

<b>DATE OF DETERMINATION</b>	Wednesday, 21 November 2018
<b>PANEL MEMBERS</b>	Helen Lochhead (Chair), Bruce McDonald, Nicole Gurrán, Michael Forshaw, Steve Simpson
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Sutherland Shire Council, 4-20 Eton Street, Sutherland on 21 November 2018, opened at 2.35pm and closed at 7.20pm.

#### **MATTER DETERMINED**

2017SSH007 – Sutherland – DA17/0161 at 186-206 Captain Cook Drive Kurnell (as described in Schedule 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

1. The proposed development will provide a warehouse and associated office facility servicing an established product distributor and provide significant employment within an established industrial centre within the Sutherland Shire and Sydney South District.
2. The proposed development satisfies the Commonwealth Environmental Protection and Biodiversity Conservation Act (EPBCA) 1991. In this regard the Panel notes that the Commonwealth Department of Environment and Energy has advised that the proposal is not a controlled activity and the action does not need approval under the EPBCA.
3. The Panel has considered the Applicant's request to vary the development standard contained in Cl. 4.3 of Sutherland Shire LEP 2015 relating to maximum height and considers compliance with the standard is unreasonable and unnecessary in the circumstances of this case. The panel considers the variations facilitates non- mechanical ventilated fire management provision within the proposed warehouse and responds to the need to locate the office building floor level above the flood level. Further the additional height will not generate unacceptable impacts on nearby premises, is of minor perception in the context of the locality and remains consistent with the objectives of the standard and the IN3 zone.
4. The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP 55 -Remediation of Land, SEPP (Infrastructure) 2007 SEPP 33-Hazardous and Offensive Development and SEPP (Coastal Management) 2018
5. The proposal adequately satisfies the applicable objectives and provisions of Sutherland Shire Local Environmental Plan 2015 and Sutherland Shire DCP 2015.
6. The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including air, water or noise pollution, the integrity of the

adjacent coastal wetland and adjacent Towra Point Nature Reserve Ramsay Site Wetlands, the amenity or function of nearby premises or the utility of the local road system.

7. The proposed development is considered to be of acceptable form and scale consistent with the industrial land use context in which it is placed. The Panel notes that the Councils Architectural Review Advisory Panel is supportive of the development in this context and the expression of the office building. The Panel also notes that while the subject site is located within a 1% flood liability area the building is required to be designed and constructed to address flooding impacts and ensure site grading has no additional impacts on existing vegetation.

In consideration of conclusions 1-7 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

## **CONDITIONS**

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

### **4. Design Changes Required**

#### **A. Before Construction**

The following design changes must be implemented:

- i) The flood conveyance path along and adjacent to the eastern boundary shall be widened to a clear width of 5m. This will require the eastern extremity of the eastern carpark being cantilevered over the conveyance path.
- ii) The flood conveyance path along and adjacent to the south eastern edge of the Sydney Desalination Plant Pty Ltd easement, from the most western culvert under the suspended building to the eastern boundary shall be widened by 1m. This will result in the north western edge of the driveway being cantilevered over the conveyance path.
- iii) The development must be constructed to the ground floor finished surface levels detailed on the approved stormwater drainage design drawings.
- iv) The "potential staff parking" along the eastern boundary must be sealed and line-marked.
- v) An outdoor staff recreation shall be provided within the approved landscaped area to the west of the ancillary office building beyond the first two rows of car parking. The area shall be about 16m<sup>2</sup> in area with a minimum dimension of 3m. It must accommodate a table and chairs and provide shading in summer.
- vi) The "Staff Accommodation" and "Accessible Staff Accommodation" rooms on Level 1 of the ancillary office building must be deleted and replaced with additional lounge areas, open offices, meeting rooms, staff room or the like. No overnight accommodation is permitted within the building.

Details of these design changes must be included in documentation submitted with the application for a Construction Certificate.

### **11. Design and Construction of Works in Road Reserve (Council Design)**

#### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve between the eastern end of Chisholm Road, along Sir Joseph Banks Drive and along Captain Cook Drive up to the new bus shelters as required below. (An exception is the required stormwater works at the northern corner of the site.) To this end a Detailed Frontage Works application under the Roads Act 1993 must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate. The form is available on Council's website. A fee applies for the relevant inspections, assessment, coordination, creation of design brief and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design Services unit.

