

COUNCIL ADDENDUM ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

Panel Reference	PPSHCC-245
DA Number	8/2016/557/2
LGA	Cessnock City Council
Proposed Development	<p>Section 4.55(2) Application proposing to modify Development Consent No. 2016/557 that approved a concept development application consisting of construction of an integrated tourist development to be completed in seven (7) stages - comprising an 18 hole golf course, 50 room hotel, 250 serviced apartments, 300 residential lots, function centre, aboriginal heritage centre, retail and food outlet, and spa and recreation facilities; and Stage 1 comprising a four (4) lot community title subdivision.</p> <p>The Section 4.55(2) Application proposes amendments to the layout and staging of the approved development, along with a modification to the number of community title lots proposed to be registered in conjunction with Stage 1 of the concept approval.</p>
Address	<p>Wine Country Drive (Lot 1 DP 1233030)</p> <p>Wine Country Drive (Lot 2 DP 869651)</p> <p>1058 Wine Country Drive (Lot 3 DP 869651)</p> <p>1054 Wine Country Drive (Lot 4 DP 869651)</p> <p>1184 Wine Country Drive (Lot 11 DP 1187663)</p>
Author	<p>Janine Maher</p> <p>(Principal Town Planner, Hunter Valley Development Services)</p>
Date	13 June 2024
Attachments	<p>A. Draft conditions of consent</p> <p>B. Aboriginal Cultural Heritage Assessment Report (prepared by Navin Officer Heritage Consultants Pty Ltd, dated 6 May 2024)</p> <p>C. Concept Master Plan (prepared by HACHEM, Revision 9, dated 13 May 2024)</p>

	<p>D. Residential Area Comparison (prepared by adw johnson, Version E, dated 28 May 2024)</p> <p>E. Concept and Management Plan (prepared by Hunter Development Brokerage Pty Ltd, Revision 6, dated 13 May 2024)</p> <p>F. Concept Water Cycle Management Plan (prepared by adw johnson, Issue D, dated 13 May 2024)</p> <p>G. Landscape Plan (prepared by Moir Landscape Architecture, Revision D, dated 13 May 2024)</p> <p>H. Staging Plans (prepared by HACHEM, Revision 9, dated 24 April 2024)</p> <p>I. Site Vegetation Management and Offset Plan (prepared by MJD Environmental, Version 3, dated 29 April 2024)</p> <p>J. Appendix A – Design Guidelines of the Concept and Management Plan, (prepared by Hunter Development Brokerage Pty Ltd, Revision B, dated 13 May 2024)</p> <p>K. Community Title Subdivision (prepared by Monteath & Powys, Revision 17, dated 23 March 2024)</p> <p>L. Response letter (submitted by Hunter Development Brokerage Pty Ltd, dated 14 May 2024)</p>
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BACKGROUND

This matter was considered by the Panel on 9 April 2024 and was deferred on 16 April 2024 as the Panel was not satisfied with respect to several matters, and accordingly required:

- i. *Additional current technical flood information to satisfy clause 5.21 and the Concept and Management Plan updated to reflect current controls.*
- ii. *A designing with Country framework that demonstrates how aboriginal cultural heritage and landscape elements will be protected and considered in future DA's including how works including the golf course works can protect and compliment these elements.*
- iii. *Reduction in the size of the lots facing Wine Country Drive to closer reflect the size of lots originally proposed in the original consent. A minimum of 100-120 metres along Wine Country Drive should be landscaped as community lands – it does not need to be golf course. This will require a change in the size of Lot 1.*
- iv. *The design guidelines need to be amended and incorporated in the Concept and Management Plan. The plan needs to make reference to lot size and landscape outcomes and identify how they contribute to maintaining the landscape and character. The landscape strategy needs to provide an appropriate framework for future DA's.*
- v. *There needs to be consistency in documents.*

In consideration of the above, the Application was deferred for:

1. The Applicant to provide the information and amendments outlined in points (i) to (v).
2. A formal written request to amend the application is required to be uploaded to the Planning Portal by the Applicant within four (4) weeks outlining:
 - (a) Particulars sufficient to indicate the nature of the change of the development, as required under section 37 of the *Environmental Planning and Assessment Regulation 2021*.
 - (b) Updated technical reports relied on in the amended application.

3. Council is requested to provide an addendum assessment report responding to the matters above, which is to be uploaded to the Planning Portal within four (4) weeks of the upload of the Applicant's required information to the Planning Portal.
4. When the updated assessment report is received the Panel will determine the application by way of electronic determination.
5. The applicant is to advise Council whether the amendments/additional documents will be provided within seven (7) days of this decision.

This addendum assessment report provides an assessment of the matters identified above.

RESPONSE TO DEFERRAL ITEMS

The following is noted with respect to the deferral items:

Issue	Comment
The Applicant to provide the information and amendments outlined in points (i) to (v).	Information and amendments provided by the applicant on 14 May and 29 May 2024, comprising the documents outlined in the below table.

