

ITEM NO: 27**SUBJECT:** REFERRAL OF CROWN DEVELOPMENT (SHIPLEY PLATEAU RURAL FIRE SERVICE BRIGADE BUILDING) TO JOINT REGIONAL PLANNING PANEL**FILE NO:** F07350 - 12/187762**Delivery Program Link**

Principal Activity: Built Environment - Using Land

Service: Land Use Management

Project: Advise on land use

Recommendations:

That the Council refer the Crown Development Application X/900/2011 for the Shipley Brigade Building at 117-123 Shipley Road, Blackheath to the Joint Regional Planning Panel for determination pursuant to s. 89(2) of the Environmental Planning and Assessment Act 1979.

Report by Director, Development, Health & Customer Services:**Reason for report**

The purpose of this report is to request that the Council refer the Crown Development Application (DA) X/900/2011 for a Shipley Brigade Building by the Rural Fire Service at 117-123 Shipley Road, Blackheath to the Joint Regional Planning Panel for determination.

The application is one that could be determined under delegated authority by the staff of the Council, but as a Crown application, recommended conditions of consent cannot be imposed without the agreement of the Crown authority and that agreement has not been forthcoming. The resolution of this matter has reached an impasse and the Environmental Planning and Assessment Act 1979 provides a mechanism whereby the JRPP can accept a Crown application for determination.

BackgroundThe site and general development assessment requirements

The site is a difficult and challenging one, being part of a large tract of undeveloped Crown land which has environmental sensitivities, extreme bush fire hazard and no services. Some large lot residential sites are opposite and adjoining.

The application and assessment has had to deal with and settle on an appropriate design and proposal elements in relation to vehicular access, bush fire protection, fauna flora impacts, onsite effluent disposal, stormwater management and issues associated with an Aboriginal title claim. These are all matters which must be considered under the Environmental Planning and Assessment Act 1979 and other related legislation or subsidiary regulation. Adjoining and nearby owners have also had issues in this regard, together with

concerns about the how the building will look and what noise and other amenity impacts might arise.

Brief history of the development application

The DA was lodged By NSW Rural Fire Service (RFS) on 21 October 2011 (with Department of Public Works acting as consultants to RFS and managing the application content.) The application remains undetermined but a draft development consent and conditions has been with RFS since 1 August and then revised again in mid September in an effort to address some of the concerns of the RFS.

A chronology at Attachment 1 outlines the steps taken by the Council in seeking to resolve the significant deficiencies in the application which stood in the way of the determination of the application. The chronology demonstrates an unacceptably long and complex process. That has occurred as a consequence of the poor standard of the development application and the lack of responsiveness of the applicant to the issues raised early in the assessment period.

The draft conditions were sent to the applicant for review (as is required for Crown Development under the Environmental Planning Assessment Act 1979), on 1 August 2012. Regretfully, the ongoing issues with inadequate documentation particularly as relates to stormwater management have resulted in a draft deferred commencement consent which has been made more complex than desirable by the need to accommodate and resolve the ongoing outstanding issues. As a result of the meeting with Rural Fire Service staff in early September 2012, some amendments were made to simplify the draft conditions and the amended draft conditions were referred back to the RFS for consideration on 18 September 2012.

It is noteworthy that the majority of major additional information requests were from State Government authorities and agencies.

One of the more troubling omissions from the development application as lodged was that of the absence of a Bushfire Threat Assessment, a base requirement for development in this circumstance and the RFS (as the assessment body under Section 79BA of the EP&A Act, not the applicant) responded that the information in the application was not adequate for a full assessment to be undertaken. It also indentified that the Asset Protection Zones identified in the Flora and Fauna Assessment would extend into adjoining land and therefore require an easement over this land. Additional information with regard to the Bushfire Threat and compliance with *Planning for Bushfire Protection 2006* was not provided to the Council. On 5 March 2012 a second response was received from the RFS (as the assessment body) detailing recommended conditions (including construction requirements) in accordance with section 79BA of the EP&A Act.

The major continuing delays and the necessity for the proposed issue of a Deferred Commencement consent has occurred principally as a result of insufficient information provided by the applicant, particularly in regard to stormwater and wastewater. Both the NSW Sydney Catchment Authority and the Council have consistently requested the standard information required under the State Government's SEPP (Sydney Drinking Water Catchment) 2011, as well as Council's planning instruments. Whilst the most recently lodged information was not sufficient to fully resolve the baseline requirements, it has enabled the

deferred commencement consent to be proposed so satisfying the Sydney Catchment Authority requirement for further information before an operational consent could be issued.

