

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	2017SSH007
DA Number	DA17/0161
LGA	Sutherland Shire
Proposed Development	Construction of a warehouse for storage and distribution of tyres and an ancillary office building which includes a food and drink premises
Street Address	Lot 1 in DP 402485 and Lot 1 in DP 652964 (Nos. 186-206) Captain Cook Drive Kurnell
Applicant/Owner	Taleb Property Pty Ltd
Date of DA lodgement	21 February 2017
Number of Submissions	14
Recommendation	Deferred Commencement Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	General Development over \$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environment Protection and Biodiversity Conservation Act 1999 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 33 – Hazardous and Offensive Development • State Environmental Planning Policy No. 55 – Remediation of Land • Sutherland Shire Local Environmental Plan 2015 • Sutherland Shire Development Control Plan 2015 • Sutherland Shire Section 94A Development Contribution Plan 2016 • Draft State Environmental Planning Policy (Coastal Management) 2018
List all documents submitted with this report for the Panel's consideration	<p>Draft Conditions of Consent – Deferred Commencement</p> <p>Pre-Application Discussion (PAD) letter</p> <p>Report from Architectural Review Advisory Panel (ARAP)</p> <p>List of Public Submissions</p> <p>Responses of External Authorities (Commonwealth Department of the Environment and Energy, NSW Department of Planning and Environment, NSW Roads and Maritime Services, Department of Primary Industries)</p> <p>Clause 4.6 written request (building height)</p>
Report prepared by	Martin Southwell, Major Projects Planner Sutherland Shire Council
Report date	23 October 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes / No**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes / No / Not Applicable**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes / No / Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes / No / Not Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes / No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

REASON FOR THE REPORT

This development application (DA) is referred to the SSPP as the development has a capital investment value (CIV) of more than \$30 million and is nominated under Schedule 7 "Regionally significant development" of State Environmental Planning Policy (State and Regional Development) 2011. The Registered Quantity Surveyor's report submitted to Council with the DA nominates the CIV of the project as \$32,060,337.

PROPOSAL

The DA is for the construction of both a warehouse for storage and distribution of new tyres and an ancillary office building which includes food and drink premises and amenities. At-grade car parking is provided around the site.

THE SITE

The site is located on the eastern side of Captain Cook Drive and directly adjoins the Caltex fuel import terminal (previously the refinery). The Sydney Desalination Plant (SDP) is about 250m to the south of the site. The site is burdened by an easement that travels along the northern boundary (i.e. Captain Cook Drive frontage) which contains a pipeline that belongs to SDP, buried within a densely vegetated mound.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the building height development standard satisfies the relevant provisions of clause 4.6 and is therefore supported. It is recommended that the provisions of clause 4.6 be invoked for part of the development and that the 16m maximum building height development standard be varied to 17.6m (10% variation) with respect to this application.
2. That Development Application No. 16/1035 for the Construction of a warehouse for storage and distribution of tyres and an ancillary office building which includes a food and drink premises at Lot 1 in DP 402485 and Lot 1 in DP 652964 (Nos. 186-206 Captain Cook Drive, Kurnell) be determined by the granting of a deferred commencement development consent subject to the conditions contained in **Appendix A** of the Report, requiring completion of the Aboriginal heritage assessment and consultation process, revision of the stormwater design to provide stormwater quality improvement devices and particulate filtration, and preparation of a comprehensive stormwater maintenance plan.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

The subject application is for the construction of a warehouse for storage and distribution of new vehicle tyres and the construction of an ancillary office building that also contains a take away food and drink premises. Both buildings are intended to be used by Tempe Tyres to service their existing retail outlet on Princes Highway, Tempe.



Figure 1 - Photomontage Captain Cook Drive (without existing vegetation)

The warehouse building is irregularly shaped to address the triangular nature of the site and to provide for servicing and access by heavy and articulated vehicles to a series of loading docks along both the northern and southern sides. The warehouse consists of a total of 6 bays which vary in length from 130m up to 226m. The ground level of the warehouse is built up by 2m to address the flood prone nature of the site and in anticipation of climate change.

The proposed warehouse building heights are up to 17.6m to accommodate existing ground conditions and roof forms. The scale of the warehouse complex is compatible with the scale and mass of the buildings and large fuel storage tanks on the adjacent Caltex fuel import terminal.

The proposed 4 storey office building is circular in shape with an internal circular atrium enclosing a central garden with glazed roof above, rising to a height of 16.87m above existing ground level. The office building has been designed to provide a range of facilities for staff associated with the warehouse functions (including truck drivers) and office staff. One of these is a take away food and drink premises in the form of a “booth” from which staff, truck drivers and (potentially) external visitors can purchase food and drink. The form of the office building, together with the selected cladding, simulates a tyre-like appearance.

The proposal accommodates associated at-grade parking and includes a circulation road around the warehouse for large articulated trucks. There is a bay that accommodates up to 7 heavy vehicles in the south-eastern corner for trucks waiting for an available loading dock.

Demolition of existing structures and removal of existing concrete hardstand will occur in accordance with the approved DA14/0456, which granted consent to “Demolition of an Existing Hydrocarbon Extraction Plant”. New fill material will be required on site in order to construct at the proposed finished levels.

Tempe Tyres plans to operate the warehouse component on a 24 hours per day, 7 days per week basis. The ancillary office building is expected to operate between 7am and 6pm on weekdays.

The facility will employ up to 20 staff during the day shift (7am to 6pm) and 7 staff during the night shift (6pm to 7am). Tempe Tyres expects to employ up to 60 staff in the ancillary office building, between 7am and 6pm on weekdays. Therefore, there will be up to 80 staff on site at any one time during 7am and 6pm on weekdays.

Though documentation submitted with the DA refers to “stages” of the development, the DA is not a concept DA under s4.22 of the Environmental Planning and Assessment Act. Rather, the staging reflects the possibility to deliver 2 components of the development in 2 construction phases. The applicant has advised that Tempe Tyres may temporarily operate the warehouse prior to constructing the ancillary office building.

2.0 SITE DESCRIPTION AND LOCALITY

The site consists of 2 parcels of land legally described as Lot 1 in DP402485 and Lot 1 in DP652964. They are collectively known as 186-206 Captain Cook Drive, Kurnell. The site is situated directly adjacent to the former Caltex refinery plant, which now operates as a fuel import terminal for New South Wales and the Australian Capital Territory.

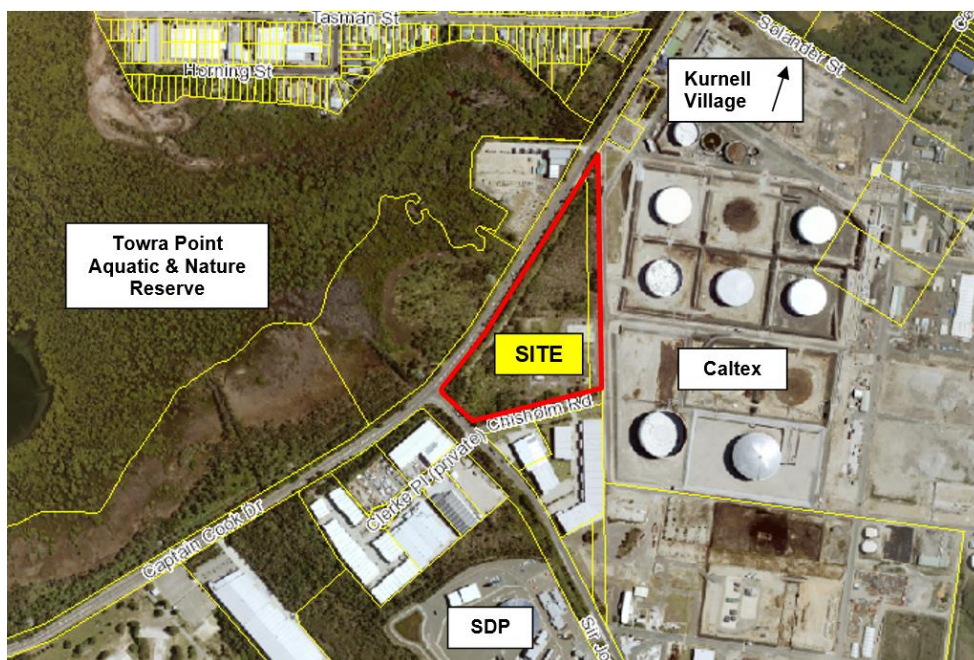


Figure 2 - Location plan

The development site is irregular in shape and has 3 road frontages to Captain Cook Drive, Sir Joseph Banks Drive and Chisholm Road. Its total area is 58,800m². The site was formally occupied by an AGL hydrocarbon extraction plant located in the south-eastern corner of the site. One small brick building associated with this former operation remains to be demolished. Demolition of this structure was previously approved under DA14/0456. A second small brick building exists within the site about a third of the way along the Captain Cook frontage.

