an increased setback.	Agreed. Refer to 10. Site Plan with Setback.
(ii)	It is noted that the feedback from the Department is that the setback should be fully compliant.	No longer relevant The Department has confirmed it has no objection to the proposal and that the treatment of the set-backs so far as the Department is concerned is a

	matter for the consent authority. The Applicant has provided sufficient set back and land dedication specifically for the future road widening. Refer to document 2. Email from Department.
(iii) The expansive and unarticulated northern building façade relates to a considerably non-compliant building façade, and overall the relationship of the proposal to Lenore Drive, remains unsatisfactory from design quality, character and scale perspectives.	No longer relevant.
(iv) The palisade side return fencing along the eastern boundary, should not extend forward (towards Lenore Drive) of the alignment of the fencing addressing Lenore Drive.	Agreed. Refer to 3. Amended Site Plan 16 June 2023 Not relevant to this item?
(c) Lockwood Road	
(i) The awning on the Lockwood Road frontage remains unsatisfactory from design quality, character and scale perspective. The depth of the awning should be reduced to a maximum depth of 20m. Opportunities should be explored to break up the expansive and unbroken width of the super awning, into 3 separate portions, which are commensurate with the 3 lengths of loading docks, in order to address scale impacts and provide more landscaping.	Not Agreed The revised awning is stepped back 6m from the edge of the hardstand, which provides a set back ranging between 11-14.77m from the boundary. This provides ample room for the landscaping to mature and canopy conditions to provide a complete screen to the structure. The awning is effectively set back 14.77m from the boundary at its western end and 13.38m at the eastern end. Accordingly the canopy is substantially compliant with the 15m setback requirement in the DCP and, with the revised landscaping will not be observable at street level to the passer by. To modify the canopy as suggested would make it inefficient with respect to operations and increase the heat load of the development. Refer to 3. Amended Site Plan 16 June 2023
(ii) The covering of expansive areas which are required for heavy vehicle manoeuvring is unjustified.	Not Agreed. The awning is specifically required by prospective tenants to provide all weather access to loading and unloading of goods and movement of staff. That is relevant to the objectives of the LEP and DCP. The

awning also provides benefits in relation to heat island effect.

- (iii) The substation is located close to the primary street and corner -this should be relocated to a more appropriate location. Consideration needs to be given to a location that is of lower profile. It is expected that the substation be aligned with the non-elongated end addressing the respective street frontage.

Agreed.

The substation has been relocated. Refer to [3. Amended Site Plan 16 June 2023](#)

(d) Landscaping

- (i) The Landscape plan does not reflect the updated architectural plans.

Agreed.

This has been updated to remedy the inconsistency between the awning and the landscaping along with the fencing on the Lenore Road frontage. Refer to [5. Amended Landscape 16 June 2023.](#)

- (ii) The pot sizes in the plant schedule are relatively small. Large pot sizes for trees and shrubs should be incorporated for greater visual impact earlier in the life of the development.

Not agreed

Pot sizes are consistent with planting regimes in similar developments. Plant density across the site is approx.3 /sqm. Within a growing season the effect of using a pot size larger than documented would be negated and significant cost avoided.

- (iii) The tree species along compass drive are too large for the narrow garden bed. The species need to be changed in this area to be a mix of Eucalyptus moluccana, Eucalyptus sideroxylon / crebra, Waterhousia floribunda and Angophora floribunda.

Agreed.

Refer to [5. Amended Landscape 16 June 2023.](#)

- (iv) Tree species along compass drive should be planted at least 800mm away from the fence to protect fencing infrastructure and to allow for the plantings to develop to maturity.

Agreed.

Refer to [5. Amended Landscape 16 June 2023.](#)

- (v) A Stratavault or similar tree pit is required to protect the carpark along compass drive from damage and enabling healthy rootzone development and tree health.

Agreed

The Applicant has already committed to tree pits within the carpark along Compass drive, being 8 blister islands.

- (vi) Adequate architectural perspectives from eye level are to be provided from Lockwood Avenue to show the amenity of the landscaping on that frontage.

Agreed

The Applicant has provided 4 perspectives of Lockwood Road, including 2 perspectives from locations requested by Council. Refer to [6. Enscape Awning Level](#), [7. Enscape Street Level](#), [8. Southwest View 1](#) and [9. Southwest View 2](#).

-
- (vii) We note that each of the above landscaping matters are capable of resolution by way of the imposition of conditions. **Agreed.**
-

(e) Car Parking

- (i) The justification and reasoning, provided for the layout and general arrangements associated with the car parking spaces located off the easternmost driveway, is still considered to be unsatisfactory. **Not Agreed**
- This statement lacks clarity or specification. The Applicant has submitted traffic engineering reports and updated commentary that confirm that the arrangements proposed are compliant with standard industrial car-parking arrangements. If the Respondent disagrees, could it provide its traffic engineers statement confirming the standard or requirement with which the Applicant's proposal is to conform.

Notwithstanding, and for abundant caution, the Applicant has provided further refinement to allay council's concerns raised in the s 34 conference,

Refer to [1. Traffic Impact Statement](#).

(f) Operational Management Plan

- (i) The OMP does not adequately detail how the covered heavy vehicle manoeuvring/ reversing area is to be used. The OMP mentions trucks unloading / loading from a 'parking parallel to the building' position, this conflicts with the vehicle tracking diagrams provided for the loading docks, within the Traffic Assessment Report (that has been submitted in support of the proposal). **Agreed.**
- The OMP has been updated. Refer to [4. Amended OMP 16 June 2023](#).