This design will generally comply with the approved architectural design drawings and the current website

version of Council's Public Domain Design Manual (PDDM) and Public Domain Technical Manual (PDTM) except where modified by/or addressing the following:

- i) Property alignment/ boundary levels - establish the property alignment/ boundary levels and crossing profiles.
- ii) Grades - regrade footpath verge to final design levels including topsoil, turf and all associated soft landscaping (where necessary to suit the extent of works required by this condition).
- iii) Vehicle Crossings - construct two vehicle crossings.
- iv) Redundant Laybacks and Crossings - remove redundant laybacks and vehicle crossings and replace with kerb and gutter (including associated road reconstruction works).
- v) Road Works - Provide upgrade on Captain Cook Drive including the formalisation and modification (including widening) of the existing acceleration lane to facilitate the proposal's vehicle use, and all associated road works for west bound vehicles leaving Sir Joseph Banks Drive.
- vi) Stormwater Connection - construct new stormwater infrastructure as required to facilitate drainage for the proposed development. This includes adjustment of the existing drainage system adjacent to the northern corner of the site and construction of a new kerb inlet pit.
- vii) Bus Stops - construct new bus shelters and stopping bays on both the eastern and western sides of Captain Cook Drive in close proximity to Sir Joseph Banks Drive. This includes associated road pavement works, kerb and gutter, line marking, median islands and signage and kerb ramps.
- viii) Footpath - install new footpath pavements along the frontages of the site between the new bus stops and the northern driveway to the site, to provide safe access to the bus stops.
- ix) Infrastructure Transitions - ensure there are adequate transitions between newly constructed and existing infrastructure as required
- x) Road Pavement - construct road pavement as required, including to accommodate the upgrade of infrastructure e.g. adjacent to new kerb and gutter to avoid the failure of existing pavement when excavation is carried out. The full extent of works shall be determined by detailed design process and is dependent on the condition of existing infrastructure.
- xi) Kerb and Gutter - construct kerb and gutter/edge strip as required including associated road reconstruction. This includes the formalisation of the eastern end of Chisholm Road as a cul-de-sac or as required to ensure that water drains correctly.
- xii) Street Signage - alter existing and/or install new street signage as required to cater for the impact of the development on the surrounding streets and is subject to approval by Sutherland Traffic and Traffic Safety Committee.
- xiii) Trees - remove and replace street trees as required.
- xiv) Undergrounding - provide replacement of existing local distribution power lines and other overhead utilities with insulated aerial bundles cables (ABC) as required.
- xv) Street Lighting - install new street lighting in Chisholm Road as required.
- xvi) Utility Services - adjust public services infrastructure as required.
- xvii) NBN - the Australian Government has issued a new policy on the provision of telecommunication infrastructure in new developments. The policy is effective from 1 March 2015. Developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, developers need to contract a carrier to install and operate a telecommunications

network.

- i. NBN is the IPOLR (infrastructure provider of last resort) in developments of 100 lots or more within its fixed-line footprint and in new development where its fixed-line network is available, or the NBN rollout has been announced ([www.nbnco .com.au/learn-about-the-nbn/rollout-map.html](http://www.nbnco.com.au/learn-about-the-nbn/rollout-map.html)).
- ii. If you use NBN, you will need to provide six months' notice before your network needs to be available.

Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

#### **B. Before Construction**

Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.

#### **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation/Subdivision Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify that the road frontage works were constructed in accordance with the development consent and associated approval under the Roads Act 1993 including the approved drawings and specification.

### **18. Stormwater Drainage**

#### **A. Design**

The stormwater drainage, rainwater harvesting, and rainwater reuse systems shall accordance with the approved stormwater drainage design drawings, Flood and Stormwater Impact Assessment Revision 1 of May 2018 and Australian Standard AS3500.3:2003, except where modified by the following;

