

Panel Reference – 2016SYW110-LGA- Wollondilly-DD010.2015.00000935.001AT37,41 & 46 Marsh Road and 1 Production Avenue , Silverdale.

Annexure 1. Response to issues raised by Planning Panel Deferral on Minutes Dated 18th June 2018. (Version dated 29 August -2018)

| Planning Panel Item | Applicants Response (Simba Developments) | Council's Response | Agreed response back to Planning Panel Y/ N |
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| Item 1. The Panel saw merit of a residential subdivision of the DA site if it is found to satisfactorily address the new zoning of the site for the: DA, its ecological significance, and other applicable controls. | Item 1 It is noted that the Planning Panel saw merit in the DA proposal, as it satisfactorily addressed zoning, ecological and other applicable controls. No action or response required. | | Yes |
| Item 2. The staff report advised that a proposed voluntary planning agreement offered by the Applicant (VPA) relevant to the provision of infrastructure essential to the proposed development has yet to be exhibited and has not yet been approved by the Council. The Panel is aware that it cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement (see s.7.7(2)(previously s.931) of the EP&A Act). However, the Panel was of the view that the VPA that has been offered by the Applicant ought to be exhibited, and its status then reported on, before the DA is finally determined. | Response to Item 2. 1. VPA was exhibited from 23 rd July to 20 th August 2018. Link to Wollondilly Council Website: https://www.wollondilly.nsw.gov.au/council/advertisements/draft-planning-agreement-1-41-marsh-road-silverdale/ 2. Report its status. At the Council meeting held on 16 th April 2018, it resolved the following items 2 & 3 of the minutes: Item 2 a. VPA to be exhibited in accordance with the Act. b. Delegation to be given to the General Manager to authorise any Minor changes. On Wednesday 18 th July -2018 the Acting General Manager signed off on the minor changes made to the VPA, prior to it being exhibited. Item 3 Outcome of VPA exhibition is to be reported back to a Council meeting being held on 15 th October 2018. No written submissions were received. Draft DA Conditions of Consent: Condition Number 27 - Developers Contributions, contain conditions that relate to the VPA: | (a) The draft VPA was publicly exhibited between 23 July 2018 and 20 August 2018. (b) No written submissions were received. (c) The VPA will be reported to the next available Council meeting which is scheduled for 15 October 2018. | Yes |

- Prior to issue of any Construction Certificate the applicant shall provide a Draft Planning agreement in accordance with Environmental Planning & assessment Act and letter of offer which is constant with Council’s planning policy.

Draft VPA and letter of offer have been issued to Council.

- The Draft Planning agreement shall be provided to Council in a form that is suitable for Public exhibition subject to legal advice on its content.

This condition has been complied with.

- The applicant and Council shall use their best endeavours to ensure the planning agreement is executed within 120 days of the date of consent.

This timing is on track to achieve this outcome.

- VPA to contain works to be completed to satisfaction of Council prior to issue of subdivision certificate.

Therefore the DA conditions calls for the Draft Planning agreement is to be in place prior to issue of the first Construction Certificate and for works to be carried out in accordance with the VPA prior to Subdivision Certificate release.

Simba’s legal advice received from Matthews Folbigg on the VPA approval process, agrees with the Planning Panels reference in their minutes that it can not refuse the granting of the DA approval on the grounds that a VPA agreement is not yet entered into. The above demonstrates that this VPA agreement is in its final stages and requires Council to execute the agreement within 120 days of issue of the consent.

“The Panel is aware that it cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement (see s.7.7(2)(previously s.931) of the EP&A Act)”.

Refer to Document No. 1 attached.

