

## MEMORANDUM

**TO:** Hunter and Central Coast Regional Planning Panel (HCCRPP)  
**FROM:** Port Stephens Council (PSC)  
**DATE:** 16 December 2020  
**FILE NO:** 16-2018-772-1  
**PROPERTY:** LOT: 41 DP: 1037411, LOT: 4821 DP: 852073  
3221 Pacific Highway KINGS HILL, 35 Six Mile Road KINGS HILL  
**PROPOSAL:** Concept Development Proposal for Residential Subdivision and Stage 1  
Works including Vegetation Clearing and Establishment of a  
Conservation Area  
**SUBJECT:** PSC Response to HCRPP Key Issues Discussed at the 12 August 2020  
Briefing

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### Item 1 - Scope of Concept Approval

The Panel requested clarity from the applicant on the scope of and works proposed in the concept stage of the application.

- *Extent of urban footprint*

**PSC Response:** The development application only seeks approval for the Concept Development Approval for Subdivision of the Applicant's land holding and Stage 1 clearing works. It does not seek approval for physical construction and subdivision works.

- Scope of Concept Approval:
  - Establishment of an urban footprint comprising residential and commercial uses, to be developed under future subdivision and development applications (DAs), distributed across seven (7) precincts;
  - Formalising and creating an Environmental Conservation Area for land that is environmentally sensitive to be retained and managed in-perpetuity;
  - The footprint for both the low level, the alternative low level, and the high level water supply reservoirs;
  - Stormwater Master Plan strategy including the location of treatment devices and basins;
  - Collector road corridors.

The Applicant will be required to lodge subsequent DAs for the actual physical construction and subdivision works in accordance with the Concept Approval.

A simplified plan has been provided that illustrates the elements of the Concept Proposal relative to the proposed Conservation Area and the proposed urban precincts. While the proposed location and scale of open space (in the form of a district park and multiple local parks), recreation and community facilities, local roads and schools is contemplated by the Application, the specification and the locations of such facilities and infrastructure is to be assessed under future DAs for subdivision.

Given that the Proposal is Concept only, future DAs will need to provide detail on road layout, lot yield, open space and community infrastructure, in addition to detailed impact assessments that address environmental and amenity site constraints in accordance with s4.22(5) of the *EP&A Act*.

- *External road upgrade works to provide flood free access via Newline Road / Six Mile Road*

**PSC Response:** A plan set (Appendix V attached to the Council Assessment Report) has been provided illustrating the preliminary engineering design of road and drainage works anticipated external to the site to enable access during flood events. A supplementary ecology report (Appendix U attached to the Council Assessment Report) was also provided identifying that the external works required are not likely to cause significant environmental impact; do not involve works of a kind that are unlikely to obtain consent or approval; and do involve the acquisition of privately owned land.

It is considered that the preliminary road works plans and supplementary preliminary ecology report addresses the findings from *Ballina Shire Council v Palm Lake Works Pty Ltd*.

- *Part 5 Application for infrastructure*

**PSC Response:** Part 5 assessments are being prepared by TfNSW for both the Pacific Highway intersection upgrades and the Grahamstown Dam stormwater diversion channel (identified as enabling infrastructure for the KHURA (Kings Hill Urban Release Area)), as per arrangements in the State VPA.

Details on the status of the Part 5 assessments for enabling infrastructure have been addressed in Council's assessment report.

It is considered that the assessment addresses the findings from *Ballina Shire Council v Palm Lake Works Pty Ltd*.

- *Stormwater infrastructure*

**PSC Response:** The stormwater strategy for the KHURA has been included as part of the Concept Development Proposal. The stormwater management design includes sufficient detail to determine the likely sizing and locations of devices such as detention / bio-filtration basins required.

The inclusion of the stormwater strategy in the Concept Proposal is a requirement to address the concerns of Hunter Water Corporation (HWC). The authority requested detailed modelling for water quality and quantity to measure possible impacts on the Irrawang Swamp and Grahamstown Dam Drinking Water Catchment.

The location, sizing and environmental impact of stormwater basins formed part of the assessment. HWC, Council's engineering section, Council's natural resources section, DPI - Fisheries and the Natural Resource Regulator (NRAR) all endorsed the Concept stormwater management strategy.

It is important to highlight this application does not give development consent to construct the stormwater management system, as it is to inform the Concept Approval only. Detailed assessment of stormwater management devices will form part of subsequent detailed DAs for subdivision works.

- *Use of B4 Mixed Use zoned land*

**PSC Response:** The HCCRPP requested clarification of the use of portions of the B4 Mixed Use zoned land for drainage purposes.

The Applicant submitted a justification for land use planning and design for the B4 Mixed Use zones. The Applicant has relied on site constraints, ecology and stormwater strategy and old survey technology at the rezoning stage in 2010 to justify the use of B4 Mixed Use land and location of retention basins in some of these areas.

The Applicant noted the detail survey and biodiversity avoidance measures reduce the anticipated lot yield (based on the extent of urban zoning) on the site by approximately 20%, which in turn reduces the demand and the locations suitable for village's centres within B4 Mixed Use zoned land. This is discussed in further detail in Council's assessment report.