To the north and north-west of the site on the opposing side of Captain Cook Drive is a Wetlands of International Importance (Ramsar site), listed under the Ramsar Convention in 1984. It is known as Towra Point Nature Reserve and supports the largest wetland of its type in the greater Sydney region. The site also contains remnants of the endangered ecological community (EEC) 'Kurnell Dune Forest', mostly confined to the south-west corner adjacent to Chisholm Road and Sir Joseph Banks Drive. This EEC is an endangered ecological species under the NSW Threatened Species Conservation Act.

There are 2 threatened plant species on the site: *Callistemon linearifolius* (Netted Bottle Brush) and *Syzygium paniculatum* (Magenta Lilly Pilly) located in the EEC near Chisholm Road. There are 2 small artificial wetlands which are potential habitats for the endangered Green and Golden Bell Frog, currently supporting sedges and rushes, *Gahnia spp* and *Phragmites*.

The remainder of the remnant vegetation on site is heavily weed infested. In December 2015, a storm cell of tornado-strength passed across the Kurnell Peninsula and as a result the site's vegetation suffered significant disturbance. Refer to Figure 3 below, which shows the extent of storm damage and tree loss resulting from the storm cell.

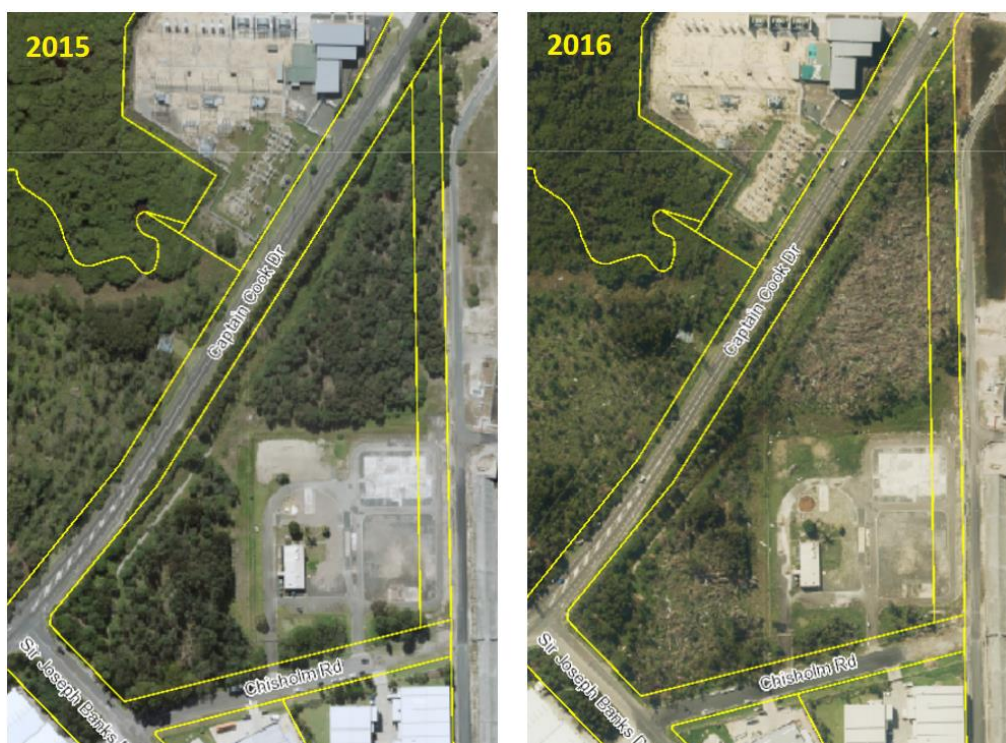


Figure 3 - Storm damage *before* (2015) and *after* (2016)

There is a major easement adjacent to the north-west boundary adjoining Captain Cook Drive. The easement contains a pipe that leads from the Sydney Desalination Plant into Botany Bay and beyond. The pipe is buried within a relatively densely vegetated soil embankment that has a height of nearly 2m above natural ground.

The site's existing primary access is located via Chisholm Road, where 2 driveways one-way traffic for entry and exit. A secondary access point is located on Sir Joseph Banks Drive, however no paved driveway exists.

There are 2 existing paved driveways providing vehicle access into the site from Chisholm Road. A third driveway and gate are located on the Sir Joseph Banks Drive frontage. The latter was constructed for the purposes of maintenance access to the desalination pipeline.

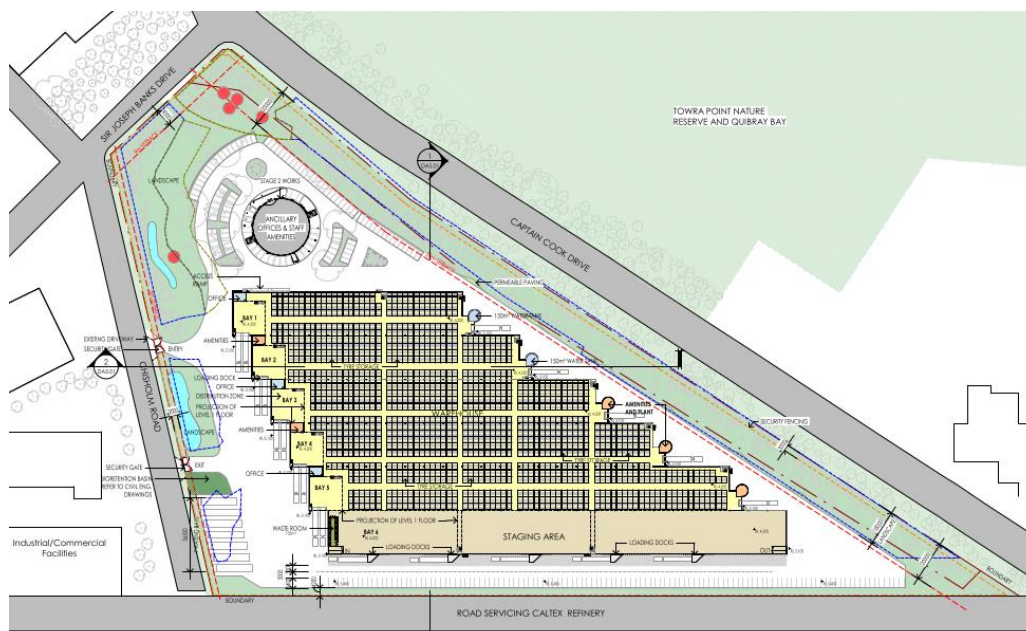


Figure 4 - Site Layout

3.0 BACKGROUND

A recent history of the development site and current DA is as follows:

- Development consent was granted on 25 June 2014 under DA14/0456 for the decommissioning and demolition of the hydrocarbon extraction plant formerly located on site.
- A pre-application discussion (PAD) was held on 9 November 2015 regarding the proposed development (PAD15/0125). As a result of this a formal letter of response was issued by Council dated 22 December 2016. A full copy of the advice provided to the Applicant is contained within **Appendix B** of this report. Key issues raised at this meeting include:
 - Setbacks, landscaping and waste storage requirements are to be complied with.
 - Drainage design is to be provided, incorporating on-site detention.

