

MEMO

To: Planning Panel

From: Paul Smith

Date: 2 May 2022

Subject: DA 163/2017 – Section 8.2 Review – PPSHCC-107 – Response to Queries

Trim no: OUT-2615/22

As the salinity issue is crucial to the Council recommendation, are we to rely principally on the March/April 2022 exchanges referenced at p2/55 of the assessment report? Is that correct? For some reason the 118 page Martens March 2022 report is not referenced as part of the Assessment Set, only their response to Soil Futures?

The Hydrogeological Assessment and Groundwater Management Plan: 150 Gundy Rd Scone, NSW (Martens) is on the PPSHCC-107 Att6 Updated Salinity Report is now available and was intended to be part of the Assessment Set but is marked instead as “Sensitive” due to an administrative error, which restricted access. This was updated on 29 April 2022.

Also, although the report doesn't say so, as advised previously a condition of dealing with a review of an amended proposal under review under s.8.3(3) is that the DA remains “substantially the same” as the original one refused in 2020. Can we assume that is Council's position, as advised verbally at previous briefings? I would intend to have that recorded as part of the discussion on Tuesday.

Council is satisfied that the Section 8.2 Review Application is substantially the same as the original development application (DA 163/2017).

A statement at p.5/55 about the land being zoned rural is an error. There are various references in the report still to 385 lots but Plan vers. P reflects the latest proposal with 384.

The land that is the site of all of the residential development (Lot 2 DP 11693200) is zoned R1 General Residential, however some related “support” development, eg. APZ, vegetation buffer, and the emergency access road, is on the adjacent lot which is zoned rural. Based on Version P of the subdivision plan, the number of lots is 384 (Version O was 385 lots).

Owner's Consent

On the Portal there is a document 'Owner's Consent 2' which appears to be the substantive owner's consent for the DA site, ie for Lot 2 DP 1169320.

Another document 'Owner's Consent 1' dated 31 August 2021 covers the former (now deleted) proposed Emergency Access Road from 150 Gundy Road, Scone to the New England Highway; and

the landscape buffer plantings along the common boundaries between 'both sites'. Both these elements are on Lot 3 DP 1169320 which I understand is in the same ownership as Lot 2?

So, there was clearly an intent to include these parts of Lot 3 for the purposes of the DA, but the problem is now that (despite the draft 88bs) this document does not address the current proposal with the emergency access to the east as well as the surrounding APZ and proposed gravel access track for fire fighting. Is that correct and is that still the case? If so why is the absence of adequate owner's consent not part of the recommended reasons for refusal (see further discussion below)?

The land formerly identified as Lot 3 DP 1169320 (including on Version P of the subdivision plan) now appears (according to Council records) to be Lot 2 DP 1237000 (owned by Shellden Pty Ltd). It is not clear if this is still in the same ownership as Lot 2 DP 1169320 (the development site). It is true that both of the Emergency Access Road and APZ and gravel access track are on Lot 2 DP 1237000. This lot or former Lot 3 have not been included as part of the development application. It is agreed that could be a reason for refusal, because owners consent has not been formally provided.

Unresolved Issues

"Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,***
- (b) the supply of electricity,***
- (c) the disposal and management of sewage,***
- (d) stormwater drainage or on-site conservation,***
- (e) suitable vehicular access."***

Although at p. 12/55 the report states that water, sewerage and telecommunications services "are available", there are less definite statements elsewhere in the report about uncertainty on water supply (p7, 18 for example) and off site sewer capacity/connection (p.17/55); electricity (p.17) seems to be OK based on the Nov 21 response from Ausgrid, though locations of substations are unknown at this stage, for instance.

Council should be confident in a macro sense about a methodology of/capacity for providing reticulated water and sewer to the site, or that arrangements have been made to do so, before resorting to a condition of consent as suggested at p.18, for instance.

Also, as things stand stormwater appears unresolved pending a final peer review (p.20/55) and 'suitable vehicle access' still appears questionable for the reasons we discussed at our two briefings.

As things stand how can the Panel be feel confident that 6.10, a mandatory pre-condition to any consent, has been satisfied? If it has not, is this not a basis for refusal?