## **Item 2 - Scope of Stage 1 Works**

**PSC Response:** Approval is sought under Stage 1 to progressively carry-out clearing and vegetation works in the form of site preparation works (governed by the proposed Vegetation Management Plan (VMP)).

The vegetation works involve the progressive clearing of the proposed urban footprint in phases that are in sequence with (and not in advance of) the establishment of the proposed Conservation Area (governed by the proposed Biodiversity Management Plan(BMP)), which involves vegetation enhancement and improvement works required

to revert the Conservation Area into long term sustainable habitat. The plans (Attachment 1 under the Council Assessment Report) provided illustrate the proposed staging of development relative to the existing cleared land and/or proposed Phases of clearing.

The recommended conditions restrict the nature and timing of clearing across the site to be consistent with delivery of the interchange, stormwater channel and future DAs for subdivision works.

### **Item 3 - Approach to Biodiversity Issues**

**PSC Response:** The Stage 1 Works are to be carried out in phases under the VMP to achieve a gradual transition of affected species in impacted areas into the 244.25ha Conservation Area comprising 'like for like' native vegetation and threatened species habitat restored and improved under the BMP.

The phased site preparation approach provides a framework that will minimise impact intensity on sensitive biodiversity values. In essence, it allows for the gradual removal of vegetation to enable species relocation into the Conservation Area over the 8+ year period. The Phased approach is provided in detail as part of the SIS.

The SIS states a nett gain in preferred koala feed trees is expected through the revegetation of cleared lands and intraforest enrichment.

The SIS has been prepared in accordance with the Chief Executive's Requirements (CERs) issued by OEH 9/9/2018 and underpinned by the legislation and policy appropriate to the assessment with specific regard to the *Biodiversity Conservation (Savings and Transitions) Regulation 2017*.

Conditions have been recommended in Attachment 2 (under the Council Assessment Report) to ensure no wide-scale clearing of the site occurs and vegetation removal is only undertaken in conjunction with subdivision works in the urban footprint. Specifically, a condition has been recommended that no vegetation clearing (other than revegetation, weed management and track maintenance/establishment) be permitted to occur prior to the approval of detailed DAs for subdivision in the respective precincts.

Council commissioned a third party review of the SIS and associated BMP and VMP. From this review, the SIS field survey, reporting of results and consideration of alternatives including avoidance and proposed mitigation measures were supported. Information and assessment presented in the SIS report relating to impacts and assessment of significance were also supported. The detailed assessment and measures presented in the SIS and supporting VMP and BMP relating to the Koala were all supported.

Council's independent ecologist will be attending the determination meeting and will be available to clarify any questions the Panel may have on ecology and biodiversity matters.

#### **Item 4 - Contributions**

**PSC Response:** The exhibition period for the Draft Port Stephens Local Infrastructure Contributions Plan 2020 finished on 10 December 2020. The plan will be sent to Council for adoption at the 9 February 2021 Ordinary Council meeting.

This application seeks consent for concept approval for the subdivision of the subject land only. It is noted that the consent would only permit the clearing of the land, and further consents would be required to approve the detailed subdivision. Considering land clearing would not require the provision of or increase the demand for public amenities, it has been determined that a condition requiring monetary contributions is not applicable pursuant to Section 7.11.

Of particular note, Section 7.11(1) states that a consent authority can only apply a condition requiring a contribution where a development will or is likely to require the provision of or increase the demand for public amenities. Therefore, adoption of the Kings Hill Local Infrastructure Contributions Plan is not required until subsequent DAs for subdivision.

#### **Item 5 - External agency consultation**

**PSC Response:** All Integrated approvals and other agency comments have been received and have been incorporated into Council's assessment report.

#### **Item 6 - Issues associated with neighbouring waste management facilities to be addressed**

**PSC Response:** The Applicant has commissioned Douglas Partners to conduct the monitoring of landfill gas migration. Initial results indicate that the landfill gas migration risk is very low and unlikely to preclude development in accordance with the Concept Proposal.

A condition has been recommended that investigations and monitoring in the odour/gas buffer occur prior to development occurring under subsequent DAs.

#### **Item 7 - Voluntary Planning Agreements**

**PSC Response:** The Voluntary Planning Agreement (VPA) terms have been endorsed in principle by Council (8 December 2020) for the purposes of delivering an in-perpetuity conservation agreement for the Conservation Area. The establishment and in-perpetuity protection of the Conservation Area under a VPA is consistent with the options outlined in the CERs.

### **Item 8 - Offsite Infrastructure**

**PSC Response:** As detailed elsewhere in this memo, a supplementary ecology report was provided for the external road works. Further TfNSW, provided a letter stating the draft (REF) assessment currently indicates impacts caused by construction of the drainage channel will not be significant.

It is highlighted the external works are not required until subsequent DAs for the site given the subdivision component of the application is Concept only. Further, the site can develop up to 250 lots prior to the completion of the interchange and channel as outlined in the State VPA.

### **Item 9 – Documentation**

The Panel requested an overlay of the proposal on the site to assist in understanding of the concept. This should also include clear information to understand what works sit within what zone – particularly E2 Environmental Conservation.

**PSC Response:** The requested plan has been provided at Attachment 1.