Against this context, the local community has expressed a significant level of concern about the adverse impact of the development upon this environmentally sensitive site, the safety of the access point and the potential for adverse impact on the visual and residential amenity. These are all issues of substance on this challenging site and have had to be resolved to a satisfactory level before the grant of development consent could be proposed.

Another background issue of relevance is concern raised by an adjoining owner that they were not notified about the Development application. Staff have reviewed this procedural aspect closely and determined that the owner at the time that the application was put out to neighbour notification did receive that notice and did in fact lodge an objection. Therefore the notification occurred in accordance with the Councils Development Control Plan. The current landowner purchased the property in April 2012 and therefore, given that the application was lodged in October 2011, the notification process had been completed some months earlier.

Current Status of the Development Application

As noted above, the need to resolve statutory threshold issues has resulted in the proposed draft deferred commencement consent being issued to the RFS and remains with RFS for their response.

Since the issue of the first draft consent and conditions at the beginning of August, there have been a number of meeting and discussions and an amendment of the draft conditions in an effort to resolve the issues.

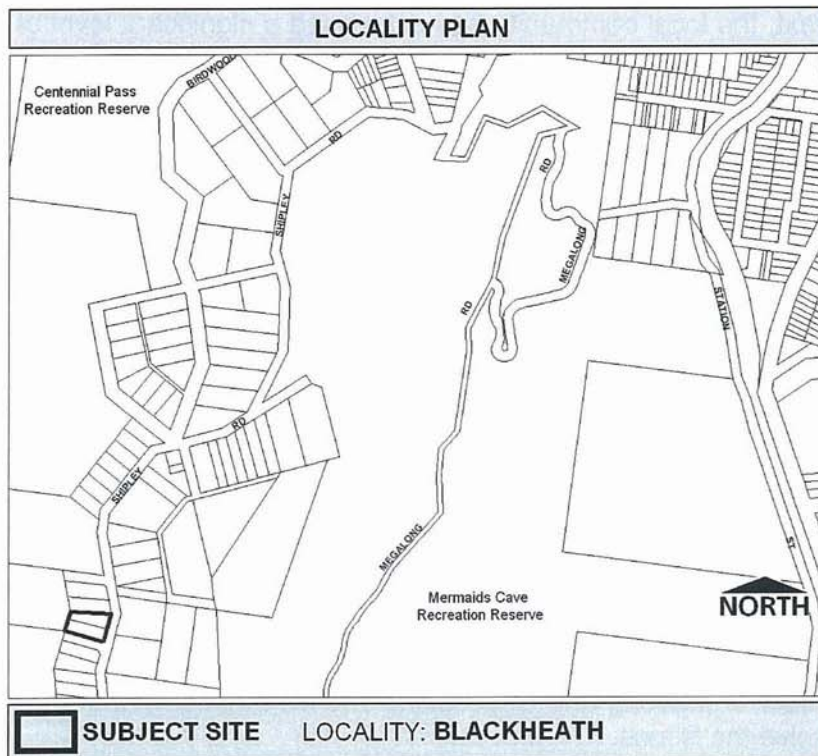
The issues that seemingly remain of concern to the RFS relate to the cost of meeting the vehicular access standards and the need for further work to ensure that the design of effluent/stormwater disposal system accords with the site conditions.

It is relevant that the Council inherits the RFS brigade building and site assets and the maintenance costs thereof. Thus the conditions require that the asset be constructed to the appropriate standard for acceptance of that asset but senior management have given undertakings to consider how assistance with the construction cost for the access might be provided via funds identified for RFS asset maintenance.

Discussions scheduled to examine and agree the potential assistance that the Council might offer did not come to fruition because of uncertainties raised by the applicant very recently that the incorrect building plans were lodged and that there is also an issue with respect to the possible inaccuracy of the other plans and/or supporting documents originally submitted with the application.

Those issues are still playing out as this report is being prepared and once the applicant is clear as to the exact nature of the potential inaccuracy, the implications of the issue for determination of the application can be identified.

The RFS has also expressed concern regarding the concerns raised by the adjoining owner that he was not notified of the application. As noted in the Background of this report a review of that process has determined that the neighbour notification occurred as required by the Council DCP and it is not agreed that the process was flawed. However it may propose a point of argument and as with any other potential risk, lodgement of a new application with the correct plans and correct building proposal would entirely eliminate any argument as to this point.



Resolution of the DA

The application has been with the Council for an unreasonably long period, exceeding 400 days. As noted above there have been a number of attempts to resolve and finalise this application.

As this is Crown Development, the Council cannot refuse consent or impose conditions without approval of the applicant and/or the Minister. Absent the information required by the Deferred Commencement and certain of the other conditions the application cannot be recommended for approval.