- A traffic and parking assessment report is to be provided to assess impacts on relevant intersections. Vehicle loading and parking to comply with Australian Standards and the SSDCP.
- Ecological Assessment to be provided.
- Aboriginal heritage assessment report to be provided.
- Groundwater Vulnerability clause in the LEP (clause 6.6) to be addressed.
- Acid Sulfate Soils assessment to be provided.
- Contamination status to be clarified, to ensure that the site is suitable for the proposed use in accordance with State Environmental Planning Policy No. 55 – Remediation of Land. A Detailed Site Contamination Investigation, and a Remedial Action Plan may be required.
- Utilities and services to be considered.
- The current DA was submitted on 21 February 2017.
- The application was placed on exhibition with the last date for public submissions being 22 March 2017.
- An Information Session was held on 15 March 2017 and 1 party attended, being a representative of Caltex.
- The application was considered by the Architectural Review Advisory Panel on 30 March 2017. The Report from ARAP is held at **Appendix C**.
- A request for further information was requested by NSW Department of Planning and Environment on 23 March 2017.
- Council wrote to the applicant on 2 June 2017 and requested the following:
 - Flood Impact Assessment
 - Stormwater Management Plan
 - Modified vehicle access from Chisholm Road only
 - Traffic Survey
 - Landscape Plan detail amendments
 - Vegetation Management Plan
 - Referral of the DA to Commonwealth Department of the Environment and Energy under the Commonwealth Environmental Protection and Conservation of Biodiversity Act 1999 (EPBC Act 1999)
- Additional information was received on 10 October 2017 including the following:
 - Flood Impact Assessment and Stormwater Management Plan
 - Revised Architectural Plans
 - Vegetation Management Plan
 - Detailed Aboriginal Heritage Assessment
- Confirmation was received on 22 November 2017 from Commonwealth Department of the Environment and Energy that the proposal is not a Controlled Action under the EPBC Act 1999.
- A letter was received on 21 December 2017 from NSW Department of Planning and Environment confirming no objection to the proposal.
- A meeting was held with the applicant (including engineers) on 12 January 2018 to discuss flooding impacts on site and seek additional information.

- Revised Flood Impact Assessment information was received from the applicant on 9 February 2018.
- Flood Impact Assessment feedback was provided to the applicant on 19 March 2018 and again subsequently on 15 April 2018. Further information and clarification was requested of the applicant to enable Council to support the proposal.
- Revised Architectural Plans, a revised Flood Impact Assessment and Stormwater Management Plan and an amended clause 4.6 Objection to the building height development standard were received on 1 June 2018.
- A revised Landscape Plan was received on 30 August 2018.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application, including a written request to vary the Building Height development standard under clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of the Sutherland Shire Development Control Plan 2015 (SSDCP 2015) and administrative requirements of the Sydney South Planning Panel. Council notified 44 adjoining or affected owners of the proposal. Council received 14 written submissions at the end of the notification period. The main issues identified in the submissions are as follows:

- Hazards and risks to Kurnell residents
- Traffic generation, road safety and capacity of Captain Cook Drive
- Aesthetics of the proposed tyre shaped building
- Environmental impacts.

A full list of the locations of those who made submissions, the dates of their letters and the issues raised is contained within **Appendix D**.

Information Session

An Information Session was held on 15 March 2017 and 1 party attended, being a Caltex representative.

Revised Plans

The applicant lodged revised plans on 10 October 2017 and 1 June 2018. In accordance with the requirements of SSDCP2015 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

Submission Review Panel (SRP)

The submissions received were discussed with the Team Leader and, given the nature of the issues raised, it was decided that referral to Council's SRP was not required.

6.0 STATUTORY CONSIDERATIONS

The site is within Zone IN3 Heavy Industrial under the provisions of SSLEP 2015. The proposed development, a *warehouse or distribution centre*, is a permissible land use within the zone with development consent from Council. A warehouse or distribution centre is “a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made”. The proposal satisfies this definition and conditions of consent will reinforce this.

The freestanding office building component of the development if considered in isolation would be prohibited within the zone, however in this instance the office building is accepted as being ancillary to the warehouse or distribution centre.

The classification of the office building as an ancillary component of the warehouse and distribution centre is appropriate in view of the following:

- The proportion of GFA allocated to the office is approximately 6% of the total GFA proposed (3,321m² for the office compared to 55,792m² for the warehouse);
- Should the same quantum of office GFA be accommodated within a building that is attached to the warehouse and has the same form and aesthetic as the warehouse, it would be treated as an ancillary office component to the warehouse;
- The office is proposed to be constructed as a third and final stage of the overall development; and
- The facilities proposed within the office will directly support the warehouse staff, including the “take away food and drink booth” located on the ground floor of the office building.

The provision of a *take away food and drink premises* (marked as “take away food and drink booth” on the Ancillary Office – Ground Floor Plan) is permitted with development consent within the IN3 zone. The proponents envisage that this booth will be “available for on-site or off-site staff to purchase take away food and drinks but would not provide designated seating or table service *etc.*”

The LEP defines *take away food and drink premises* as, “premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises”. The key issue at hand is whether or not the food and drink sold at the booth will be consumed predominantly *off the premises* or *on the premises*. “Premises” in this context is taken to refer to the entire site, rather than explicitly to the booth itself or even to the office building. In this instance, due to the location of the booth within an office building and with no visual connection to the public domain and no business identification signage sought under this DA, there is little evidence to suggest that the majority of food and drink sold at the booth would be consumed off the

premises rather than being purchased by staff and truck drivers making deliveries to and from the site. As such, the booth would be akin to a staff cafeteria and would best be described under the LEP as a *kiosk*, which means “premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like”. The 23m² booth satisfies the maximum GFA limit for kiosks of 25m² under clause 5.4 of the LEP.

Regardless of whether the “take away food and drink booth” is defined as either a *take away food and drink premises* or *kiosk* under SSLEP 2015, its inclusion in the development is a positive planning outcome and supportable from a land use perspective subject to appropriate conditions of consent pertaining to hours of operation.

The objectives of the IN3 Zone are as follows:

- *to provide suitable areas for those industries that need to be separated from other land uses;*
- *to encourage employment opportunities;*
- *to minimise any adverse effect of heavy industry on other land uses; and*
- *to support and protect industrial land for industrial uses.*

The proposed development is consistent with these zone objectives subject to appropriate conditions of consent.

The following Environmental Planning Instruments (EPIs), Development Control Plans (DCPs), Draft EPIs, Codes and Policies are relevant to this application:

- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *Sutherland Shire Local Environmental Plan 2015*
- *Sutherland Shire Development Control Plan 2015*
- *Sutherland Shire Section 94A Development Contribution Plan 2016*
- *Draft State Environmental Planning Policy (Coastal Management) 2018 (since gazetted)*

7.0 COMPLIANCE

7.1 Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999)

The proposal was referred by the applicant to the Commonwealth Department of the Environment and Energy in accordance with Section 75 of the EPBC Act 1999, to determine whether the proposed action needs approval. Notice was received from the Department of the Environment and Energy on 17 November 2017 that the proposal is not a controlled activity.

7.2 State Environmental Planning Policy (State and Regional Development) 2011

The proposal has a CIV of \$32,060,337 as outlined within the submitted Registered Quantity Surveyors Detailed Cost Report. It therefore constitutes “regionally significant development” under Schedule 7, clause 2 “General development over \$30 million” of this SEPP. The proposal is not “State significant development” referred to in Schedule 1, clause 12 as the CIV does not exceed \$50 million.

7.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal constitutes traffic generating development and was referred to RMS in accordance with *State Environmental Planning Policy (Infrastructure)*. RMS responded on 29 March 2017 and raised no objection to the proposal because Captain Cook Drive where it adjoins the site is under the care and control of Council.

7.4 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)

The proposal has been assessed against the provisions of SEPP 33 by both Council and NSW Planning and Environment. The proposal is not a hazardous or offensive development as defined within the SEPP and therefore does not require a preliminary hazard analysis. However, due to the volume of tyres stored at the facility, NSW Planning and Environment has recommended conditions to be included within the development consent. These conditions, which are included in **Appendix A**, require the preparation of a Fire Safety Study and an Emergency Plan. The applicant has been advised of these requirements.

7.5 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 requires a consent authority to consider whether the land is contaminated and, if so, whether the land will be remediated before the land is used for the intended purpose. The application was referred to Council’s Environmental Assessment Officer who found the site to be suitable for commercial and industrial land uses.

A previous DA approval for the site (DA14/0456) involving “Demolition of an Existing Hydrocarbon Extraction Plant” required remediation of the site. The project environmental consulting firm that managed the remediation works advised in a letter dated 21 May 2015 that the site is now suitable for commercial and industrial land use, based on the results of post-remediation soil and groundwater investigations. This advice also supports the post-demolition and remediation contamination investigation reports held within Council’s records.

As such, potential contaminated land matters have been appropriately addressed in accordance with clause 7 of SEPP 55 and precautionary conditions have been recommended to address any unexpected finds of contamination during works and management of site soil/ fill material.