- (ii) The OMP does not specify the staffing numbers for each individual warehouse and instead gives a total number of staff permitted on site at any time for both warehouse A and warehouse B. **Agreed.**
- The OMP has been updated. Refer to [4. Amended OMP 16 June 2023](#).
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Annexure 2: Distinction between plan revisions relied on

Sheet Number	Amended Plans provided to Council and the Panel on 16 June 2023	Plans available on Planning Portal and referred to in Council's memorandum of 19 June 2023
Site Plan		
DA001	Revision Z	Revision U
Landscape Plans		
L-600	DA_02D	DA_02B
L-601	DA_02D	DA_02B
L-602	DA_02D	DA_02B
L-603	DA_02D	DA_02B
L-604	DA_02D	DA_02B
L-605	DA_02D	DA_02B
L-606	DA_02D	DA_02B
L-607	DA_02D	DA_02B
L-608	DA_02D	N/A
L-609	DA_02D	N/A

Annexure 3: Letter to Panel from Applicant of 16 June 2023 as uploaded to the Planning Portal

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Your Ref: PPSSWC-289
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16 June 2023

Ms Sharon Edwards
Project Officer
Planning Panels Secretariat
32 Mann Street
GOSFORD NSW 2250

BY EMAIL sharon.edwards@planning.nsw.gov.au

Dear Sharon

Request for Panel determination - PPSSWC-289 - 68 Lockwood Road, Erskine Park

We act for Fitzpatrick Investments Pty Ltd (**Fitzpatrick**), being the Applicant in respect of DA22/1080 for warehouse development at 68 Lockwood Road, Erskine Park, (the **Development Application**).

We refer to the email received on 13 June 2023 from HWL Ebsworth in respect of the Western Sydney Planning Panel's direction to Council that it cannot enter into a section 34 agreement based on the most recently submitted 'without prejudice' plans (copy of the email is attached). Further, the Panel has directed that the Applicant consider the list of further issues to be resolved.

It is the Applicant's contention that, the Panel could direct the Council to enter into a sec.34 agreement, subject to the incorporation of those matters agreed, into the draft conditions of consent. In relation to the matters not agreed, the Panel has sufficient material before it for those matters to be decided on the papers.

We set out the full list of issues contained in the HWLE email, together with the Applicant's response to those issues. We have provided a copy of this correspondence to HWLE to provide to Council.

As set out below, we confirm that we are instructed to confirm that the majority of issues raised can be agreed, and where possible, plans have been provided reflecting those concessions. Where there is agreement, but insufficient time to prepare a plan to reflect that agreement, we propose submitting the relevant plan to the PCA that reflects the terms of the agreement.

There are some items that are not agreed. These are instances where the applicant says that the development control plan requirements have largely been complied with, or where there are no standards and there is merely a difference of opinion.

We respectfully request that the Panel consider the attached response to the remaining issues to be addressed together with the previously provided plans (uploaded to the portal), the additional plans attached to this correspondence and:

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- (a) Invite the parties to brief the panel on any remaining matters of conjecture; or
- (b) Determine the application by approval subject to the agreed draft conditions, together with any additional conditions that the Panel thinks appropriate

Outstanding issues

The references to documents are those attached and accessed by the incorporated link.

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(i)	The Lenore Drive setback is non-compliant. A step should be introduced in the building to provide an increased setback.	Agreed. Refer to 10. Site Plan with Setback.
(ii)	It is noted that the feedback from the Department is that the setback should be fully compliant.	No longer relevant

	The Department has confirmed it has no objection to the proposal and that the treatment of the set-backs so far as the Department is concerned is a matter for the consent authority. The Applicant has provided sufficient set back for the road widening. Refer to document 2. Email from Department.
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(ii) The pot sizes in the plant schedule are relatively small. Large pot sizes for trees and shrubs should be incorporated for greater visual impact earlier in the life of the development.	Not agreed Pot sizes are consistent with planting regimes in similar developments. Plant density across the site is approx.3 /sqm. Within a growing season the effect of using a pot size larger than documented would be negated and significant cost avoided.
(iii) The tree species along compass drive are too large for the narrow garden bed. The species need to be changed in this area to be a mix of Eucalyptus moluccana, Eucalyptus sideroxylon / crebra, Waterhousia floribunda and Angophora floribunda.	Agreed. Refer to 5. Amended Landscape 16 June 2023.
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(v) A Stratavault or similar tree pit is required to protect the carpark along compass drive from damage and enabling healthy rootzone development and tree health.	Agreed The Applicant has already committed to tree pits within the carpark along Compass drive, being 8 blister islands.
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- (ii) The OMP does not specify the staffing numbers for each individual warehouse and instead gives a total number of staff permitted on site at any time for both warehouse A and warehouse B. **Agreed.**
- The OMP has been updated. Refer to [4. Amended OMP 16 June 2023](#).
-

As can be seen there are 6 items of disagreement. Those matters are, in our submission, able to be decided by the Panel exercising its diligence, care and skill. We respectfully request the Panel determine the application based on these further amendments and additional supporting information provided.

Please let us know if you have any queries and we look forward to hearing from you at your earliest convenience.

Yours faithfully,

A handwritten signature in blue ink that reads "Johnson Winter Slattery". The signature is written in a cursive, flowing style.

Johnson Winter Slattery