

JRPP No.	2013SYW015
DA No.	X/900/2011
Proposed Development	A fire brigade station for NSW Rural Fire Service on Crown Reserve 751647 (Part) 117-121 Shipley Road and Crown Reserve 751647 (Part) 123 Shipley Road, Blackheath
Applicant	NSW Rural Fire Service
Report By	Regional Panels Secretariat
Report Date	5 March 2013

Crown DA Referral Summary Report

This Crown development application (DA) has been referred to the Sydney West Joint Regional Planning Panel (regional panel) under section 89(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The applicant is taken to be the Crown for the purposes of Part 4, Division 4, of the EP&A Act, as it is a public authority.

Section 89(2) of the EP&A Act states that the applicant or consent authority can refer a Crown DA to the regional panel if the consent authority fails to determine the DA within the period prescribed by the regulations (70 days). In this case, council have referred the DA to the regional panel as it has been with council for more than 450 days and they have not been able to determine the DA due to a lack of agreement on consent conditions.

If the regional panel does not determine the DA within 50 days, the DA may be referred (by the applicant or the regional panel) to the Minister for Planning and Infrastructure for determination.

1. BACKGROUND

The DA was lodged on 21 October 2011, seeking approval for a 2B Category fire brigade station on the subject site.

Following the receipt of additional information from the applicant and concurrence from the Sydney Catchment Authority, council provided draft conditions of consent to the applicant on 1 August 2012. The proposed conditions were then revised, in consultation with the applicant, and a final draft of the conditions provided on 18 September 2012.

Since this time, the applicant has verbally raised concerns with certain conditions of consent, and meetings have been held between council and the applicant to try to resolve the concerns. However, at the time of referral to the regional panel on 18 January 2013, council advise that they had not received a formal response requesting changes to the conditions, or received acceptance of the draft conditions.

2. SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is located at 117-123 Shipley Road, Blackheath, in the Blue Mountains local government area. The site is formally known as Lots 204 and 205 DP751647. Refer to **Figure 1**.

Refer to council's assessment report for a description of the site and surrounding locality and a description of the proposal.



Figure 1 – Site Location

Source: SIX Maps, NSW Land & Property Information

3. VIEWS OF THE PARTIES

Blue Mountains City Council

Council's assessment report recommends approval of the DA subject to the proposed conditions of consent (dated September 2012) provided as an attachment to that report (copy at **Attachment 1**).

The report concludes that “with the satisfaction of the deferred matters and implementation of appropriate conditions of consent, the proposal is capable of complying with relevant state and local planning instruments, and is unlikely to have a significant adverse impact on adjoining allotments”.

Draft conditions of consent were provided to the applicant on 1 August 2012, and were subsequently revised in consultation with the applicant. A final draft of the conditions was provided to the applicant on 18 September 2012.

Council advise that since this time, the applicant has raised concern over the level of construction required for the access road (Dalton Place), driveway into the site and the internal pavement areas (draft conditions 16 and 25). Council's assessment report indicates that meetings held with the applicant have not resolved this matter, and no formal response has been received to confirm the proposed conditions or otherwise.

Council resolved to refer the DA to the regional panel at the council meeting dated 11 December 2012. Refer to the council report presented at this meeting at **Attachment 2**.

Since the referral of the DA to the regional panel, the applicant has provided written comments to council (letter dated 8 February 2013) outlining their comments on the draft conditions of consent. Refer to **Attachment 3**. However, council advise that they did not receive this letter until it was forwarded by the secretariat via email on 1 March 2013.

At the request of the secretariat, council provided a response to these matters by letter dated 4 March 2013. Refer to **Attachment 4**. Council's comments are included in **Section 4** of this report.

In reviewing the letter from the applicant dated 8 February 2013, council noted reference to amended plans. After investigation, council advised that the applicant claimed to have submitted additional information to council on 31 January 2013. However, council advise that they have no record of receiving or registering this information. Council received a copy of the amended plans on 4 March 2013. Council have assessed the amended plans and information and advise that they reduce the scale of the building and marginally increase the size of the car parking area. Council consider that the changes are inconsequential and have no impact on council's assessment report.