- i) Layout of the drainage system showing the alignment of all pipelines, rainwater tanks and associated structures, including finished surface levels,
- ii) Three shallow bio-retention ponds shall be created along the Chisholm Road frontage within the front setback and planted in accordance with the approved Landscape Plan and Vegetation Management Plan. One must be located between the proposed driveways, another must be located between the eastern driveway and the truck waiting area, and the third must be in the south-eastern corner of the site between the truck waiting area and the eastern boundary. These three areas are shown as landscape areas on the approved architectural design drawings. These ponds shall:
  - Drain via pipelines to the street kerb and gutter under the footpath verge in Chisholm Road.
  - These pipelines shall be hot dipped galvanised steel rectangular hollow sections, 150mm by 75mm by 4mm, placed on a grade of 0.5% and at 90 degrees to the alignment of the street kerb.
  - Any two pipelines within the footpath verge connecting to the street kerb shall be 6m apart.
  - The three ponds shall be interconnected via high level pipelines placed on a grade of 0.5% and a minimum diameter of Ø 250mm. The invert level of these pipelines must be lower than the invert level of the outlet pipes to Chisholm Road.
  - Increase the volumetric capacity of these ponds by re-grading the side slopes to 1 vertical to 2 horizontal. The maximum vertical depth of the excavation shall be 0.5m.
- iii) Delete the proposed Ø 825mm located in close proximity to the north eastern corner.
- iv) In close proximity to the north eastern corner detail / show the existing stormwater drainage infrastructure, being; pits No.41134, No.76849, No.76846, No.76845, No.76840 and No.76847 and associated pipelines (indicated as Council drainage infrastructure on Shire Maps). Remove those structures located within the footprint of the development. The pipeline between pit No.76840 and No.76849 shall be replaced with an Ø 825mm.
- v) Create a long narrow trapezoidal channel adjacent and along the eastern boundary. The channel shape to be; 3m wide across the base, 0.5m deep, minimum length 95m and with side slope of 1 vertical to 2 horizontal or where abutting walls the side slope can be vertical. This channel must drain

to existing pit No.76840. The southern end of this channel will integrate with the required pond mentioned in above sub-item (ii).

**Note:** The “Vegetation Management Plan, 186-206 Captain Cook Drive, Kurnell” by Narla Environmental, August 2017 specifies the revegetation required for this channel and is described as ‘Zone 5 - Revegetation Corridor’.

- vi) The volumetric increase in the three ponds plus the required trapezoidal channel may be removed from the equivalent volume of the Atlantis™ cells.
- vii) The five pipelines and associated pits in the front setback to Chisholm Road and east of the proposed western vehicle crossing shall be redirected to drain to the three required ponds.
- viii) The required culverts than enable stormwater flow from Chisholm Road to Captain Cook Drive via the void under the suspended buildings, must be detailed.
- ix) The flood conveyance path along and adjacent to the eastern boundary shall be widened to a clear width of 5m, this will result in the eastern extremity of the eastern carpark being cantilevered.
- x) The flood conveyance path along and adjacent to the south eastern edge of the Sydney Desalination Plant Pty Ltd easement, from the most western culvert under the suspended building to the eastern boundary shall be widened by 1m. This will result in the north western edge of the driveway being cantilevered.
- xi) The rainwater harvesting system shall accord with the following;
  - At least 730m<sup>2</sup> of roof area shall be capture and directed to rainwater tanks.
  - The total minimum volume of the rainwater tanks shall be 300m<sup>3</sup>, with the overflows connected to one or more of the aforementioned three shallow ponds within the site along the Chisholm Road frontage (sub-item (ii)).
  - Install an automatic irrigation system to water all landscaped areas, including all wet lands and areas surrounding the wet lands.
  - Ensure suitable proofing for the prevention of mosquito breeding.

#### **B. Before Release of a Construction Certificate**

- i) Certification from an Accredited Certifier in Civil Engineering or a Chartered Civil Engineer, to the effect that the stormwater drainage system design was prepared having regard to the conditions of Development Consent and to their satisfaction, shall accompany the application for the Construction Certificate.
- ii) Certification from Catchment Simulation Solutions, to the effect that the stormwater drainage design prepared for the Construction Certificate was prepared having regard to their document “Flood and Stormwater Impact Assessment Revision 1 of May 2018”, shall accompany the application for the Construction Certificate.
- iii) Provide evidence that the stormwater drainage design drawings prepared for the Construction Certificate has been viewed by Sydney Desalination Plant Pty Ltd that with regards to the existing pits and pipelines in close proximity to the north eastern corner of the property, the proposed stormwater drainage system and flood mitigation works will not adversely affect the operation of the desalination plant.

