

SUPPLEMENTARY REPORT – Joint Regional Planning Panel (Northern Region)

JRPP Ref: 2015NTH002

KSC Ref: DAT6-14-62

Applicant: Tee Bee Holding Pty Ltd

Proposed Development: Stage Development Application – Concept Plan (338 lots) Stage 1 (29 lots)

Subject Land: Lot 35 DP 1167775, via Waianbar Avenue, South West Rocks

Introduction

Council is in receipt of a letter dated 15 February 2016 (received 16 February 2016) from Pike & Verekers Lawyers on behalf of the applicant requesting the JRPP to defer determination of the DA until such time as a report that properly assesses the DA has been provided. In this regard, the submission makes a number of assertions to which the following comments relate.

Executive Summary

The applicant asserts that the level of information requested by Council to determine the application is unnecessary and can be provided with DAs for subsequent stages or even at construction certificate stage. The applicant asserts that this can be achieved through conditions of consent which set the parameters for the concept approval and the manner in which the subdivision should be undertaken.

As detailed in the planning report to the JRPP, it is Council's contention that although more detailed information will be required for DAs dealing with subsequent stages of the concept approval, insufficient information has been provided in relation to a number of critical matters to enable appropriate conditions to be applied to provide any level of certainty that the concept plan can be achieved. Council considers that in accordance with the recommendation provided to the JRPP and having regard to previous requests for the applicant to provide information that is consistent with this approach, that the application should be refused for the stated reasons.

Assessment Approach

The applicant contends that the EP&A Act clearly makes a distinction between the level of information required at the concept level with that required for Stage 1 (29 lots).

Whilst Council concurs with this view, as detailed in the planning report, the information provided in support of the concept plan is either completely lacking or clearly inadequate to allow the consent authority to assess the proposal against the heads of consideration under Section 79C. In support of Council's approach, it is noted that Section 83C of the Act provides that:-

83C Staged development applications as alternative to dcp required by environmental planning instruments

- (1) An environmental planning instrument cannot require the making of a staged development application before development is carried out.

(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a staged development application in respect of that land.

(3) Any such staged development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

On this basis, the information required in support of the application seeking concept approval, must include the information required under KLEP 2013 and KDCP 2013. Contrary to the applicant's assertion, Council is of the view that several key issues are either completely lacking or fail any reasonable test of adequacy, including:-

- Lack of a staging plan
- Inadequate traffic assessment justifying not providing a link road or identifying thresholds for additional access points to Phillip Drive
- Lack of an overall Vegetation Management Plan
- Inadequate strategy for providing a network of recreation areas
- Inadequate stormwater and water quality management controls

In support of its argument, the applicant refers to section 83B(3) that provides that the consent being sought would only apply to Stage 1 and that development of the remainder of the site cannot proceed until subsequent DAs have been approved.

However, the submission clearly fails to address the requirements of Section 83D(2):-

83D Status of staged development applications and consents

(1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a staged development application and a development consent granted on the determination of any such application.

(2) While any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.

(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a staged development application.

Therefore, the concept plan must have a higher level of certainty than that contemplated by the applicant, which, as detailed in the planning report, has not been achieved, despite repeated requests to provide the level of information required.

The applicant's contention that Council is seeking a level of detail that reflects final construction methods is incorrect. The information requested by Council in respect to stormwater control, access and threatened species in particular, have implications that are fundamental to the overall layout and therefore required to ensure that Section 83D(2) can be met.

The applicant cites *Amalgamated Holdings v North Sydney Council (2012)* in support of its assertion as to the level of information required. It is noted that the relevance of this case largely turns on the

merits of the application which related to a high rise seniors development and the degree to which the design principles under the Seniors SEPP had been addressed. It is noted that in this instance the information required to support the concept plan had already been incorporated in detailed planning controls adopted by the Council for the site.

Using a high-rise building as an analogy to the current proposal, it is agreed that whilst full architectural details are not required for the Stage 1 component of the approval, sufficient information to describe the parameters of the building (height, setbacks, carparking, etc), including an assessment of associated primary impacts (views, overshadowing, traffic generation and access, etc) needs to be provided with the application to ensure that subsequent DAs are not inconsistent with the approval.

The applicant draws the conclusion that information provided must be sufficient to understand the concept only, but not the final resolution of all potential issues. This view is agreed to the extent of issues that are not fundamental to achieving the overall concept plan. In the context of the application at hand, fundamental issues related to the concept plan remain unresolved.

Conditions/ Critical Aspects

Using the example of stormwater, the applicant considers that the concerns raised by Council and DPI related to the lack of detail concerning stormwater disposal can simply be cured by conditions of consent that specify the relevant desired outcomes. Where such issues are fundamental to the overall concept plan, it is Council's considered position that such conditions are likely to be found to be invalid unless sufficient information has been provided to demonstrate that the desired outcomes can be achieved without significant alterations to the concept plan.

Using the example provided, having regard to the relationship between ground water and the capacity to collect and adequately treat stormwater, it is imperative that there is sufficient information provided to indicate that this can be achieved, including the DPI preliminary requirements. Such considerations have implications for the overall design and justification for the concept plan. In the absence of such information, any conditions of consent as proposed by the applicant would lack the requisite level of certainty and, as referred to above, cannot simply be left to subsequent DAs to sort out on an adhoc basis.

It is noted that this example is relevant to a range of other issues including:-

- Flora and fauna impacts, in particular the Wallum Froglet
- Traffic, including impacts on the road network in not providing a through link road and the thresholds for additional access points to Phillip Drive
- Lack of a servicing strategy and the associated implications for how and when subsequent stages are to be developed.

LEP Clause 6.3

KDCP 2013 specifies the matters to be included in a master plan for the site, precedent to the consideration of any DA that may be satisfied by a concept plan. The applicant states: *"Save for the question of a master plan and supporting strategies, the proposed development is generally consistent with....the DCP."*

This position is inconsistent with Section 83C (3) of the Act.

Master Plan

The applicant is under the misapprehension that the master plan referred to in Chapter D2 of KDCP 2013 is the master plan required under SEPP 71. The applicant's contention is that as a waiver under clause 18(2) of SEPP 71 has been provided by NSW Planning, the requirements of KDCP 2013 are therefore irrelevant.

This position is at odds with both the applicant's request to the DPE for a master plan waiver of 28 August 2013 and the advice received from DPE received 16 May 2014 in response the Council's letter of 11 April 2014.

- The applicant's request for a waiver of 28 August 2013 relies upon the requirements of Clause 66 of KLEP 1987 relating to the need for a DCP, including matters required to be address and the fact that Saltwater DCP 2010 had been adopted by Council, which is effectively a master plan. It was pointed out to the applicant's consultant that Clause 66 was repealed upon commencement of KLEP 2013 on 3 February 2014 with parallel provisions contained in Clause 6.3. It was further pointed out that Saltwater DCP 2010 was also repealed on 3 February 2014 with the commencement of KDCP 2013.
- The DPE letter of 14 May 2014 confirms that the basis of the waiver assumes that existing planning controls will be complied with.

Notwithstanding, the master plan waiver merely removes the requirements for the Minister to approve a master plan under SEPP 71 and does not remove the requirement to prepare a masterplan in accordance with KLEP 2013 and KDCP 2013. As referred to above, having elected to submit a staged development application, in accordance with Section 83C (3) the concept plan must address the requirements of KLEP 2013 and KDCP 2013.

Conclusion

For the reasons detailed above and in the planning report, it is considered that the information provided in support of the application does not comply with the requirements of KLEP 2013 and KDCP 2013 and the application is therefore recommended for refusal.