Item 3. The Panel would be assisted in its further assessment by clarification from the Council staff and/or the applicant (which may include legal advice) as to:

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| (a) Proposed pedestrian linkages between the DA subdivision and the Warragamba Town centre, and particularly information as to any road infrastructure or other measures proposed to ensure safe crossing of Production Avenue, and safe passage through the adjacent public park towards the town centre and local school (noting that approval of the proposed subdivision would be expected to direct significant numbers of pedestrians including school age children along that route). | <p>A plan was prepared by Siteplus for Simba Developments which demonstrated the proposed pedestrian linkage to the Warragamba Town Centre. This information was provided to Council on 4th April 2017 in a response to the Planning Panel's site visit on 16th March 2017 where this issue was raised.</p> <p>Refer to Document 2 & 3 which demonstrates the proposed linkage from the development to Warragamba Town Centre.</p> <p>A Pedestrian Crossing or other works suggested to be carried out within Production Avenue was not raised by Council staff or by their Traffic committee as a Development requirement. The Pedestrian crossing suggested by the Planning Panel is not a DA condition being imposed or forms part of the VPA works required to be carried out.</p> <p>The construction of pathway for the pedestrian's link from the development to Warragamba Town Centre would require works to be carried out by Council on their parklands or an agreement to be entered into with Council for these works to be carried out on their land.</p> <p>The Pedestrian crossing that was raised by the Planning Panel on 18th June-18 was referred to Council's engineers who provided the following response on 28th June-18.</p> <p><i>1. A pedestrian crossing is not considered to be required at this location. Also this would need approval by RMS & would be unlikely to meet the warrants for a crossing. In addition to provide an appropriate pedestrian travel path the crossing would be too close to the intersection.</i></p> | (a) A pedestrian facility across Production Avenue may have merit, but not considered a development requirement. However, any pedestrian path should be located within road reserve beside Warradale Road rather than the park to ensure passive surveillance. | Yes |

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| <p>(b) Future use and management of the E2 zoned bushland, including:</p> <p>(i) whether any aspect of the use, management or preservation of the bushland within the E2 zone (and any associated vegetation management plan) is part of the development proposed by the DA or justification for that development or not,</p> | <p>The E2 land was previously contained within Lot 1 in DP 588912.</p> <p>With the recent subdivision of lot 1 (DP558912) into 4 lots, the land is now known as lots 1301-1304 in DP 1236986.</p> <ul style="list-style-type: none"> Lot 1301 was created for the purpose of identifying the E2 land area for a Bio-banking agreement and Long term management. Lots 1302 & 1303 were created for drainage and are subject to Vegetation management (VMP) requirements. Lot 1304 was created to isolate the proposed residential subdivision lot referred to in this DA. <p>Therefore the E2 land as referred to in the DA conditions and the VPA is known as lot 1301 and is now a separate lot. (Refer to document 4 for registered lots 1301-1304 in DP 1236986).</p> <p>Lot 1301 has an executed Bio-banking Agreement No. 328 over this land with OEH (Refer to document 5) and an agreement with Council Staff for its ongoing maintenance cost which requires to be put into the trust fund (TFD) prior to hand over. The VPA also provides for Lots 1302 and 1303 to be managed as water quality basins and bushland.</p> <p>The VPA has clauses contained within it which accepts this E2 land from Developer to Council after undertaking 5 years of maintenance (Refer to VPA agreement). This agreement is not reliant on this being in place for the development to proceed.</p> | <p>(a) The approval of the development is not dependent on the existence of the E2 land and the framework for its management. The E2 land will be managed in accordance with the terms of the Biobanking Agreement No 328 issued by the Office and Environment and Heritage. The E2 land is therefore not required as any justification for the proposal.</p> <p>(b) The amended Voluntary Planning Agreement includes a provision that Council be satisfied with the undertaking of works on the biobank site (land covered by the Biobanking Agreement) at the conclusion of the 5 year Simba maintenance period prior to accepting ownership of the land. Council will manage the site in accordance with the terms of the Biobanking Agreement in the event of it accepting ownership of this land. The approval of the development is therefore not dependent on the any aspect of the use, management or preservation of the bushland within the E2 Zone.</p> <p>(c) In relation to this matter, the E2 land is covered by the subject Development Application. The Biobanking Statement No 32 (Document 6) issued by the Office of Environment and Heritage contains a number of requirements to address potential impacts associated with the development on the E2 land. The determination includes a condition requiring compliance with the Biobanking Statement in accordance with Section 127ZO(2) of the <i>Threatened Species Conservation Act 1995</i>. The determination also includes additional consent conditions to those contained in the Biobanking Statement related to Council's responsibilities under the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The E2 Environmental Conservation zoned land, embellishment and contributions for maintenance are included in the Bio-banking Agreement No.328 trust fund.</p> | Yes |

