

Supplementary Report to JRPP (Northern Region) 19 November 2014
Response to the Applicant's Concern with Conditions
Ref 2014NTH007 Tomato Farm - New England Highway Falconer

This supplementary report is in response to the concerns raised by the Applicant, in regard to the recommended conditions of consent, in their letter dated 17 November 2014.

Condition No. 5

It is agreed that this BCA condition is not appropriate. The following prescribed conditions should be imposed instead.

Compliance with Building Code of Australia

5 A

(1) For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- (b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

(1A) For the purposes of section 80A (11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia*.

(2) This clause does not apply:

- (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
- (b) to the erection of a temporary building, other than a temporary structure to which sub clause (1A) applies.

(3) In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application is made for the relevant:

- (a) development consent, in the case of a temporary structure that is an entertainment venue, or
- (b) construction certificate, in every other case.

Note. There are no relevant provisions in the *Building Code of Australia* in respect of temporary

structures that are not entertainment venues.

Erection of signs

5B

- (1) For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note. *Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).*

Modification of Second Heading

There is no objection raised to inclusion of the foundations of the supplementary buildings in the initial part of Stage 1 of the development provided the precondition in Condition No.8 (of fully resolving all landownership issues) is maintained as discussed below. Therefore the second heading would read:

THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE FOR THE BUILDING FOUNDATIONS IN STAGE 1 OF THE DEVELOPMENT

Condition No.8

This condition requires in part that *“All lot boundary adjustments and/or easements necessary to enable the establishment and ongoing operation of the tomato farm are to be created on the respective titles”*. This requirement is fundamental to the consent. Concessions to early advancement of the development have already been granted in the form of the earthworks and subdivision. The resolution of these matters involves third parties and is beyond the control of either the proponent or the consent authority. If these easement or boundary adjustments could not be finalised as proposed it would require modification of the proposed development either in the form of the relocating the access or relocating the route of the water and sewer lines. To allow the development to proceed further without resolution of these matters could result in undue pressure on the consent authority to later modify the consent.

I considered recommending that these matters be resolved as deferred commencement consent matters but have recommended this simpler process.

In regard to the stormwater catch drains it was noted in the request for further information that some of the external catch drains were outside the new lot boundary. The applicant was asked to outline how these catch drains will be maintained if in separate ownership. These catch drains at the top of the cut embankments simply disappeared in the revised plans. The top north west corner of the cut embankment is now outside Lot 2. It would seem that a catch drain at the top of the embankment is required to stop the erosion of the embankment. As such this part of the embankment and catch drain should be in the same ownership. Therefore this requirement should remain.

The condition should remain as recommended.

Condition No.12

While it is understood that the Traffic Management/ Control Plan aspects of the temporary intersection have been approved for the earthworks the building construction phase will require some alteration of these approved arrangements. The intersection arrangements may be different with the changes in the type and frequency of vehicle movements. Additionally the Traffic Management Plan will need to cover the construction of the water and sewer services on Council's roads. As such approval under the Roads Act will be required. The condition should remain as recommended.

Condition Number 14(e)

I agree that it is reasonable to allow works outside the standard hours that are not audible at adjoining premises (e.g. painting). Therefore it is recommended that the following words be deleted:

No construction work is to take place on Sundays or Public Holidays

Conditions 17, 20 and 21

The applicant wishes to be able to have multiple construction certificates issued and comply with each condition when it is relevant. As such the applicant is seeking in regard to each of these conditions to make it clear they only need to provide the information if it is relevant to the particular construction certificate to be issued. These changes would be more easily achieved by modifying the third heading with the addition of the underlined words as follows:

THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE FOR THE REMAINDER OF STAGE 1 OF THE DEVELOPMENT WHERE RELEVANT TO THE CONSTRUCTION CERTIFICATE TO BE ISSUED. ALL CONDITIONS MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE LAST CONSTRUCTION CERTIFICATE FOR STAGE 1.

Condition No.22

The applicant wishes to delay the preparation of the Operational Plan of Management until prior to the occupation of the development. I have recommended this condition prior to the construction certificate only because the legislation requirements of occupational certificates are not as rigorous as the construction certificate requirements. Never the less given the applicant's acceptance of the requirement for the plan moving it to prior to occupation is reasonable.

Condition No.22(e)

The applicant wishes to adjust the operational hours from a 7am to 6 am start to clearly provide for the arrival of staff. The applicant has not provided any detailed noise assessment with the application. They have relied on the relative isolation of the site. There have been a number of objectors raising concerns about potential noise impacts. Given the uncertainty with regard to noise impacts it is recommended that a precautionary approach be taken and that the hours remain as recommended until the operation of the development can be monitored.

Condition No.32

Council's engineer will responded to this request at the meeting.

Condition No.38

The applicant objects to this condition allowing residents the authority to order a noise assessment in circumstances where they are impacted by noise from the operation of the tomato farm. This is a condition that I have successfully utilised before for large operations where noise impacts are uncertain. As stated above the applicant has not provided any detailed noise assessment with the application. They have relied on the relative isolation of the site. There have been a number of objectors raising concerns about potential noise impacts. Given the uncertainty with regard to noise impacts it is recommended that a precautionary approach be taken and the condition remain. It provides a very good mechanism for any noise issues to be resolved in a conciliatory manner.

Conclusion

It is recommended that the recommended conditions be modified as outlined above.



Chris Pratt
Land Use Planner