Multiple requests for this deficient application to be withdrawn have not been agreed to by the applicant.

It is considered that Government agencies and the staff of the Council have taken every reasonable step to resolve the application. There is a public benefit in having this application resolved, both in terms of enabling the level of service sought by the RFS and providing certainty to the adjoining neighbours concerned by this development.

In specifying the requirements applying to Crown Development, s. 89 of the *Environmental Planning and Assessment Act 1979* states:

- (1) *A consent authority (other than the Minister) must not:*
 - (a) *refuse its consent to a Crown development application, except with the approval of the Minister, or*
 - (b) *impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.*
- (2) *If the consent authority fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the consent authority may refer the application:*
 - (a) *to the Minister, if the consent authority is not a council, or*
 - (b) **to the applicable regional panel, if the consent authority is a council...**

Accordingly, it is open for the Council to refer this application to the Joint Regional Planning Panel (JRPP) for determination. The Council staff would still be in a position to prepare assessment reports and draft conditions for determination by the JRPP. However, it is expected that the JRPP will be in a position to require the RFS to provide the necessary information and advice on the amendment of the application and, if necessary, take a recommendation to the Minister to have the application refused if impacts of the amended application cannot be resolved.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Nil	Nil
Social	Nil	Nil
Economic	Nil	Nil
Governance	The Joint Regional Planning Panel will be able to independently review the DA process and resolve further delays in the assessment process.	Nil

Financial implications for the Council

Nil.

Legal and risk management issues for the Council

Nil. The JRPP has been constituted to provide an independent planning assessment, and is specifically identified for this role in relation to Crown Development under the EP&A Act.

External consultation

Advice has been provided to the RFS that the Council will be considering a proposal to have this DA determined by the JRPP, reiterating the request to have this application withdrawn.

Conclusion

The delays by the applicant in this particular Crown Development are extreme. Such a process not only prejudices the public interest but also adjoining neighbours who are uncertain about the future development of the site. The Council does not have power to conclude this matter in a way that appropriately addresses the inadequacies of this application other than by conditions which the applicant has not and indicates is not prepared to agree.

It is recommended that the Council refer this application to the JRPP in an effort to further exhaust all reasonable avenues to have this development application resolved in the public interest. JRPP are an independent body with a role to address impasse in DA determination of Crown applications. Any consent that may ultimately issue after its deliberations will have the benefit that all parties will have comfort that the result of the process will have been appropriately tested against the proper considerations.

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AUTHOR: Will Langevad, Manager, Development and Planning Services

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Does this paper need to go to a briefing session OR have Ward Councillors been briefed?: No

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ATTACHMENTS/ENCLOSURES

1	Timeline - Shipley Brigade	12/188127	Attachment
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Attachment 1- Timeline Shipley Brigade

X/900/2011 – Shipley Brigade Station – Shipley Road, Blackheath

Following is a summary of the issues raised with X/900/2011 and the time take to resolve each issue:

Timeline	Description of issue	Response Time
21st October 2011 – Application Lodged	A number of significant issues were identified with the application at an early stage. Council has discussions with applicant about withdrawal of application due to the manifest deficiencies of the information. The applicant refused to withdraw the application.	
26th October 2011 – Referrals	Referrals sent: External: SCA, RFS, Lands Internal: Engineering, Environmental Science, Environmental Health,	Referrals within 1 week of lodgement
2nd November 2011 – Response from Sydney Catchment Authority Requesting additional information	Request for: - specific contemporary wastewater report - A water cycle management study including stormwater drainage plan	
8th – 30 November 2011	Public notification(letters & Gazette) – a number of submissions, registering concern/objection to suitability of site on grounds of environmental, visual, access/safety and impact on residential amenity	
30th November 2011 – Response from RFS (Head Office) Requesting additional information	The land is mapped Bushfire Prone land yet the application did not contain a Bushfire Threat Assessment. The RFS (Head Office) identified a number of significant issues – namely failure to address the need for APZs onto adjoining land.	
9th and 14th December 2011 – Letters from Council requesting additional information	Information requested (response to issues raised in public submissions; inadequacies raised by SCA, RFS, Crown Lands, related inadequacies re impacts on native vegetation)	Applicant responds after 2 months to request a meeting.
24th January 2012 – Due to no response to above letters, additional letter sent from Council	Letter reiterated earlier information requested, and raised the need to addressed issue of Native Title – new issues as raised by the Crown Letter again requested withdrawal of application due to deficiency of information	No information provided
9th February 2012 – Meeting held with Kim Barrett (BMCC), RFS (applicant), Public Works and the applicant's	At this meeting applicant again requested to withdraw the application and address major inadequacies. The applicant refused to withdraw the	