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| (ii) the proposed Bio banking arrangement to the extent it is relied upon as justifying the ecological impacts of the development, | <p>The Bio-banking Agreement No. 328 (Document 5) is over Lot 1301 (E2 land) and has been assessed for its ecological impact and benefits over this lot, with Bio-banking credits being generated and to be taken up for the Development needs prior to hand over to Council.</p> <p>The Bio-banking Statement No. 32 (Document 6) is over Lots 1302, 1303 and 1304 where these have been assessed for its ecological impact for the number of Bio-banking credits required to satisfy the Development needs.</p> <p>The total Bio-banking Credits required to satisfy the Development requirements are noted below.</p> <table><tr><th colspan="5">Project Bio-Banking requirements</th></tr><tr><th>Type</th><th>Total Credits required</th><th>Lot 1301 (E2 Land) No. 328</th><th>Percentage of Credits off the E2 Land</th><th>Balance required for the project</th></tr><tr><td>HN1556</td><td>479</td><td>8</td><td>1.67%</td><td>471</td></tr><tr><td>HN1564</td><td>276</td><td>35</td><td>12.68%</td><td>241</td></tr><tr><td>Cumberland Snail</td><td>158</td><td>20</td><td>12.66%</td><td>138</td></tr><tr><td>Total Credits</td><td>913</td><td>63</td><td>6.90%</td><td>850</td></tr></table> <p>The E2 land only generates a total of 63 Credits of the 913 credits required for the development. Therefore the E2 land (lot 1301) land only provides 6.9% of the required credits for this residential Development and is not solely reliant upon the E2 land credits to be in place for the Development to proceed.</p> <p>The remaining 93.1% of the Bio-banking credits are being sourced and purchased externally for the development requirements. If this E2 Bio-banking Agreement over lot 1301 was not in place, as is currently executed with OEH, these credits would have then been sourced externally to meet the development needs.</p> | Project Bio-Banking requirements | | | | | Type | Total Credits required | Lot 1301 (E2 Land) No. 328 | Percentage of Credits off the E2 Land | Balance required for the project | HN1556 | 479 | 8 | 1.67% | 471 | HN1564 | 276 | 35 | 12.68% | 241 | Cumberland Snail | 158 | 20 | 12.66% | 138 | Total Credits | 913 | 63 | 6.90% | 850 | <p>(a) Biobanking is an assessment and approval pathway detailed in the <i>Threatened Species Conservation Act 1995</i>. It enables the offsetting of impacts associated with a development on threatened species and ecological communities listed in Schedules of this Act. A component of this approval pathway is a Biobanking Statement which applies to the development footprint</p> <p>(b) The development footprint for the subject proposal is covered by the Biobanking Statement No 32 (Document 6) issued by the Office of Environment and Heritage. To participate in BioBanking, a developer must obtain a biobanking statement from the Office of Environment and Heritage (OEH).</p> <p>(c) To obtain the biobanking statement, the developer needs to demonstrate they will ‘improve or maintain’ the site’s original biodiversity values. Section 127ZL of the <i>Threatened Species Conservation Act 1995</i> states the following:</p> <p>(d) “A Development will improve or maintain biodiversity values only if a Determination is made by the Chief Executive (of the Office of Environment and Heritage), on the basis of an assessment of the development in accordance with the Biobanking Assessment Methodology, that the development will improve or maintain biodiversity values”</p> <p>(e) A biobanking statement has been submitted to Council with the development application, the submitted statement is considered to be complying with the laws relating to biodiversity. This means that a biobanking statement ‘switches off’ the requirements of the <i>Environmental Planning and Assessment Act 1979</i>. Council is therefore not required to take into consideration the likely impact of the development on biodiversity values (as required under the former Section 79c of the <i>Environmental Planning and Assessment Act 1979</i>). Council is however permitted under the Biobanking Assessment Methodology to include additional conditions provided they are not already addressed by the Biobanking Statement and the conditions are environmentally related.</p> <p>(f) The above explanation demonstrates that the ecological impact of the development has been justified under the provisions of the <i>Threatened Species Conservation Act 1995</i>as a result of the issuing of the Biobanking Statement.</p> <p>(g) The VPA has provisions for the dedication of the managed reserves land and funding for the ongoing maintenance to Council.</p> | Yes |
| Project Bio-Banking requirements | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Type | Total Credits required | Lot 1301 (E2 Land) No. 328 | Percentage of Credits off the E2 Land | Balance required for the project | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| HN1556 | 479 | 8 | 1.67% | 471 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| HN1564 | 276 | 35 | 12.68% | 241 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cumberland Snail | 158 | 20 | 12.66% | 138 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Credits | 913 | 63 | 6.90% | 850 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| (iii) the application of relevant legislation and relevant savings and transitional provisions, | <p>The following legislations were considered as part of the assessment:</p> <ul style="list-style-type: none"> • Threatened species Conservation act 1995 (re • Native Vegetation Act 2003. (replaced with the Local Land Services Act 2013 and the Biodiversity Conservation Act 2016) • Noxious Weeds Act 1993(Replaced with the Biosecurity Act 2015) • Fisheries management Act 1994 • Water Management Act 2000 • Biodiversity Act 2016 • Environment Protection & Bio-Diversity Conservation act 1999. <p>(Commonwealth)</p> <p>Transitional arrangements</p> <p>Local developments in the following Western Sydney local government areas will have 15 months from 25 August 2017 to submit an application under the previous legislation, that is, until 24 November 2018. These provisions apply to the local government areas of Camden, City of Campbelltown, City of Fairfield, City of Hawkesbury, City of Liverpool, City of Penrith and Wollondilly.</p> | <p>(a) The following legislations were considered as part of the assessment:</p> <ul style="list-style-type: none"> • Threatened species Conservation act 1995 (replaced with the Biodiversity Conservation Act 2016) • Native Vegetation Act 2003. (replaced with the Local Land Services Act 2013 and the Biodiversity Conservation Act 2016) • Noxious Weeds Act 1993 (replaced with the Biosecurity Act 2015) • Fisheries management Act 1994 • Water Management Act 2000 • Environment Protection & Bio-Diversity Conservation Act 1999 (Commonwealth) <p>Transitional Provisions</p> <p>(b) Requirements for transition arrangements associated with the introduction of the <i>Biodiversity Conservation Act 2016</i> is detailed in the <i>Biodiversity Conservation (Savings and Transition) Regulation 2016</i>.</p> <p>(c) Section 27 of the Transition Regulation contains a number of development application types where Part 7 of the <i>Biodiversity Conservation Act 2016</i> (which contains the offsetting scheme) does not apply. The application type of relevance to this application is 27(a) below as a result of the application being lodged prior to the commencement of the new Biodiversity Conservation Act on 25th August 2017:</p> <p>(d) An application for planning approval (or for the modification of a planning approval) made before the commencement of the new Act but not finally determined immediately before that commencement.</p> | Yes |