#### **C. Before Occupation of the Development**

- i) A Works-As-Executed drawing (WAED) of the stormwater drainage system shall be prepared by a Registered Surveyor. This drawing must detail the alignment of pipelines, pits, rainwater tanks, Atlantis™ cells, stormwater treatment devices, contours of the excavated ponds, trapezoidal channel and the detention facilities. An original or a colour copy shall be submitted to Sutherland Shire Council.
- ii) The Supervising Engineer must certify the WAED of the stormwater drainage system that the stormwater drainage works were constructed to their satisfaction and in accordance with the Development Consent. Prior to the occupation or use of the building the Applicant / Owner shall submit to Council a copy of the aforementioned letter of certification.
- iii) The appropriately qualified Civil Engineer must certify the stormwater drainage system was constructed to their satisfaction and in accordance with the Development Consent and document “Flood and Stormwater Impact Assessment Revision 1 of May 2018”. Prior to the occupation or use of the building the Applicant / Owner shall submit to Council a copy of the aforementioned letter of certification.

#### D. Ongoing

- i) The operation of all devices or appliances installed within the development approved by this consent as required by conditions pertinent to rainwater harvesting and rainwater reuse must be maintained in good operating order at all times.
- ii) The storm water detention facilities shall be:
  - Kept clean and free from silt, rubbish and debris.
  - Be maintained so that it functions in a safe and efficient manner.
  - Not be altered without prior consent in writing of the Council.
- iii) Maintenance and renewal of all storm water treatment devices is to be documented in a maintenance and renewal plan to be prepared by a suitably qualified civil or environmental engineer with experience in storm water quality management.

**Note 1:** Upon submission of the Works-As-Executed drawing for the storm water drainage system a notation will be added to the section 149(5) certificate advising future owners that their property is burdened by a storm water detention facility.






**Note 2:** Upon submission of the Works-As-Executed drawing for the stormwater drainage system a notation will be added to the section 149(5) certificate advising future owners that their property is burdened by a stormwater treatment device.

**Note 3:** Investigate Pits No.76842, No.76841 and associated Ø 300mm as I believe these structures are part of the Desalination Plant Infrastructure.

#### 48. Aboriginal Heritage - Protection for a Potential Aboriginal Heritage Item

##### A. During Construction

Development consent from Council does not imply consent to destroy an Aboriginal site or object issued under the National Parks and Wildlife Act. Should any Aboriginal objects be unearthed or exposed during the project, works must temporarily cease within the immediate vicinity and the Office of Environment and Heritage be contacted to advise on the appropriate course of action. **Requirements of National Parks and Wildlife Act 1974:** The National Parks and Wildlife Act is the primary legislation for the protection of Aboriginal cultural heritage in NSW. Under the National Parks and Wildlife Act 1974 it is an offence to desecrate or harm an Aboriginal object without having obtained an Aboriginal Heritage Impact Permit (AHIP) under section 90 or without having exercised due diligence in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (NSW Department of Environment, Climate Change & Water (DECCW)).

PANEL MEMBERS	
 Helen Lochhead (Chair)	 Nicole Gurran
 Bruce McDonald	 Michael Forshaw
 Steve Simpson	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017SSH007 – Sutherland – DA17/0161
2	PROPOSED DEVELOPMENT	Construction of a warehouse for storage and distribution of tyres and an ancillary office building which includes food and drink premises and amenities
3	STREET ADDRESS	186-206 Captain Cook Drive Kurnell
4	APPLICANT/OWNER	Taleb Property Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million and lodged before 1 March 2018
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy No. 33 – Hazardous and Offensive Development</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>Sutherland Shire Local Environmental Plan 2015</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Sutherland Shire Development Control Plan 2015</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Draft State Environmental Planning Policy (Coastal Management) 2008</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 31 October 2018</li> <li>Written submissions during public exhibition: 14</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Support – Nil</li> <li>Object – Belinda Holdsworth, Lyn Cooney</li> <li>Council assessment officer – Carine Elias, Martin Southwell, Amanda Treharne</li> <li>On behalf of the applicant – Sam Taleb, Shane Youssef, Tim Ward, Kim Jones</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing 23 May 2017</li> <li>Site inspection 21 November 2018</li> <li>Final briefing to discuss council's recommendation, 21 November 2018, 1.15pm. Attendees: <ul style="list-style-type: none"> <li><u>Panel members</u>: Helen Lochhead (Chair), Bruce McDonald, Nicole Gurran, Michael Forshaw, Steve Simpson</li> <li><u>Council assessment staff</u>: Carine Elias, Martin Southwell, Leanne Mariani, Erin Sellers, Amanda Treharne</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report