The Manager of Water and Sewer (MWS) conditionally agree that the provision of water and sewer to the development is possible, however is concerned about the lack of critical detail. The MWS has reviewed the previous comments and requested that the following points show replace dot point 1 and dot point 5 in the Infrastructure Services (Water & Sewer) section of the Assessment of Application Report.

- J) The Proposal is to construct a 250 mm Main from the High Level Reservoir Scone. More detail on the “Water strategy report and network plan for Peppertree and Bakewell sites” as referenced on drawing “Water Servicing Strategy/Proposed Subdivision/ Lot 2 in DP 1169320, Gundy Road Scone” Ref Ver P, is required.
- J) The RGH Sewer Strategy Report April 2018 section 4 indicates that the downstream pipe exiting the man hole on the South East corner of Honeysuckle Crescent is 225 mm Diameter. Council requires additional information as to why a 300 mm diameter pipe is proposed to discharge into the manhole, where the existing pipe is a 225 mm and what the proposals are for the existing system to accept the additional sewer loading. Council require further details on flow calculation and sizing of sewer pipes in particular demonstrating sufficient flow is adopted to prevent stagnation and long retention times in pipe work.

It is noted that these issues have not been identified previously and the applicant is likely to feel aggrieved that this issue was not raised as part of the further information requests. It is possible the level of detail the MWS is requesting could be imposed as a condition of consent prior to the issue of any Subdivision Works Certificate, however a reason for refusal is offered below if required.

Gundy Road frontage

Comments at p.27/55 noted. In relation to this last issue, in the March 2022 landscape plan L04 there appears to have been an attempt to match the fencing design to the west/north of the site, and there is a proposed 88b arrangement to go with it (p.29/55). This does seem an improvement on what was available previously and Council would have access if required. Absent of community ownership of this strip, what would Council accept?

As been stated Council are not in favour of Section 88B instruments to achieving planning outcome on private land. Council's preference would be for a Planning Agreement, however this proposal was rejected by the applicant. Furthermore, the proposed fence arrangement would make it quite difficult and inconvenient for the adjacent lots to maintain the buffer. A more practical solution is required.

Proposed Reasons for refusal

The first reason refers to the UH 2015 DCP, which is addressed in more detail in Appendix 2. Discussion about open space and landscape at p.26-28/55 and p. 48/55 appears somewhat inconclusive – and the text in the table on this final page is incomplete. Is it possible to be more specific about Council's DCP requirements for open space for the subdivision which are not met, if this is to be a reason for refusal?

The DCP is now somewhat dated and does not reflect best practice or current thinking in all respects. The comments that have been provided by Council's Asset Manager are inconsistent with the layouts in the DCP (Part 13a St Aubins) – preferring a central park on a corner site and not having the interlinking pathways. The applicant's CPTED report makes a similar recommendation for the park. However I do not think we could make an issue of this.

The 2020 refusal also included a ground that “The lot layout and yield proposed does not respond to the constraints and interfaces of the site”. That has also been dropped, although various key issues with the lot interfaces still appear unresolved – eg proposed tree planting in an Ausgrid easement which appears to be precluded under their 5/11/21 response to the DA, a problematic emergency access across a gully, unresolved stormwater impacts from the detention basins, and future maintenance requirements on a third party owner etc.

One of the concerns here was the rear of lots being directed onto the drainage reserve – this has largely been rectified with location of roads. Also there were concerns about having a hard fence interface between the lots that east, west and southern boundary.

The applicant has responded to the Peer Review undertaken by Northrop and provided an updated stormwater management plan and flood impact assessment. This resulted in further changes to the subdivision plan (resulting in Version P). These documents and the amended plan have been referred to Northrop for a final review, however at this time (30.04.2022) a response has not been provided. However verbal comments from Northrop suggest it is an improvement but were uncertain about

whether or not this was sufficient. Many of the “unresolved” issues could be resolved by conditions of consent or further information to Council's satisfaction prior to submission of a CC.

Also the reasons do not refer to the lack of GTAs from the RFS? Section 4.47(2) of the Act states that “Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent”, however the lack of GTAs under the legislation also precludes granting consent for integrated development. The recommended reasons just refer to bushfire risk as a DCP non-compliance issue? The latest RFS letter of 11 March 2022 states that the Service does not support the proposal (albeit Vers. O, but the basis for RFS opposition does not appear to have changed in Vers. P?) and 4.47(4) of the Act states “If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application”.

