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| MEMO | | | | |  |
| To: | Hunter and Central Coast Regional Planning Panel | | | | |
| From: | Jonathan Ford, Senior Development Planner | | | | |
| File: | DA/3015/2022 | **Reference:** | PPSHCC-110 | Date: | 14 October 2022 |
| Subject: | Supplementary information for Fernleigh Awabakal Shared Track | | | | |

At the determination briefing held on Thursday 13 October 2022, the Hunter and Central Coast Regional Planning Panel (Panel) requested Council staff provide a memo to the Panel addressing the following:

**Updates to council assessment report**

* Further comments under Section 3.8 of the report regarding the likely impacts of the development, including conditions being imposed to manage the impacts.
* Inclusion of a specific reference to the public interest in Council’s assessment of the applicant’s written submission perusal to Clause 4.6 of the Lake Macquarie Local Environmental Plan 2014 (LMLEP).

**Updates to draft conditions of consent**

* Preparation of a condition for lighting, including placement and management of potential impacts.
* Inclusion of mitigation measures under the submitted Environmental Impact Assessment in the consent conditions.
* A summary of the changes made to the conditions following review by the applicant.

This memo responds to this request.

**Likely Impacts of the Development**

The key impacts for the development identified throughout Council’s assessment are provided below in table 1. Conditions of consent imposed to manage these impacts are referenced.

**Table 1 - Summary of Likely Impacts of the Development**

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| --- | --- | --- |
| **Impact** | **Comment** | **Relevant conditions** |
| Land contamination and remediation | The submitted site investigation concludes that the site is suitable for the proposed use with regard to land contamination subject to the preparation of an asbestos management plan, and inclusion of an unexpected finds protocol.  Conditions for asbestos and unexpected finds have been imposed. | 3 – Unexpected Finds Protocol  14 and 49 - Asbestos Management Plan  60 - Contaminated Land Remediation and Validation |
| Ecology and waterway impact | A Biodiversity Development Assessment Report has been submitted, including appropriate assessment in accordance with the Biodiversity Assessment Method 2020. The conclusions of the BDAR are supported.  No substantial impacts on proximate waterways are expected.  Conditions have been imposed requiring retirement of biodiversity offset credits, preparation of a vegetation management plan and protection measures for trees proposed for retention.  A condition requiring preparation of a landscape plan has also been imposed. | 3 – Mitigation Measures  8 - Retirement of Biodiversity Credits  21 - Native tree and vegetation protective measures  9, 32, 55 and 63 - Vegetation Management Plan and Implementation  33 - Removal of fauna habitat |
| Social impacts, noise and crime risk | The development displays adherence to applicable noise criteria. The track is sufficiently offset from residences and is otherwise consistent with the principles of Crime Prevention Through Environmental Design.  Conditions require adherence the recommendations of the acoustic assessment undertaken for the proposal.  Conditions have also been imposed to manage the position and design of lighting. | 12 – Acoustic Certification  48 - Noise - Construction Sites  51 – Lighting  66 - Emissions |
| Flooding, bushfire and emergency procedures | Due to the nature of the development, no construction standards for bushfire or flood risk are applicable.  A condition requiring preparation of an emergency management plan has been imposed. | 16 – Emergency Management Plan |
| Aboriginal and European heritage | The development has been designed in close consultation with local aboriginal groups. Required consultation has also been undertaken during assessment of the application. Heritage documentation has been submitted in support of the application and supported by Council’s Heritage Officer.  Conditions have been imposed requiring obtainment of an Aboriginal Heritage Impact Permit from Heritage NSW, protocols for unexpected finds, and interpretation of local heritage items within the site area. | 10 - Aboriginal Heritage Impact Permit (AHIP)  13, 57 and 62 - Cultural heritage interpretation  22 - Cultural awareness induction  35 - Excavation – human remains  36 - Excavation – Aboriginal Relics  37 - Excavation – Non-Indigenous Relics |
| Scenic amenity and visual impacts | A visual impact assessment has been submitted demonstrating the development will not result in adverse impacts on the scenic qualities of the locality.  This element is addressed through the development design itself, no specific conditions have been imposed. | N/A |

**Clause 4.6 Assessment**

Clause 4.6 (4) requires the consent authority to be satisfied that the departure from the relevant development standard is in the public interest. Specifically, the subclause provides:

*Development consent must not be granted for development that contravenes a development standard unless…the consent authority is satisfied that…the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The majority of the site area is within the C2 – Environmental Conservation zone under LMLEP, including the two structures comprising the building height exceedance. The SP2 – Infrastructure and RE1 – Public Open Space zones also apply to small areas of the development site.

The development is considered consistent with the objectives of all applicable zones, noting:

* The ecological significance of the site is maintained;
* The development comprises a key piece of public infrastructure for the benefit of the community;
* No substantial impacts on proximate waterways are anticipated.

The objectives of the building height development standard under Clause 4.3 of LMLEP are as follows:

*(a) to ensure the height of buildings are appropriate for their location,*

*(b) to permit building heights that encourage high quality urban form.*

The proposed bridge and viewing platform are appropriate for the location in terms of design, bulk and amenity. The structures have been designed to embody the Aboriginal dreaming story for the locality, and will sit suitably in the scenic landscape. The structures have design merit and are considered to be consistent with the objectives of the building height development standard.

The development is considered to be in the public interest, including the proposed height exceedance.

**Conditions – Lighting and Mitigation Measures**

The following conditions have been included in the updated draft conditions set at Appendix A:

* Condition 51 – Lighting
* Condition 4 – Mitigation measures

The conditions embody the directions of the Panel in terms of content and timing.

**Condition Review by Applicant**

Draft conditions were provided to the applicant for review prior to the Panel’s determination meeting on 13 October 2022. The following changes were undertaken in response to the applicant’s comments:

* Condition 7 (Shared Pathway) was amended to remove specific dimensions and requirements for adherence to Council’s standard engineering drawings. The path is variable in width and incorporates specialised re-enforcement not provided under Council’s standard drawings.
* Conditions 5 (Construction Certificate) and 8 (Retirement of Biodiversity Credits) were amended to enable the project to proceed with or without the additional linkage from Alick Street south of Belmont TAFE.
* Condition 34 (Landscape Works) was amended to remove a statement requiring realignment of the track for tree retention. The alignment of the track has been largely resolved and biodiversity assessments conducted accordingly. Realignment during construction phase is not feasible.
* The wording of condition 55 (Vegetation Management Plan and Implementation) was amended to address vagueness regarding the timing of VMP outcomes.

Should you have any further questions, or require further information to assist in the Panel’s determination of the application, please contact me on 4921 0401 or jford@lakemac.nsw.gov.au.

Jonathan Ford

Senior Development Planner

Development Assessment & Certification

*Appendix A – Revised Draft Conditions of Consent*