

MEMO



To: Regional Planning Panel Secretariat
From: Development Planner - Jonathan Ford
File: DA/1692/2019
PPSHCC-21

Date: 14 July 2020

Subject: Response to Panel's request for further information – Tuesday 14 July 2020

The purpose of this memorandum is to provide a response to the matters identified by the Panel's via email on 14 July 2020. An address to each item is provided below.

Clause 7 of SEPP 55 - Contamination and remediation to be considered in determining development application

Council records indicate the subject land is not contaminated or potentially contaminated. The site has historically been utilised as an aged care complex.

A Phase 2 Contamination Assessment was undertaken in support of the proposal, noting remediation works required on existing areas of fill. The assessment recommends a Remediation Action Plan be prepared for the site. Council's Environmental Health Officer has reviewed the assessment, and concurs with the recommendation for a RAP. A condition of consent to this effect is recommended, as well as an additional condition requiring appropriate treatment for unexpected finds. The remediation works will be required to be completed prior to occupation of the development.

In accordance with Clause 7 of SEPP 55, the site will be remediated before the land is used for its intended purpose. Following remediation, the site will be suitable for the purpose of which it is intended to be used.

Clause 9(2) of SEPP 44 – Application of koala SEPP

The Ecological Assessment conducted for the development concluded the site is not Core Koala Habitat.

Surveys undertaken in support of the assessment showed no signs of koalas being present in the area. This is consistent with Council's records / mapping for the site and immediate locality. Council's Ecology Officer has supported the findings of the Ecological Assessment.

It is concluded the site does not comprise Core Koala Habitat in accordance with subclause (2)(b)(ii).

Clause 27(2) of SEPP (HSPD) – Bushfire prone land

The site is bushfire prone land and is mapped as containing vegetation category 2 and vegetation buffer.

The application was referred as Integrated Development to the NSW RFS for assessment against the provisions of *Planning for Bushfire Protection*.

The NSW RFS have provided General Terms of Approval for the development and Council are therefore satisfied the development complies with the requirements of *Planning for Bushfire Protection* and an assessment has been undertaken against the provisions of clause (2).

Council consider the location of the development and means of access to and egress provides acceptable outcomes to ensure safety of residents from bushfire risk.

Clause 55 of SEPP (HSPD) – Fire sprinklers

The applicant has provided updated plans with a notation indicating a compliant sprinkler system is to be installed.

A Building Code of Australia compliance report recommending the same has also been submitted.

Both the report and the plans have been submitted to the Panel on 14 July 2020.

Coastal SEPP – Coastal use and coastal environment areas

Clauses 13 and 14 of the Coastal Management SEPP apply to areas mapped as Coastal Environment Areas and Coastal Use areas respectively. The subject site is within both mapped areas.

Clause 13 provides:

Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) 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,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

The development is offset from Lake Macquarie by more than 200m to the west and 400m to the east. Surface water is appropriately managed through proposed stormwater works for the development. The development is considered consistent with the coastal environmental values, and is not expected to impact on natural coastal processes. Lake Macquarie is not listed as a sensitive coastal lake under

Schedule 1. No works that would impact on marine vegetation are proposed. Works that would affect terrestrial native flora has been considered in detail in accordance with Council's DCP. The development would not impede, or otherwise impact, public access to foreshore areas. No aboriginal heritage constraints apply to the land. A search of the Aboriginal Heritage Information Management System indicates there are no listed aboriginal sites or places within 200m of the site.

It is considered that the proposal reasonably manages to avoid impacts outlined under Subclause (1), and thereby satisfies Subclause (2)(a).

Clause 14 provides:

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

The development would not impede, or otherwise impact, public access to foreshore areas.

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

The development will not overshadow coastal or public areas, nor is any perceptible wind funnelling expected. Views from public land to the foreshore are to be maintained.

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

The development is considered to be consistent with the scenic qualities of the locality.

(iv) Aboriginal cultural heritage, practices and places, (v) cultural and built environment heritage, and

No heritage constraints apply to the land.

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

The development would not impede, or otherwise impact, public access to foreshore areas. No overshadowing of coastal or public areas is expected, nor is any perceptible wind funnelling. Views from public land to the foreshore are to be maintained. The development is considered to be consistent with the scenic qualities of the locality. No heritage constraints apply to the land.

It is considered that the proposal reasonably manages to avoid impacts outlined under Subclause (1)(a), and thereby satisfies Subclause (1)(b)(i).

The development design has been considered in detail as provided in the assessment report. Council's assessment is that the proposal is suitable and appropriate for the site and locality in terms of its built form.