The proponent submitted an amended Bush Fire Assessment (Firebird, 22 March 2022) on 31 March 2022. This amended Assessment included a response to RFS's concerns, however it is not known whether RFS is satisfied with this response, particularly given the applicant's assessment's reliance on performance based solutions in some circumstances. This was referred to the Rural Fire Service on 5 April 2022. To date a response has not been provided and as it stands the RFS do not support the development application. I have therefore now offered this as a reason for refusal below.

Also see above re cl. 6.10 of the LEP & owner's consent issues. The latter could be easily resolved prior to any decision, I can't really understand why this remains an issue if the proponent owns Lot 3?

The owner of Lot 3 now Lot 2 DP 1237000 – Shellden Pty Ltd has not been verified. Shellden Pty Ltd appears to be associated with E C Throsby. Edward Throsby signed the owners consent for the DA. He is the Managing Director of E C Throsby and Charles David. It is not known how Shellden, E C Throsby and Charles David relate in a company ownership sense, but they appear to be closely related.

A letter signed by Edward Throsby states: “Edward Throsby, Managing Director of Charles David Pty Ltd consent to the following development over Lot 2 DP1237000, known as 2316 New England Highway, Scone, NSW, 2337 as part of the development of land for the purpose of subdivision at Lot 2 DP1169320, known as 150 Gundy Road, Scone:

- Emergency Access Road from 150 Gundy Road, Scone to the New England Highway; and
- Landscape buffer plantings along the common boundaries between both sites.”

This letter does not refer to the APZ, drainage easement or the amendment route of the emergency access road to the east, all of which affect Lot 2 DP 1237000. This is a matter that could be resolved with another letter providing owners consent for the above, but should be resolved before any potential consent is granted.

Additional Reasons for Refusal

Based on my response to the above the following further reasons for refusal are offered:

1. Based on the comments provided by Council's Infrastructure Services (Water and Sewer) there is insufficient clarity and information as to whether reticulated water and sewerage services can be made available to the development. In this regard pursuant to Clause 6.10 of the Upper Hunter Local Environmental Plan 2013 the consent authority is not satisfied that essential services can be provided to the development.
2. The development application proposes an Emergency Access Road and intersection with Gundy Road via Lot 2 DP 1237000 however insufficient detail about its construction, management and operation. In this regard pursuant to Clause 6.10 of the Upper Hunter Local Environmental Plan 2013 the consent authority is not satisfied that essential services can be provided to the development.

3. The development application (Review of Determination) was referred to the NSW Rural Fire Service pursuant to Section 4.46 of the Environmental Planning and Assessment Act 1979 (the Act). The NSW Rural Fire Service responded on 11 March 2022 advising they cannot support the application. In this regard the development application satisfies Section 4.47(4) of the Act as the approval body has informed the consent authority that it will not grant an approval and as such the consent authority must refuse consent to the application.
4. The development application (Review of Determination) is for a 384 lot subdivision on Lot 2 DP 1169320. However elements of the development including the Emergency Access Road, Asset Protection Zone and access for fire fighting are on Lot 2 DP 1237000 (previously Lot 3 DP 1169320 and as shown on the most subdivision plans - Version P) in the ownership of Shellden Pty Ltd (according to Council property records) which are not part of the development application. The owners consent for the inclusion of Lot 2 DP 1237000 has not been provided.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the development does not satisfy the Upper Hunter Development Control Plan (Part 13a St Aubins Estate) for Open Space. While the spatial requirements for Open Space (Park) are provided, the functional requirements are not as only one of the four public parks proposes play equipment.
6. Pursuant to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 the development is not in the public interest as the high dependence on offsite property easements, rights, restrictions or covenants secured through Section 88B of the Conveyancing Act provides insufficient surety to Council that the subdivision will continue to meet the relevant conditions of consent over time, particularly given the 20 year staging of the proposed development.
7. Pursuant to Section 4.15(e) of the Environmental Planning and Assessment Act 1979 the development is not in the public interest as the high relevance on adjacent land parcels to achieve development outcomes that could reasonably be expected to be contained in within the subject land