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| (iv) the operation of any applicable conditions of consent (see the proposed condition 7 for example), and | <p>In response to DA Condition 7 for the acceptance of the Bio-Banking Land.</p> <p>Condition 7.1 (a) – The final costings for the management of the Bio-Banking site have been confirmed and agreed to by Council's Environmental Planner in February 2018 and these have been included in the executed Bio-Banking Agreement with OEH.<i>(Refer to document 7 which contains the Council's Environmental Planners (David Henry) email correspondence of this acceptance.</i></p> <p>Condition 7.1 (b) – Refer to document 5 which contains a copy of the executed Bio-Banking Agreement over the E2 land on lot 1301 with OEH.</p> <p>Condition 7.1 (c) – Noted and Simba (the applicant) accepts this condition should remain for the handing over of the E2 land onto Council.</p> | <p>(a) The intent of Condition 7 in the draft conditions of consent presented to the Panel was to enable Council to be satisfied with the costings for the management of the biobank site and that the agreed total costings (Total Fund Deposit) be paid to the Office of Environment and Heritage's Biodiversity Conservation Trust Fund prior to accepting ownership of the land.</p> <p>(b) The draft Voluntary Planning Agreement has been amended to address this matter to the satisfaction of relevant Council Staff and Simba. Condition 7 has consequently been removed from the amended Determination.</p> <p>(c) The VPA makes reference to Biobanking Agreement No. 328.</p> | Yes |
| (v) the relevance of any proposed or adopted voluntary planning agreement. | <p>As was noted by Council's Development Contributions Planner, Martin Beveridge in his discussion with the Planning Panel on 18th June-2018, that there is:</p> <ul style="list-style-type: none"> • An existing VPA over this land. • This existing VPA between Wollondilly Council and ALSP PTY LTD executed on 16 Oct-2006 was considered no longer relevant by Council staff as it was considered out of date and the land is now in two different ownerships. • Therefore Council Staff and Simba Developments have been in negotiations over the last 18 months with Council staff, which also required a Councillors workshop, where an agreement was reached to replace the old VPA with a new VPA that reflects Council's current policies for the ongoing Maintenance costs and reflects the proposed development requirements. • Prior to the DA being put before the Planning Panel, Council obtained legal advice which requested a Council Resolution to be first obtained from Wollondilly Council | <p>(a) The new VPA has now been publicly exhibited. Appropriate DA conditions have been placed to ensure the applicant observe their obligation with regard to compliance with the VPA.</p> | Yes |