LMLEP Clause 7.1 – Acid Sulfate Soils

The development site is mapped as potentially containing "Class 5" Acid Sulphate Soils, where although no ASS are expected within the site, proposed works may have an effect on any ASS within the adjacent lots.

it is considered that the proposed works are not likely to lower the water table by 1 metre, as such will not have any impact on adjacent ASS areas. This is consistent with the threshold provided under Clause 7.1 (2) of LMLEP.

LMLEP Clause 7.2 – Earthworks

Clause 7.2 of LMLEP provides the following matters for consideration with regard to earthworks:

(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Council's Development Engineer has confirmed that suitable stormwater management measures, including capture and detention, have been incorporated into the proposal. No detrimental impacts on drainage patterns are expected. The proposed earthworks will enable a substantial redevelopment of the site. Relevant conditions of consent are to be imposed to manage fill quality. A condition of consent will be imposed requiring use of Virgin Excavated Natural Material only. Fill is generally retained by the building footprint. Retaining in the front setback area is suitably presented and landscaped. Amenity impacts arising from the proposal are considered satisfactory. No heritage constraints apply to the land. Standard processes will apply for unexpected finds. The development is substantially offset from any natural waterway and is not within a drinking catchment or environmentally sensitive area. The scope of earthworks are considered reasonable and appropriate given the nature of the development and the topography of the site.

LMDCP – Street setback

Council's controls for street setbacks provide:

Where there are existing adjoining residential buildings within 40 metres,

- i. the front setback must be consistent with the established setbacks or*
- ii. where adjoining building setbacks vary by more than three metres, the front setback must be the same distance as one or other of the adjoining buildings, or:*
- iii. where adjoining buildings vary in setback, development must locate between their setbacks.*

The setbacks for adjoining developments vary in excess of three meters. Practically, an arrangement where the development would match the substantial street setback of the adjoining dwelling is not feasible or desirable. The applicant instead chose to submit information demonstrating the selected street setback has been informed by careful site analysis and streetscape suitability. Part 1 of Council's Development Control Plan specifies that a variation to controls may be supported where Council is satisfied that the objectives of the control are achieved, notwithstanding the departure. The objectives of the street setback control are as follows:

To ensure that the development complements the existing setback pattern in the locality

To permit flexibility for developments that may be vulnerable to the impacts of flooding

To define the street edge and provide definition between public and private space

To encourage entries, windows, balconies and living areas that overlook the street

The development provides a built form that effectively staggers the street line from the minimal street setback at 1 Coal Point Road, to the substantial setback provided at 26 Laycock. The development provides a more defined street edge. The winged design allows suitable breaks in the building form such that the building is not overbearing or imposing. Transitions between public and private land are clearly defined, and the development provides windows and communal spaces which overlook the street. Council is satisfied the objectives of the street setback control have been addressed.

LMDCP – Site coverage

Council's site coverage controls are understood to be overridden by Clause 48(b) of SEPP (HSPD), which specifies a development which achieves a floor space ratio of 1:1 cannot be refused on the basis of density and scale.

Council's DCP specifies residentially zoned land is to comprise a maximum site coverage by buildings of 50%. Submitted plans indicate that a total coverage of 54% is achieved. Council is supportive of this minor departure, noting the development generally conforms to the existing built areas of the site. The objectives of the site coverage control are as follows:

To ensure density of development is in keeping with the local street character

To provide sufficient area around a dwelling for access ways, private open space and landscape planting

To maximise the potential for on-site stormwater retention

The development has demonstrated to be suitable for the local street character, and incorporates suitable stormwater management arrangements. The development achieves the objectives of the site coverage control.

LMDCP – Landscaping

Council's minimum landscape area requirements are understood to be overridden by Clause 48(c) of SEPP (HSPD), which requires a minimum of 25m² of landscaped area per bed.

Council's DCP specifies that for lots greater than 1500m², 45% of the lot must be landscaped. Submitted plans indicated that approximately 5800m² of new landscaping (or 46%) of new landscaping is proposed. The development complies with this control. Council's Landscape Architect provided the following comments with regard to landscape coverage for the proposal:

The areas of the site wider than 2000mm that support the growing of plants are contiguous and provide adequate spaces for tree and shrub planting within a residential setting. The landscape area is supported.

Ecology / Bushfire

The submitted ecological report and arborist assessment acknowledge the extent of tree removal proposed, and conducted their assessments accordingly.

Verification was obtained by the Applicant's BPAD certified Bushfire Consultant that the requirements of the RFS would be achieved with the nominated extent of tree retention and planting.

I trust this sufficiently addresses the matters raised. Please contact me if I can be of any further assistance.

Jonathan Ford
Development Planner