7.6 Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)

The proposal has been assessed for compliance against SSLEP 2015. A compliance table with a summary of the applicable development standards is contained below:

Sutherland Shire Local Environmental Plan 2015			
Standard/Control	LEP 2015	Proposed	Complies
Building Height	16m	Up to approximately 17.6m in parts due to variable ground level	No (10% max.)
Building Density	1.0:1 (58,800m ²)	0.95:1 (55,792m ²)	Yes
Landscaped Area	10%	28% (16,515 m ²)	Yes

7.7 Sutherland Shire Development Control Plan 2015 (SSDCP 2015)

The proposal has been assessed for compliance with SSDCP 2015. A compliance table with a summary of the applicable development controls is contained within **Appendix E**.

7.8 Draft State Environmental Planning Policy (Coastal Management) 2018

This DA was lodged prior to the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) coming into effect. As such, the CM SEPP is treated as a *draft* environmental planning instrument for the purposes of assessment.

The CM SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the Coastal Management Act 2016. The CM SEPP applies to land within the coastal zone across NSW. All foreshore land within the Sutherland Shire is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the Sutherland Shire foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed warehouse or distribution centre is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the CM SEPP map as land within proximity to coastal wetland and within the coastal environment area / coastal use area. The coastal wetland in this instance is the Towra Point Nature Reserve Ramsar Site.

Development on land in proximity to coastal wetlands (clause 11)

As the site is identified as being land in proximity to coastal wetlands on the CM SEPP map the consent authority cannot grant development consent unless it is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland.
- (b) the quantity and quality of surface and groundwater flows to and from the adjacent coastal wetland.

The proposal is deemed by Council's Environmental Science unit to be acceptable with respect to the aforementioned potential impacts to the adjacent Towra Point Nature Reserve Ramsar Site wetlands. This position is supported by the Commonwealth Department of the Environment and Energy, who has assessed the proposal and advised that the development is not a controlled activity and no further assessment is required.

Development on land within the coastal environment area (clause 13)

The site is identified as being land within the "coastal environment area" on the CM SEPP map. This requires the consent authority to consider certain factors before development consent is granted. These factors include the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014); marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; Aboriginal cultural heritage, practices and places and the use of the surf zone.

These factors have been considered in the assessment of this application and Council is satisfied that subject to appropriate conditions the development has been designed, sited and can be managed to avoid any adverse impact detailed in clause 13(1).

The Vegetation Management Plan (VMP) submitted with the DA has been assessed as being appropriate for the site. It retains and improves 2 man made wetlands within the property boundary, retains and improves the Kurnell Dune Forest Endangered Ecological Community (EEC) through weed removal and replanting, and provides a vegetation corridor along the eastern boundary. Furthermore, ecological investigation has concluded that there is no evidence of the endangered Green and Golden Bell Frog on the site. Refer to Section 10.10, "Threatened Species" of this report for further details.

Development on land within the coastal use area (clause 14)

The site is identified as being land within the "coastal use area" on the CM SEPP map. As such, the consent authority must consider certain factors and be satisfied of certain requirements before

development consent is granted. Specifically, the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application. The site is located between 80 and 250m from the foreshore area of Towra Point Nature Reserve to the north-west. Being on the opposing side of Captain Cook Drive, the proposal will not impede access to the foreshore, nor will it overshadow or impede views from public places to the foreshore. Council is satisfied that subject to appropriate conditions the development has been designed, sited and can be managed to avoid any adverse impact detailed in clause 14(1). Furthermore, Council has considered the bulk, scale and size of the proposed development and its impact on the surrounding coastal and built environment, its visual amenity and scenic qualities. All such aspects of the proposal are acceptable.

8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal specialists and external authorities for assessment and the following comments were received:

8.1 Commonwealth Department of the Environment and Energy

The application was referred by the applicant to the Commonwealth Department of the Environment and Energy in accordance with Section 75 of the EPBC Act 1999. The site is within proximity of the Ramsar-listed wetlands at Towra Point Nature Reserve and was initially considered by the consultant ecologists to have some potential to contain the endangered Green and Golden Bell Frog. Notice was received from the Department of the Environment and Energy on 17 November 2017 that the proposal is not a controlled activity and no further assessment is required. This notice is held at **Appendix F**.

8.2 NSW Department of Planning and Environment

The application was referred to the Department of Planning and Environment as a potentially designated development and (pursuant to the *2007 Kurnell Peninsula Land Use Safety Study*) due to the proximity of the site to the Caltex facility. The Department requested additional information that was supplied by the applicant. The Department subsequently responded to Council (see **Appendix G**) advising that its assessment has generally considered the hazards and safeguards relevant to the bulk storage of rubber tyres, and the location of the proposed development in the vicinity of the Caltex facility. The Department recommended conditions to be included as part of the consent including that a Fire Safety Study be prepared. These conditions are included in **Appendix A**. A Caltex representative attended the Information Session held during public exhibition and no submission was received from Caltex.

The applicant does not believe the proposal to be designated as the application does not seek to manufacture rubber or tyre products and does not seek to receive waste (*i.e.* used) tyres for storage or

rethreading. On this basis, Council's assessment officer agrees that the proposal does not constitute designated development.

8.3 NSW Roads Maritime Service (RMS)

RMS raised no objection to the proposal on the basis that this section of Captain Cook Drive is a regional road under the care and control of Council. A copy of RMS' response is held at **Appendix H**.

8.4 NSW DPI Fisheries

NSW DPI Fisheries (a division of the NSW Department of Primary Industries) was consulted in relation to the proposal due to its proximity to the Towra Point Aquatic Reserve. Comments received from DPI Fisheries (held at **Appendix I**) were taken into account during assessment of the proposal and form the basis of conditions of consent relating primarily to stormwater management and water quality.

8.5 Architectural Review Advisory Panel (ARAP)

The application was considered by ARAP who supported the proposal subject to various further considerations including relatively minor design revisions to the ancillary office building and provision of an outdoor space with appropriate amenity for the staff. These matters were either clarified by the submission of additional information, addressed by way of design changes in the amended architectural plans or have been addressed in the recommended conditions of consent. A copy of the Report from ARAP is held at **Appendix B**.

8.6 Landscape Architect

Council's Landscape Architect has undertaken an assessment of the application with respect to landscaping, tree removal and retention and general site planning. No objection was raised to approval of the proposal subject to the conditions of consent. These conditions have been included in **Appendix A**.

8.7 Engineering (Traffic and Transport)

Council's Traffic Engineer has undertaken an assessment of the application with respect to local and wider road network impacts. No objection was raised to approval of the proposal. Refer to Section 10.2 of this report for further details.

8.8 Engineering (Assessment Team)

Council's Assessment Team Engineer has undertaken an assessment of the application with respect to stormwater management, car parking provision and design, vehicle access and manoeuvring, site and waste management and excavation. The engineer has raised no objection to approval of the proposal subject to the imposition of suitable conditions of development consent. These have been included in **Appendix A**.

8.9 Public Assets

Council's Public Assets Engineer has raised no objection to approval of the DA subject to a condition of consent requiring various works within the road reserve, including the replacement of existing road

pavement, the upgrade of Captain Cook Drive including the construction of an acceleration lane and all associated road works for westbound vehicles leaving Sir Joseph Banks Drive, the construction of new bus shelters on both the eastern and western sides of Captain Cook Drive near Sir Joseph Banks Drive and installation of new footpaths along all frontages of the site including links to the new bus stops. This condition is included within **Appendix A**.

8.10 Environmental Science

Council's Environmental Scientists reviewed the submitted Ecological Assessment report and undertook an assessment of the proposal with respects to contamination, acid sulfate soils and other relevant potential environmental impacts. No objection was raised to approval of the DA subject to the imposition of suitable conditions of consent. These have been included within **Appendix A**.

8.11 Environmental Health

Council's Environmental Health Officer has undertaken an assessment of the proposal with respect to its potential environmental impacts due to the operation and use of the site, including acoustic impacts. No objection was raised to approval of the DA subject to appropriate operational conditions, which have been included in **Appendix A**.

9.0 ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

9.1 Height of Buildings

The proposal fails to comply with the development standard for building height. Clause 4.3 of SSLEP 2015 and the accompanying height maps stipulate a maximum height of 16m for this site.

The warehouse building exceeds the 16m height limit by variable amounts up to 1.6m at the uppermost point of the sawtooth roof form of each warehouse bay. The ancillary office building exceeds the 16m height limit by between 510mm and 870mm.