consultant – BBC Planners	application, and confirmed that all information would be received by Council by end of February 2012 (excepting the assessment of Native Title).	Applicant responds 1 month after meeting (on 6th March 2012 below)
5th March 2012 – Recommendations received from RFS	Included construction standards for building, including the need for heat shields such that the APZs can be reduced to within the subject site.	
6th March 2012 - Letter from BBC Planners	Letter included a Stormwater Management Plan, request that the Vegetation Management Plan be conditioned, and instruction that investigation into Aboriginal Cultural Heritage was underway. This information as internally referred and the referred to the SCA;	First provision of information since requests on 9th and 14th of December 2012. <u>Approximate 3 month delay</u>
13th March 2012 – Email from Sydney Catchment Authority	Email confirms that the information provided by the applicant remains in adequate for assessment (particularly with regards to wastewater);	SCA responds in 1 week
24th April 2012 – Addendum to Water Cycle Management Study provided by the applicant;	Submitted to satisfy requirements of SCA and internal Environmental Staff	SCA responds in 2 days
26th April 2012 – Email from SCA requesting additional and revised information.	Contradictory information and the MUSIC model in inaccurate	
11th May 2012 – Second Addendum to Water Cycle Management Study provided by the applicant.	Forwarded to SCA on 11 th May 2012;	
21st May 2012 –BMCC received Aboriginal Cultural Assessment	Assessment report completed in accordance with Office of Environment & Heritage requirements	
29th May 2012 – Email from the SCA - the MUSIC Model and information provided by the applicant still unsatisfactory.	SCA contacted report writer directly (being Dept of Public Works) to confirm detail and inconsistencies.	
17th June 2012 –Qualified Concurrence received form SCA.	SCA required additional information prior to issue of operational consent, due to poor quality of stormwater plan. A condition to this effect is included in their concurrence dated 14 th June 2012.	Total time taken from original referral to SCA to concurrence: <u>7 months, 2 weeks</u>
27th June 2012 – Internal referral the Environmental Scientist received	Existing Council conditions reviewed on basis of SCA concurrence	
16-27th July 2012 – Report and conditions finalised, and internally peer reviewed.	Conditions reviewed by Engineering, Environmental Scientists and Environmental Health	4-5 weeks to finalisation after internal referrals received
1 August 2012 – Draft	Draft conditions sent to Dan Brindle (BBC	

Conditions sent to applicant	Planners) as applicants consultant and as per instruction from David Hoadley	
3 September 2012 – Response received from applicant	Comments received on a number of conditions, primarily related to Stormwater requirements and road construction.	Response from applicant 1 month after sending draft conditions.
7 September 2012 - Meetings with GM& Director DH&CS and then Director DH&CS & Manager Planning Services with District Manager David Jones	Reviewed / discussed the draft conditions and RFS submissions, in particular demonstrating that SCA required further work to satisfy stormwater management before Operational Consent could be issued.	
18th September 2012 - revised draft conditions issued to RFS for consideration	Some amendment made to draft conditions. Access construction standards generally retained but RFS invited to discuss assistance with funding with BMCC Assets Branch and process for transfer road to the Council	
21st September 2012 - phone call to David Jones from Manager Development & Planning Services	Follow up on offer to meet to discuss revised conditions.	
9th October 2012 – site meeting with David Jones and BMCC representatives (Kim Barrett, Tony Moore and George Thompson).	David Jones suggested that the category of building for which consent had been sought was incorrect, and they may wish to amend the DA. Concern also raised by adjoining land owner over the alignment of site boundaries. David Jones agreed to reply to Council re confirmation of survey submitted with application and intent to amend the application or withdraw it.	
25th October 2012 – phone call to David Jones from Kim Barrett	Follow up on intent to amend the current development application plans. Left message. No response.	
11th November 2012 – phone call from David Jones to advise that no decision had been with regard to amending the application or withdrawing it. Subsequent email from Kim Barrett to David Jones	Email outlining Council's concern over the extended delay in getting a response to finalise the DA. Also raised concern over significant amendments being made to the DA at such a late stage. David Jones confirmed a response would be provided in the following week. No response received.	
16th November 2012 – phone call to David Jones from Manager Development & Planning Services	Follow up on the intention of the RFS with regard to application (amendment, withdrawal). David Jones suggested the application may be amended. David Jones agreed that a response would be provided by 23 rd November 2012. No response received as at 22 nd November 2012.	
22nd November 2012 – letter sent to RFS (David Jones) from	Letter advised that a report was being prepared to go to Council. This report	

Council (Manager Development & Planning Services).	would recommend that the application be referred to the Joint Regional Planning Panel for determination.	
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