| | <p>to allow the release of the old VPA and for the replacement of new VPA and prior to this being exhibited.</p> <ul style="list-style-type: none"> • This agreement took place at a Council meeting on 16th April 2018 where Councillors accepted the new VPA offer and for this to be exhibited with delegation given to the General Manager to authorise any minor changes. <p><i>Refer to Document 8 for a copy of this Council resolution.</i></p> <p>The new Voluntary Planning Agreement (VPA) provides for:</p> <ul style="list-style-type: none"> • Council to secure funds from the developer under the current proposal to maintain the drainage reserves and deliver the required infrastructure so these can then be handed over to Council. • The VPA also includes a scope of works, dedication of land and agreed payments and offsets. | | |
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| (c) Cumulative impacts of this and other developments upon the intersection of Silverdale Road and Greendale Road/Mulgoa Road (possibly with reference to any relevant assessment conducted at the rezoning stage). | <p>The impact of the surrounding roads assessment is a re-zoning consideration which should be outside this DA determination and this should have been considered as part of the re-zoning of the land in 2007.</p> <p>Council staff is to provide a comment back to the Planning Panel for the road network reporting requirements put forward at the time of re-zoning of the land to R2 (for residential development).</p> <p>Simba's (the applicant), Development Application is in compliance with the re-zoning of this land and Council's LEP, which permits residential development.</p> <p>In addition to the above, the developer has entered into:</p> | <p>(a) A traffic study was carried out in 2016 by TDG to assess the likely impacts of five (5) housing developments and a commercial development within the Silverdale area. The housing developments include the subject site which is identified in the traffic study for containing 400 lots.</p> <p>(b) The traffic study concluded that the residential and commercial developments will not cause significant degradation in the road network due to the high level of reserve capacity available and hence the ability to cope with the expected increase.</p> <p>(c) The intersection of Silverdale Road and Greendale Road/Mulgoa Road do not form part of this study. They are the subject of a wider study.</p> <p>(d) Broader upgrade of Silverdale Road is within current Section 94 plans. Strategic review of these upgrades due to commence 2018/19.</p> | Yes |

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| | <ul style="list-style-type: none">• A State VPA for the payment of a monetary contribution for local infrastructure of the amount of \$9,264 per lot (indexed annually). Refer to document 9.• The new VPA with Wollondilly Council has in place within schedule 5, items that Council have identified as works required to be carried out outside the development requirements from the Monetary Contributions being received from the Developer.• These include items such as, all abilities Children park, local roads upgrade works program, bus shelters and pathways and cycleway etc. <p>Refer to the VPA Draft Version for exhibition 23rd July20th August -18 (Document 10) which contains the current agreed VPA version that was placed on Exhibition.</p> | <p>(e) The State VPA has no nexus to Silverdale Road which is a regional road not state road.</p> | |
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