The Applicant's submission states that the warehouse non-compliance allows the implementation of a non-mechanically ventilated fire strategy for the building via the installation of louvres in the vertical walls of the sawtooth roof and that will result in lower maintenance costs and lower demand for materials and electricity in the long term.

The non-compliance of the office building is driven by the need during the assessment process to raise the finished floor level (FFL) of the building's ground floor so that it is above the flood level. The building originally had a FFL of RL 3.00 when the DA was lodged but it is now RL 3.90.

Figures 5 – 8 below are extracts from the clause 4.6 Objection and demonstrate the extent of the non-compliance

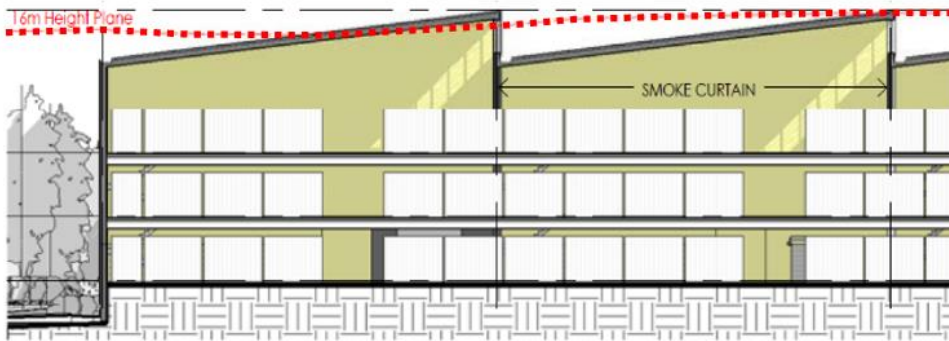


Figure 5 – Typical height exceedance for the warehouse (section)

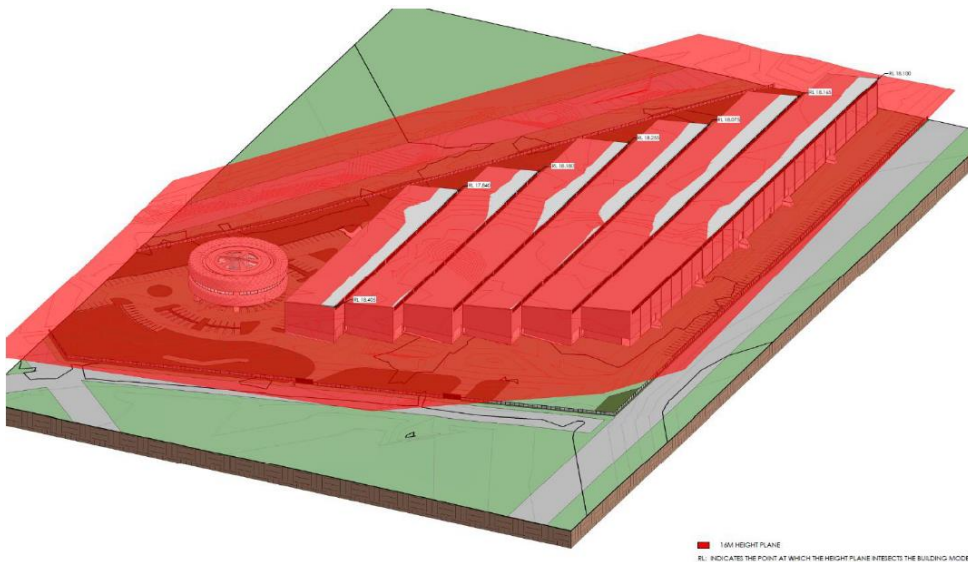


Figure 6 – Overall height exceedance for the warehouse (3D) where grey depicts exceedance



Figure 7 – Building height exceedance for the ancillary office building (section)

The objectives of the height of buildings development standard set out in clause 4.3(1) of SSLEP 2015 are as follows:

- (a) *to ensure that the scale of buildings:*
 - (i) *is compatible with adjoining development, and*
 - (ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*
 - (iii) *complements any natural landscape setting of the buildings,*
- (b) *to allow reasonable daylight access to all buildings and the public domain,*
- (c) *to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*
- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*
- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

The scale of both the warehouse and the office building is compatible with nearby industrial buildings. These nearby buildings generally have a 3 – 4 storey scale, including the multiple large fuel tanks within the Caltex facility that are of comparable height to the proposal. The desired future scale of development in the locality under SSLEP 2015 is 4 storeys. The majority of the warehouse is compliant with the 16m height limit. The non-compliance is limited to the uppermost portion of some of the sawtooth roof form as seen in Figure 6 above.

Both the warehouse and the office building have generous street setbacks that will serve to mitigate the visual impact of the relatively minor height exceedance of each building when viewed from the public domain. Furthermore, as seen in Figure 6, the warehouse non-compliances are generally concentrated towards the northern end of each warehouse bay roof. Substantial canopy tree vegetation along the Captain Cook Drive frontage, within and adjacent to the SDP pipeline easement, will assist in concealing the majority of the offending portions of the building from the public domain. The scale of the building will complement these existing canopy trees and new native canopy tree plantings (once mature) that will be undertaken in accordance with the approved VMP. Though the entirety of the outer perimeter of the ancillary office building's roof will be over the height limit, this building is setback over 31m from Captain Cook Drive and over 63m from Sir Joseph Banks Drive. These generous setbacks well in excess of the required DCP setbacks will serve to minimise the visual impacts of the proposal.



Figure 8 – View of proposal from Captain Cook Drive with existing and new landscaping

Shadow diagrams submitted with the DA clearly show that all shadows cast by the development will be contained within the subject site at the winter solstice except at 3pm, where they fall upon a boundary service road within the Caltex facility. Therefore the proposal affords reasonable daylight access to neighbouring properties and the public domain.

Due to the generous street setbacks and canopy tree buffers around the perimeter of the site, particularly along the Captain Cook Drive and Sir Joseph Banks Drive frontages, the visual impact of the building will be minimised when viewed from the public domain, nearby waterways and adjoining properties. There is no potential for loss of views, loss of privacy or visual intrusion evident.

Strict numerical compliance for the office building could be achieved by removing the mesh roof form and employing a simple flat roof, but this would require relocation of the air conditioning units and other plant that are presently concealed within the roof form. More importantly, however, the entire aesthetic of the building would be compromised. The Report from ARAP states, *“The Panel is supportive of the design of...the somewhat literal expression of the office building”*. Forsaking a positive design outcome to achieve strict numerical compliance is illogical in the context given that the building nonetheless achieves the objectives of the development standard.

The proposed development is located within zone IN3 Heavy Industrial. The objectives of this zone are as follows:

- *To provide suitable areas for those industries that need to be separated from other land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of heavy industry on other land uses.*
- *To support and protect industrial land for industrial uses.*

The proposal's relatively minor non-compliances with the building height development standard will not cause the contravention of the zone objectives. The development promotes the orderly and economic

use of industrial land and will not intensify the effects of this industry on any other land uses in the vicinity of the site, including Kurnell village.

The applicant has lodged a written request in accordance with the requirements of clause 4.6 of SSLEP 2015. This request is held at **Appendix J** and the most relevant section is reproduced below:

'The proposed minor exceedances of the height control will not result in any significant impacts to views, privacy or overshadowing to any third-party property or the public domain. The buildings will be largely screened by existing vegetation to be retained where possible along Captain Cook Drive frontage, and are consistent with existing surrounding buildings throughout the Kumell industrial area.

The benefits of allowing the proposed minor exceedance of the height control for the warehouse building is that it will enable a non-mechanically ventilated fire strategy to be implemented for the warehouse building. Reducing initial capital expenditure, and reducing ongoing maintenance requirements. Implementing a non-mechanically ventilated system will also result in lower overall demand for materials and electricity.

The benefits of allowing the proposed minor exceedance of the height control for the ancillary office building is that it will enable a 4-storey ancillary office building to be located on the site, providing the opportunity for the unique high quality architectural design and literal interpretation of the facility to be achieved, as supported by Council's Architectural Review Advisory Panel. The proposed ancillary office building meets the 4-storey intent for the site normally achievable within a 16m height limit, and complies with the maximum floor space ratio established at the site, whilst also minimising the environmental impacts of the development and achieving the parking and flood protection requirements on what is a complex and highly constrained site.