Applicant – NSW Rural Fire Service

The applicant has advised that their position on the proposed conditions of consent is as per the letter sent to council dated 8 February 2013. Refer to **Attachment 3**.

The applicant is concerned with the proposed imposition of a number of conditions of consent including the deferred commencement conditions, requirement for amalgamation of the two lots and the standard of construction required for the driveway (Dalton Place) and internal pavements.

The applicant's comments are included in **Section 4** of this report.

4. SUMMARY OF KEY ISSUES

The following section of the report outlines the applicant's objections to specific conditions of consent, and council's comments on those matters.

Condition (summary only, not actual text)	Applicant Comment	Council Comment	Council Agreed Amendment
Deferred commencement conditions			
1. Detailed stormwater management plan (SWMP) - to be provided to Council and the Sydney Catchment Authority (SCA)	The requirement of the concurrence authority that this condition be complied with prior to the consent being operational is noted. However, it is maintained that the detailed nature of the SMP required is a matter that can and should be satisfied as an operational condition during the detailed design stage of the development.	The submission of a detailed SWMP is required as a deferred in accordance with condition 10 of the SCA's concurrence. Council sought clarification from the SCA after receiving their concurrence. The SCA confirmed that as the submitted plan was hand drawn, with no drawing number or author's name and included the incorrect wastewater treatment system, the provision of a properly drafted and detailed SWMP was required as a deferred commencement matter.	None
2. Geotechnical investigation and report – must specifically address suitability of the site to accommodate water sensitive urban design devices to provide stormwater water quality control, infiltration and treatment systems	Additional geotechnical is not required as NSW RFS have carried out both field and lab geotechnical investigations. The report has been presented to Council and SCA. SCA have not asked for this condition. The condition should be deleted. It should not be a deferred commencement condition.	Geotechnical information was submitted in an addendum dated 23 April 2013 to the Water Cycle Management Study. At section 3.2 of the addendum, soil depths, types and hydraulic conductivity are described based upon geotechnical fieldwork carried out by NSW Public Works. The SCA reviewed the information included in the addendum and considered the results to be contradictory. A complete report detailing locations and number of tests has not been provided to the Council. It is considered relevant to understand whether the testing was located at the proposed sites for the bio-retention and wastewater systems.	None

Condition <i>(summary only, not actual text)</i>	Applicant Comment	Council Comment	Council Agreed Amendment
		The requirement for geotechnical investigation to be a deferred commencement matter is to permit it to inform the detailed SWMP required in deferred commencement condition 1. The resolution of this condition is not considered onerous based upon the statements in the addendum of 23 April 2012	
3. Design of on-site stormwater drainage system 4. Certification of stormwater management plan	These conditions should not be deferred commencement conditions. They are matters that can be addressed in the detail design of the stormwater management system.	The outcomes detailed in condition 3 and the certification required by condition 4 are included as deferred commencement conditions as they inform the detailed SWMP required to satisfy deferred commencement condition 1.	None
5. Transfer of Crown road reserve (Dalton Place) to council	NSW RFS cannot agree to this condition because it does not have the power to implement the condition. This is a matter between Council and the Department of Primary Industries. In any event this should not be a deferred commencement condition as it is not fundamental to the consent and it can be implemented during the construction process or following.	Dalton Place is a Crown Road reserve and the proposal relies upon the construction of a vehicle access from Shipley Road to and onto the site via Dalton Place. In accordance with the Crown Lands NSW Circular 2009/19 'Dealing with Applications to Construct Crown Roads' 30 March 2009, an applicant wishing to undertake works on a Crown public road that are not of a minor repair nature is required to obtain the local council's concurrence to the ownership of the road being transferred to the council, in terms of section 151 of the Roads Act 1993. The works required in Dalton Place to provide vehicle access to the site are not considered to be of a minor repair nature, and therefore the transfer of the road reserve to the Council is	None