Strict compliance of the maximum height limit standard would result in a less efficient development outcome, undermining the objectives of the IN3 Heavy Industrial zone to provide for heavy industrial development and associated employment outcomes."

The applicant's submission demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as the proposal nonetheless meets the objectives of both the development standard and the IN3 zone) and that, accordingly, there are sufficient environmental planning grounds to justify contravening the development standard as detailed above, including the flood prone nature of the site and lack of adverse impacts.

In terms of its scale, the proposed development is in the public interest as the proposal complies with the objectives for both height and the IN3 Heavy Industrial zone. The proposed variation does not raise any matters of State or regional environmental planning significance. In addition, there is no

public benefit associated with arbitrarily reducing the height to the development standard in the circumstances of this case.

In conclusion the variation to the building height development standard satisfies all relevant parts of clause 4.6 and therefore the variation can be supported to the extent recommended.

9.2 Traffic Impacts and Car Parking

A Traffic and Parking Assessment Report was submitted with the DA and assessed by Council's Transport Modelling Engineer. Traffic modelling undertaken within the report shows that traffic generated by the proposal can easily be accommodated by the surrounding road network and intersections with minimum additional delay. On this basis, Council's Transport Modelling Engineer advised that the proposal is acceptable with respect to traffic impacts. However, the engineer recommended that a condition be included requiring the upgrading of the westbound acceleration and bicycle lanes at the Captain Cook Drive / Sir Joseph Banks Drive intersection to current standards. This condition has been included in **Appendix A** under "Design and Construction of Works in Road Reserve (Council Design)".

Council's Transport Modelling Engineer has also reviewed the Traffic and Parking Assessment Report in relation to the car parking requirements of the proposal. The engineer raised no objection to approval of the proposal on the basis that the parking quantum proposed is expected to meet the needs of Tempe Tyres based on the staff numbers proposed. There are 227 spaces proposed to accommodate 80 staff on site at any one time. Furthermore, warehouses are progressively becoming more automated and Bay 6 has the provision to allow for a sophisticated automated picking system should the need arise. Such a system would reduce staff parking requirements in future and could conceivably be added to other bays.

The DCP does not specify a car parking rate for either *take away food and drink premises* or *kiosks* within the IN3 Heavy Industrial zone. The DCP states, "Where a proposed development is not listed in the table, or where the development proposal raises unique traffic and parking issues, or where development is identified as Traffic Generating Development, then a Traffic Report shall be completed". A traffic report has been submitted with the DA and was reviewed – and its conclusions agreed – by Council's traffic engineers. It is acknowledged that the traffic report does not take into account the potential car parking required for the take away food and drink booth. However, this component of the development is a relatively minor proportion of the overall development (0.04% of the total GFA proposed). The booth has no direct visual exposure to the public domain and the majority of its customers are expected to be the on-site office workers and truck drivers visiting the warehouse.

9.3 Aboriginal Heritage – Archaeological Sensitivity

Council records indicate that the subject site is rated “High” in terms of Archaeological Sensitivity. An Aboriginal Heritage Assessment report was submitted with this DA and reviewed by Council’s Aboriginal Heritage Assessment Officer.

An Aboriginal archaeological survey of the site was undertaken on 14 March 2017 and no Aboriginal sites, places or objects were identified on the site or immediate surrounds. The site has been significantly disturbed by initial land clearing, construction of a road, parking areas, other infrastructure and construction/removal of buildings and plant associated with the previous use of the site.

Notwithstanding, given the location of the development site close to known Aboriginal Sites recorded under the Aboriginal Heritage Information Management System (AHIMS) and the fact that sandy soils and some shell material was observed, it was considered that there was potential for subsurface archaeological deposits to be present and that it was appropriate to undertake further archaeological test excavations.

An author of the submitted Heritage Assessment report (Director Aboriginal Heritage, AMBS Ecology & Heritage) has advised Council’s Aboriginal Heritage Assessment Officer that the program of archaeological test excavations has recently been completed and no archaeological deposits were encountered. Aboriginal community consultation is scheduled to take place prior to November 2018 with regard to the results of the test excavations in accordance with the NSW OEH’s *Aboriginal cultural heritage consultation requirements for proponents 2010* (DECCW). In the event that the consultation results in no issues of concern, then the process of Aboriginal heritage assessment and consultation is complete in accordance with those requirements. At the time of writing, this process is expected to be finalised by the end of November 2018. As such, this application is recommended to be determined by the issuing of a “deferred commencement”, whereby the consent will become operative once Council is satisfied that the above process is complete.

9.4 Threatened Species

Threatened species are particular plants and animals that are at risk of extinction and include threatened populations and endangered ecological communities. Threatened species, populations and ecological communities are protected by the Biodiversity Conservation Act 2016, NSW Fisheries Management Act 1994 and the EPBC Act 1999. Council has mapped the known threatened species, populations and endangered ecological communities.

As stated previously, the site is within proximity of the Ramsar-listed wetlands at Towra Point Nature Reserve and was initially considered by the consultant ecologists to have some potential to contain the endangered Green and Golden Bell Frog. However, the consultants’ assessment found no evidence of the Green and Golden Bell Frog on site. Nonetheless, the consultant ecologists undertook an Assessment of Significance in accordance with the Threatened Species Conservation Act – which is administered by NSW Office of Environment and Heritage (OEH) – to determine whether there

would be a significant impact on the species or its habitat. The consultant ecologists concluded via this assessment that there would not be a significant impact. As such, the proposal did not trigger the requirement for a referral to OEH for a Species Impact Statement.

The consultant ecologists did note, however, that the project would result in the removal of terrestrial habitat within 200 metres of suitable habitat in which the Green and Golden Bell Frog has been recorded. As such, the consultant ecologists recommended that the matter be referred to the Commonwealth Department of the Environment and Energy for assessment under the EPBC Act 1999. The Department concluded that the proposal does not constitute a “controlled action” and therefore does not require further assessment or approval under the EPBC Act.

The Green and Golden Bell Frog *Environmental Impact Assessment Guidelines* by National Parks and Wildlife Services (NPWS) state that “Foraging habitat requirements (for the Green and Golden Bell Frog) include tall, dense, grassy vegetation and tussock forming vegetation”. Wetlands and ponds are required to be open as the frogs like to bask in the sun with vegetation nearby that they can forage and shelter in. The proposed works detailed within the VMP will provide appropriate habitat for the frogs should the species return to the Kurnell area.

The VMP will require the retention and improvement of 2 artificial wetlands within the property boundary. Though a large area of Banksia Forest will be removed, the Kurnell Dune Forest EEC will be retained and improved through weed removal and replanting. A 5m wide vegetated strip will also be created along the eastern boundary adjacent to Caltex Australia Petroleum facility to provide a vegetation corridor.

Council’s Greenweb Officer reviewed the VMP and confirmed that the species list and planting densities within the VMP are appropriate and sufficient.

Following a review of this information and an inspection of the site it is concluded that the proposed development will not result in any significant impact on threatened species and EECs but rather will enhance and protect these species and communities.

9.5 Acid Sulfate Soils

The subject site is identified as within ‘Class 3’ Acid Sulfate Soils Maps and the provisions of clause 6.1 are applicable. The objectives of this clause are to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. Within Class 3, the trigger under SSLEP 2015 is works beyond 1m below natural ground level (NGL) surface or works by which the watertable is likely to be lowered beyond 1m below NGL.

The proposal involves limited excavation due to the site being relatively flat and flood prone. Rather, filling will be undertaken generally across the site to meet minimum flood levels for the car parking areas and the buildings. The depth of fill varies considerably across the site but is generally in the

order of 0.2 – 1.5m, the highest of this being concealed behind the SDP pipeline mound within the easement. A condition of consent will stipulate that excavation shall not be undertaken more than 1m below natural ground level. Filling the site above will enable the installation of all necessary infrastructure (such as the Atlantis Drainage Cells) without excavating deeper than 1m below NGL. On this basis, an acid sulfate soil assessment was not required.

9.6 Earthworks

The proposal includes earthworks and clause 6.2 of SSLEP 2015 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. The relevant matters have been considered and the application is acceptable subject to suitable conditions of consent including that all fill material imported onto the site must comprise Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or other suitable material in accordance with the relevant Resource Recovery Exemption issued under the Protection of the Environment Operations (Waste) Regulation 2014.

9.7 Flood Planning and Stormwater Management

The proposal is located on land which is potentially affected by flooding. Clause 6.3 of SSLEP 2015 requires Council to be satisfied of certain matters prior to consent being granted. Amongst others, these matters include the compatibility of the development with the flood hazard of the land and the impact of the development on flood behaviour that result in detrimental increases in the potential flood affection of other development or properties. Furthermore, clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to consent being granted, including maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed within the submitted Flood Impact Assessment and stormwater management plan to the satisfaction of Council's Stormwater unit and Assessment Team Engineer subject to suitable conditions of consent.

All finished floor levels of the buildings and car parking areas meet the minimum Flood Risk Management requirements within Chapter 40 of SSDCP 2015, "Environmental Risk". Specifically, all car parking has been elevated to RL 3.4m AHD, which is above the 1% Annual Exceedance Probability (AEP) flood level, and all internal roadways have been elevated to RL 3.1m AHD to ensure floodwater depths on the roadways do not exceed 300mm. A condition of consent will require the flow path along the eastern boundary to be widened to 5m in order to provide additional flood storage. This will require the parking area and manoeuvring area adjacent to the eastern boundary to be cantilevered over the widened flow path.

On-site Detention (OSD) will be provided within the top one-third of 2 very large rainwater tanks (each having a capacity of 150m³). These tanks are located immediately to the north of Bays 1 and 2 of the warehouse and are situated above-ground.

The proposal includes the provision of Atlantis Drainage Cells to act as additional OSD and flood storage. Their volume includes a 20% (approximate) buffer in case of poor maintenance. To minimise impacts should this occur, their total volume will be reduced by about 30% by a condition of consent but this total volume will still include a 20% buffer. The volume lost will be compensated for by commensurately increasing the volumes of the aforementioned flow path along the eastern boundary, the drainage channel adjacent to the SDP pipeline easement and the infiltration ponds adjacent to Chisholm Road.

To maximise the likelihood of peak performance being maintained throughout the life of the development, a deferred commencement condition included in **Appendix A** will require the inclusion of particulate filtration to ensure that all stormwater runoff from constructed impervious surfaces (including the roof) is treated and filtered for particulates prior to discharge to the proposed Atlantis drainage cells, infiltration ponds or surrounding pervious landscaped or vegetated areas. In addition, the condition requires the preparation of a comprehensive maintenance plan that requires the regular cleaning, servicing and maintenance of all constructed infiltration and filtration areas such as drainage swale, inlet pits *etc.* immediately after a flood even or at 3 monthly intervals (whichever comes first) as recommended in the Flood Impact Assessment. This will be integrated with the site WHS management system.

NSW Fisheries has also recommended that there be no reduction in quality of the water leaving the site and, if possible, an improvement. To this end, the aforementioned deferred commencement condition also requires the provision of stormwater quality improvement devices. These will also form part of the system that will be the subject of the comprehensive maintenance plan.

These above engineered solutions will complement the provision of 4 bio-retention ponds along the Chisholm Road frontage of the site (two shown on the Site Plan and an additional 2 required by condition of consent). These ponds will be planted with aquatic plants and will provide additional natural filtration of the stormwater to further improve water quality, and will recharge the existing groundwater.

9.8 Terrestrial Biodiversity

The subject land is identified as an area of “Biodiversity” on the Terrestrial Biodiversity Map of SSLEP 2015. As such, clause 6.5 of the LEP requires Council’s assessment to consider certain matters including the potential for adverse impacts on vegetation/flora, fauna, biodiversity and habitat. Of further consideration is the conservation and recovery of flora and fauna and their habitats and the potential to fragment or diminish the biodiversity structure, function and connectivity of the land.

As detailed above under Section 10.7, the Ecological Assessment report was assessed by Council’s Environmental Scientists and deemed satisfactory with respect to the aforementioned considerations. The architectural plans, landscape plans and VMP align with the recommendations of the Ecological

Assessment. Accordingly, all relevant matters under clause 6.5 of SSLEP 2015 have been considered and the proposal will minimise and manage impacts to terrestrial biodiversity on the site subject to appropriate conditions of consent.

9.9 Ground Water Vulnerability

The subject land is identified as “groundwater vulnerable” on the Groundwater Vulnerability Map and the provisions of clause 6.6 of SSLEP 2015 are applicable. Clause 6.6 requires Council’s assessment to consider certain matters. Council must consider the likelihood of groundwater contamination; impacts on groundwater dependant ecosystems; the cumulative impact on groundwater and appropriate measures to avoid, minimise or mitigate the impacts.

The proposal does not involve significant excavation and does not require the extraction of groundwater. The development also comprises substantial bio-retention ponds on-site along the Chisholm Road frontage to both manage and treat stormwater flows. These ponds will also allow the groundwater to be recharged. The required stormwater quality improvement devices and particulate filtration discussed in Section 10.7 of this report will also assist to minimise the likelihood of groundwater contamination from the development. The relevant matters under clause 6.6 of SSLEP 2015 have therefore been considered as part of the assessment of this DA and the proposal is acceptable.

9.10 Airspace operations

Clause 6.12 of SSLEP 2015 aims to protect airspace around airports and ensure that, where required, controlled activity approvals are obtained prior to the issue of a development consent. The site is located below the prolongation of the eastern runway of Sydney Airport. The proposed buildings are well below both the Obstacle Limitation Surface (OLS) and the Procedures for Air Navigation Services – Aircraft Operations (PAN-OPS) surface. As such, a controlled activity approval is not required for the development.

9.11 Aircraft noise

The subject site is located within the ANEF 20 contour and is therefore affected by clause 6.13 of SSLEP 2015. Whilst the proposal will result in more people on the site compared to the present day (*i.e.* vacant) situation, they will not be affected by aircraft noise on the basis that they are reasonably expected to be generally located within the warehouse and office buildings whilst on site. Furthermore, there are no specific acoustic testing or mitigation requirements under this clause for *warehouse or distribution centres* or *office premises* within the ANEF 20 contour. As such, there is no impediment to approval of the DA under this clause.

9.12 Guidelines for developments adjoining land managed by the Office of Environment and Heritage (NSW National Parks and Wildlife Service)

These guidelines were prepared to guide consent authorities when assessing DAs that adjoin land managed by OEH. The aim of the guidelines is to avoid and minimise any direct or indirect adverse

impacts on this land. The guide identifies a number of issues to be considered when assessing such proposals. These include erosion and sediment control; stormwater runoff; wastewater; management implications relating to pests, weeds and edge effects; fire and the location of asset protection zones; boundary encroachments and access through OEH land; visual, odour, noise, vibration, air quality and amenity impacts; threats to ecological connectivity and ground-water dependent ecosystems and cultural heritage. The proposal has been assessed against this guide as Towra Point Nature Reserve is a NSW National Park managed by OEH. The majority of the aforementioned issues have been addressed within other sections of this report. The land is not bushfire prone and the proposal will not encroach on the nature reserve or affect existing access to it. The proposal is considered to be acceptable subject to suitable conditions of consent to manage its impacts to the nature reserve.

9.13 Sydney Desalination Plant Pipeline Impacts

SDP made a submission to Council on 23 March 2018 in relation to the proposal. Generally speaking, the SDP drew Council's attention to SDP assets, including *"their criticality and the need for these assets and easements to be protected and unrestricted access be maintained"*. Various concerns were raised within the submission. On 27 August 2018, consulting engineers KBR on behalf of SDP advised that, based on a telephone conversation with the applicant, SDP has no objection in principle to the proposal subject to the following:

- "SDP retains full and free access to the pipeline and its easement
- The location of the mound and by inference the pipeline are as detailed on the attached "Proposed Warehouse" drawings
- No loadings are imposed on the pipe or the mound from the development from its construction, as built or from its use including vehicles and other mobile loads
- SDP is consulted and provides agreement prior to works proceeding from this proposal stage to the detail design and construction phases to ensure SDP's pipeline protection requirements are being met
- SDP and its advisor being provided access to site as required by SDP to monitor and witness key stages of the works"

The proposal is capable of satisfying the above requirements of SDP subject to appropriate consultation between Tempe Tyres and SDP at relevant stages of the development process. There is no need for specific conditions of consent to address the above matters.