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		considered to be fundamental to the proposal and appropriate to be included as a deferred commencement condition. If the Council was not willing to have the road reserve transferred to the Council, or the transfer was to fail, the proposal could not proceed in its current form and an alternate access would need to be provided. The Council is willing to permit the road reserve to be transferred to the Council. The process to transfer the road reserve is not considered onerous. It only requires the RFS to submit a written request to the Council for the transfer to proceed, and payment of the relevant Council and Crown Lands fees. It is also noted that the Council's Development Control Plan 31 (DCP 31) 'Public Infrastructure Works in Subdivisions and Developments' requires the transfer of Crown roads to the Council be a deferred commencement provision.	
6. Consolidation of Lots 204 and 205	NSW RFS cannot agree to this condition because it does not have the power to implement the condition. This is a matter for the Department of Primary Industries. In any event this should not be a deferred commencement condition as it is not fundamental to the consent and can be implemented during the construction process or following.	The consolidation of allotments that are encompassed by a development proposal is a good practice. The two allotments are integrated by the physical design of the proposed development, with the proposed building and hard stand areas extending across both lots. As such it is considered reasonable and appropriate that the allotments be consolidated to reflect this integration.	Amendment of the draft consent such that the consolidation of the two allotments is completed prior to the commencement of works on the site

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		Additionally, the consolidation will ensure that the allotments cannot be sold off separately, excising an essential part of the development, such as vehicle access, parking, stormwater management systems from the building, or isolation of the wastewater treatment system on an undersized parcel of land. The consolidation provides an efficient and sound planning outcome. Whilst the NSW RFS does not own the land, they are the applicant and have the benefit of the consent. It is the responsibility of the RFS to resolve this matter with the Department of Primary Industries. As the proposal is a Crown development, the Council is willing to agree to the amendment of the draft consent such that the consolidation of the two allotments is completed prior to the commencement of works on the site.	
Operational conditions 1. Confirmation of relevant plans	This list of plans should be amended to refer to the amended plans.	The Council received a set of amended plans on 4 March 2013. The plans have been reviewed and it is noted that the amendments are minor and do not alter the Council's assessment of the proposal. As the proposal reduces the size of the building, it is considered that re-notification is not warranted.	Amendment of condition to reflect the most recent amended plans provided by the applicant

Condition (summary only, not actual text)	Applicant Comment	Council Comment	Council Agreed Amendment
16. Internal pavement – construction standards	It is submitted that the requirement to kerb and seal all access driveways is excessive to needs and that a formed but unsealed access is appropriate for the needs of the development and represents an overdesign.	The Council accepts the amendment of this condition to reflect the most recent amended plans provided by the applicant. This matter is largely addressed in section 6.1 of the Council's assessment report. As the site is to accommodate heavy vehicles and their manoeuvres within the site, an unsealed surface is not considered suitable. An unsealed compacted roadbase surface will deteriorate more quickly than a sealed pavement, and sediment laden runoff is likely to adversely impact the long-term functioning of the water quality control devices. Similarly, kerbing or wheel stops will be required to minimise the risk of vehicles impacting the bio-retention trenches adjacent to the car parking areas. The requirement for asphalt sealing of the internal pavement represents a concession in standards of construction applied to the works undertaken most recently at the Valley Heights and Faulconbridge RFS stations. It is also considered to be in the public interest that the works are completed to a reasonable standard and quality that will not create an ongoing maintenance burden on the community, as the Council will become the asset owner. The Council has offered to make a contribution	None