9.14 Outdoor Staff Recreation Area

The DCP requires – and both Council's Landscape Architect and ARAP have recommended – the provision of a minimum 16m² outdoor staff recreation area on site. This area is not shown on the architectural plans. A design change condition has been included in **Appendix A** that requires the provision of a 16m² area located within the approved landscaping to the west of the ancillary office building beyond the first 2 rows of car parking. Its location is not the most ideal in terms of proximity to the office building's entry doors; however, it is not expected to be highly utilised as the site is located within ANEF 20 (as detailed above) and will therefore be subject to aircraft noise to some degree. As a result, the majority of workers are expected to use the internal atrium within the office building which

will be a high quality area with a high ceiling, landscaping and a water garden. Nonetheless, the design change condition of consent requires the area to accommodate a table and chairs and provide shading in summer, to maximise the amenity of the area.

9.15 Urban Design – General Requirements of SSLEP 2015

Clause 6.16 of SSLEP 2015 contains certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable. Council's ARAP has endorsed the design of the warehouse complex and also the unique office building in this context. All recommendations of the ARAP were adopted by the applicant in the amended design.

9.16 Energy Efficiency and sustainable building techniques

Clause 6.15 of SSLEP 2015 contains matters for consideration relating to ecologically sustainable development and energy efficiency and sustainable building techniques and waste generation during the lifecycle of the building. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable. Of particular note, the building height variation is recommended for approval via clause 3.6 of SSLEP 2015 on the basis that the height variation enables the implementation of a non-mechanically ventilated system for the warehouse that will result in lower overall demand for materials and lower waste generation during construction and operations. It will also reduce operational energy consumption. Furthermore, the proposal will minimise waste by the selection of materials that are highly durable and salt resistant which is important given the coastal location. The materials are also generally recyclable such that when the building does need to be demolished and replaced, maximum recycling can be achieved.

9.17 Waste Management

Council's waste services have advised that industrial waste collection is likely to be available for the site, noting that the facility deals with new tyres only and therefore waste or recyclables generated will be any packaging associated with the new tyres plus ancillary office and food waste. In the event that Council waste services are not available then Tempe Tyres will be required to engage the services of a private waste contractor for collection. A suitable condition of consent has been included in **Appendix A** to ensure proper waste management occurs.

9.18 Kurnell Peninsula – (Caltex) Refinery Risk Area

The subject site is located within the "Refinery Risk Area" on the Activity Hazard Risk Map under SSLEP 2015. As such, the proposal is affected by clause 6.19 of the LEP. Pursuant to this clause and the *Kurnell Peninsula Land Use Safety Study* (2007), the DA was referred to the NSW Department of Planning for review and comment. As discussed previously above, the Department requested additional information that was supplied by the applicant. The Department subsequently responded to Council advising that its assessment has generally considered the hazards and safeguards relevant to the bulk storage of rubber tyres, and the location of the proposed development in the vicinity of the Caltex facility. The Department recommended conditions to be included as part of the consent. These

are included in the draft conditions held at **Appendix A**. As such, there is no impediment to approval of the DA under this clause.

9.19 Greenweb

The subject site is identified within Council's Greenweb strategy. The Greenweb is a strategy to conserve and enhance Sutherland Shire's bushland and biodiversity by identifying and appropriately managing key areas of bushland habitat and establishing and maintaining interconnecting linkages and corridors. The subject site is identified as a Greenweb Support area. The VMP has been assessed by Council's Greenweb Officer who confirmed that the species list and planting densities (i.e. quantity of replacement trees) within the VMP are appropriate and sufficient.

9.20 Noise Impacts and Hours of Operation

The warehouse is proposed to operate 24 hours a day, 7 days a week. The Acoustic Assessment report submitted with the DA has been reviewed by Council's Environmental Health Officer for performance against relevant standards. The recommendations of the Acoustic Assessment report have been adopted and form the basis for operational conditions of consent for the warehouse. These include the requirement that all north-facing loading docks of the warehouse cannot be used between 10pm and 7am (and that their roller doors must remain closed), the northern door of the staging area must remain closed (with no access) between 10pm and 7am and that heavy vehicles must not be left idling during loading and unloading operations.

Traffic noise is unlikely to have significant impacts on the nearest residential properties located 430 – 500m to the north and north-west in Horning and Tasman Streets. The Acoustic Assessment has concluded that traffic noise (the worst being generated by articulated trucks) will be well below the relevant sleep disturbance criteria.

10.0 DEVELOPMENT CONTRIBUTIONS

The proposed development has a value of greater than \$100,000. In order to provide high quality and diverse public facilities, the proposed development will attract Section 7.12 Contributions in accordance with Council's adopted Section 94A Development Contribution Plan 2016.

This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$35,266,370 (the estimated cost of development identified on the DA form). Therefore, the Section 7.12 levy for the proposed development is \$352,663.70.

11.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1,000. In addition, Council's DA form requires a general declaration of affiliation. In relation to this DA no signed declaration has been made.

12.0 CONCLUSION

The proposal involves the construction of a warehouse and distribution centre and an ancillary office building, with associated car parking. The warehouse is intended to be occupied by Tempe Tyres to service their existing retail outlet on Princes Highway, Tempe. Within the ancillary office building will be a 23m² take away food and drink “booth” to provide refreshments. There will be up to 80 staff on site at any one time. The warehouse will operate on a 24 hour, 7 days a week basis with reduced staff numbers during the night shift.

A *warehouse and distribution centre* is a permissible land use within the IN3 Heavy Industrial zone under SSLEP 2015. The office building meets the relevant characterisation tests for ancillary uses and is therefore permitted in the circumstances. Its use will support the functions of the warehouse and this has been reinforced by a condition of consent. The 23m² take away food and drink “booth” on the ground floor of the ancillary office building is proposed as a *take away food and drink premises* under SSLEP 2015 but best fits the definition of *kiosk*. Both uses are permitted within the zone. It is expected that the majority of customers will be on-site staff and truck drivers making deliveries.

The site and its surrounds are of high environmental sensitivity. The land is flood prone and will require extensive stormwater and flood mitigation infrastructure to manage risk. This infrastructure will be supported by a comprehensive maintenance plan to ensure that it is cleaned, serviced and maintained throughout the life of the development in order to minimise flood risk as a result of the development.

The site is close to known Aboriginal Sites. Sandy soils and some shell material were initially observed on site. Archaeological test excavations were subsequently undertaken on site and no archaeological deposits were found. A deferred commencement condition has been recommended requiring the completion of the Aboriginal heritage assessment and consultation process. This is expected to be finalised by the end of November 2018.

The site contains artificial wetlands that were initially considered to potentially be a habitat for Green and Golden Bell Frogs. However, an Ecological Assessment was undertaken and satisfied both Council and the Commonwealth Department of the Environment and Energy that the proposal will not have a significant impact in this regard.

The site also contains Kurnell Dune Forest Endangered Ecological Community. This will be retained and enhanced as a product of the development. All revegetation works will be undertaken in accordance with the Vegetation Management Plan endorsed by Council’s environmental unit.

The site is located within the vicinity of the Towra Point Nature Reserve and Aquatic Reserve. NSW Fisheries and the Department of the Environment and Energy reviewed the potential impacts of the proposal on this reserve and concluded that the proposal is acceptable subject to appropriate conditions of consent. In particular, stormwater quality improvement devices and particulate filtration

will be provided within the on-site infrastructure subject to a deferred commencement condition. Their ongoing performance will be controlled by the aforementioned comprehensive maintenance plan for the on-site stormwater infrastructure.

Relevant guidelines published by NSW National Parks and Wildlife Services were also taken into consideration during the assessment of this application and have been satisfied.

The proposal includes variations to the building height development standard of SSLEP 2015 and the car parking provisions of SSDCP 2015. The height variation has been discussed and is considered acceptable in the circumstances on the basis that it satisfies all relevant considerations under clause 4.6 of the LEP. The proposed quantum of car parking (227 spaces) is accepted by Council's traffic engineers as sufficient for the proposed use. The provision will become more generous if warehouse automation is adopted in future due to reduced staff numbers.

The application was placed on public exhibition and 14 submissions were received. The matters raised in these submissions have been discussed in this report and have been addressed with by design changes or appropriate conditions of consent.

The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will not result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. 17/0161 may be supported for the reasons outlined in this report subject to the granting of a deferred commencement development consent subject to the conditions contained in **Appendix A** of the Report, requiring completion of the Aboriginal heritage assessment and consultation process, revision of the stormwater design to provide stormwater quality improvement devices and particulate filtration, and preparation of a comprehensive stormwater maintenance plan.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (MS).