Condition (summary only, not actual text)	Applicant Comment	Council Comment	Council Agreed Amendment
25. Works required in council's road reserve (including Dalton Place) – extension of piped drainage; widening of road shoulder Dalton Place intersection; full sealed construction of Dalton Place; signage and linemarking; vegetation removal/management at intersection.	It is considered that the sealed construction of Dalton Place is not justified based on the nature of the development. This will add significantly to the costs of the development. Council has been advised that the largest vehicle garaged at the brigade station is a Category 7 water tanker. This vehicle has a length of 6.2m and is therefore a Small Rigid Vehicle. The requirement for access to be designed for a HRV is excessive and an overdesign. Given the frequency of use of the site by the SRV (outside of emergency situations) any very irregular large vehicle entering or exiting the site by crossing over the centre line is acceptable on traffic grounds.	to the construction costs to meet the required standards. To date, this offer has not been pursued by the RFS. The Council's DCP 31 requires minimum standards for road construction that are to come into the Council's ownership and maintenance responsibility. As the gradient of the access construction in Dalton Place is steeper than 10%, DCP31 requires that the access be sealed and include a minimum 150mm DGB20 pavement on an approved subgrade. The standard of work specified in DCP 31 is to ensure the development can be appropriately accessed, and that the Council does not inherit assets that become a maintenance burden. As noted above, the Council has offered to make a contribution to the construction costs to meet the required standards. To date, this offer has not been pursued by the RFS. Due to the limited sight distance along Shipley Road from Dalton Place, widening of the Shipley Road shoulder or splaying the access to widen it at the Shipley Road carriageway to minimise the risk of vehicles tracking onto the wrong side of the road is considered essential for traffic safety. This is even more so the case for those occasions where large vehicles may enter Shipley Road in an emergency, potentially with visibility limited by smoke and concerned residents attempting to drive along Shipley Road.	Amend reference to HRV to refer to MRV

Condition (summary only, not actual text)	Applicant Comment	Council Comment	Council Agreed Amendment
		The traffic report submitted with the development application indicated that an 8.8m rigid vehicle (medium rigid vehicle) was considered to be representative of vehicles accessing the site. Whilst the application now proposes only SRVs to be garaged at the site, there is considerable likelihood that larger vehicles could utilize the site in emergencies. In the circumstances it is considered reasonable to amend the reference to HRV to refer to MRV.	

5. CONCLUSION

Council has undertaken a comprehensive assessment of the DA, and recommends that the DA be approved subject to conditions of consent. A copy of the proposed conditions is included as **Attachment 1**.

The applicant is concerned with the proposed imposition of a number of conditions of consent including the deferred commencement conditions, requirement for amalgamation of the two lots and the standard of construction required for the driveway (Dalton Place) and internal pavements. A summary of the applicant's concerns, with a corresponding address on each matter by council, is provided in **Section 4** of this report.

It is noted that council has agreed to modify deferred commencement condition 6, and operational conditions 1 and 25, as outlined in **Section 4** of this report. Council has not agreed to modify other conditions of consent.

If the regional panel resolves to approve the DA, in accordance with the recommendation in council's assessment report, the decision should incorporate the agreed changes to deferred commencement condition 6, and operational conditions 1 and 25 (if agreed to by the applicant). Additionally, consideration should be given to the need to amend any of the other proposed conditions of consent to address the concerns raised by the applicant and taking into account the comments provided by council.

Pursuant to section 89 of the EP&A Act, if the regional panel wishes to impose a condition that is not agreed to by the applicant, or to refuse consent, the regional panel must refer the DA to the Minister for Planning and Infrastructure. Should the applicant agree to the imposition of conditions the regional panel may proceed to determine the application without referral to the Minister.

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LIST OF ATTACHMENTS

1. Copy of draft conditions (dated September 2012) as included as Attachment 1 to council's assessment report
2. Minutes of council meeting dated 11 December 2012 – Item 27 – *Referral of Crown Development (Shipley Plateau Rural Fire Service Brigade Building) to Joint Regional Planning Panel*
3. Letter from NSW Rural Fire Service to Blue Mountains City Council, dated 8 February 2013
4. Response from Blue Mountains City Council to NSW Rural Fire Service's comments on conditions of consent, letter dated 4 March 2013