Document Name	Prepared by	Date
Aboriginal Cultural Heritage Assessment Report	Navin Officer Heritage Consultants Pty Ltd	6 May 2024
Concept Master Plan	HACHEM	Revision 9, dated 13 May 2024
Community Title Subdivision	Monteath & Powys	Revision 17, dated 23 March 2024
Residential Area Comparison	adw johnson	Version E, dated 28 May 2024
Concept and Management Plan	Hunter Development Brokerage Pty Ltd	Revision 6, dated 13 May 2024
Concept Water Cycle Management Plan	adw johnson	Issue D, dated 13 May 2024
Landscape Plan	Moir Landscape Architecture	Revision D, dated 13 May 2024
Staging Plans	HACHEM	Revision 9, dated 24 April 2024
Site Vegetation Management and Offset Plan	MJD Environmental	Version 3, dated 29 April 2024
Concept and Management Plan, Appendix A – Design Guidelines	Hunter Development Brokerage Pty Ltd	Revision B, dated 13 May 2024
Community Title Subdivision	Monteath & Powys	Revision 17, dated 23 March 2024
Response letter	Hunter Development Brokerage Pty Ltd	14 May 2024

Issue	Comment
A formal written request to amend the application is required to be uploaded to	Correspondence from Hunter Development Brokerage Pty Ltd, dated 14 May 2024, has been submitted requesting that Council accepts an

<p>the Planning Portal by the Applicant within four (4) weeks outlining:</p> <p>a) Particulars sufficient to indicate the nature of the change of the development, as required under section 37 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p> <p>b) Updated technical reports relied on in the amended application.</p>	<p>amendment to Application 8/2016/557/2 under section 37 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p> <p>The correspondence includes:</p> <p>a) Particulars sufficient to indicate the nature of the change of the development.</p> <p>b) A response/summary in respect of each of the issues raised by the Panel.</p> <p>c) A table identifying any amended plans, documentation and reports submitted in conjunction with the request. It is noted that several of the amended plans, documentation and reports were re-submitted on 29 May 2024 to correct inconsistencies and/or incorporate additional detail.</p>
<p>Council is requested to provide an addendum assessment report responding to the matters above, which is to be uploaded to the Planning Portal within four (4) weeks of the upload of the Applicant's required information to the Planning Portal.</p>	<p>Noted.</p> <p>Addendum assessment report provided in respect to the matters identified, within the timeframe prescribed.</p>
<p>When the updated assessment report is received the Panel will determine the application by way of electronic determination.</p>	<p>Noted.</p>
<p>The applicant is to advise Council whether the amendments/additional documents will be provided within seven (7) days of this decision.</p>	<p>Noted.</p> <p>Applicant confirmed within Council on 18 April 2024 that the amendments/additional documents would be provided, which was within 7 days of the decision (being 16 April 2024).</p>

ASSESSMENT

Point (i)

Additional current technical flood information to satisfy clause 5.21 and the concept and management plan updated to reflect current controls

Applicant's submission

In their correspondence dated 14 May 2024, the applicant has advised as follows:

The attached Concept Water Cycle Management Plan has been revised by ADW Johnson and includes:

- *An assessment of flooding against the requirements of cl 5.21 and cl 5.22 of CLEP 2011 (Sections 4.6.5 and 4.6.6).*
- *Responses to flooding matters including:*
 - *Residential and tourist precincts located to avoid areas that are below 1% AEP, and are therefore suitable for residential and tourism uses.*
 - *Small encroachments that require filling are:*
 - *in the 'flood fringe' area, where flood waters are shallow and slow moving; or*
 - *a man-made gully; and*
 - *do not cause afflux on adjoining land.*
 - *The extent of fill and landform changes required is provided (page 15 and Exhibit 10).*
 - *An evacuation route is provided (Exhibit 7) and an evacuation plan will accompany the first detailed Development Application for Stage 2.*
 - *Remaining land within the residential and tourist precincts will be subject to normal subdivision earthworks to ensure level lots, form roads and install utilities.*

Council's assessment and response - Clause 5.21

As outlined within the applicant's response, a Concept Water Cycle Management Plan has been submitted (prepared by adw johnson, Issue D, dated 13 May 2024).

In its entirety, Clause 5.21 reads as follows:

5.21 Flood planning

- (1) *The objectives of this clause are as follows—*
 - (a) *to minimise the flood risk to life and property associated with the use of land,*
 - (b) *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
 - (c) *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
 - (d) *to enable the safe occupation and efficient evacuation of people in the event of a flood.*
- (2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
 - (a) *is compatible with the flood function and behaviour on the land, and*
 - (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
 - (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
 - (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
 - (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*

- (b) *the intended design and scale of buildings resulting from the development,*
- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.*
- (5) *In this clause—*
 - Considering Flooding in Land Use Planning Guideline** *means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.*
 - flood planning area** *has the same meaning as it has in the Flood Risk Management Manual.*
 - Flood Risk Management Manual** *means the Flood Risk Management Manual, ISBN 978-1-923076-17-4, published by the NSW Government in June 2023.*

An assessment of the relevant subclauses contained within Clause 5.21 is provided below:

Clause 5.21(1)(a)-(d)
<p>(a) Whilst the subject site is affected by both the 1% AEP flood and PMF events, the development proposes to adopt appropriate flood planning levels for the individual components of the proposed development.</p> <p>The construction of the tourist and visitor accommodation and evacuation route being set at or above the PMF and the construction of the residential lots and subdivision road at the flood planning level, will allow for the self-evacuation of these areas in a timely and straight forward manner that minimises the risk to the occupants of the various components of the development. The adoption of the differing flood planning levels is also reflective of the vulnerability of the end user and level of occupant awareness with respect to flooding.</p> <p>The additional protections afforded by the adoption of the PMF as the flood planning level for the tourist and visitor accommodation will allow an increased lead-time or advanced warning time before the evacuation of the more densely populated portions of the site is required, and as such, will remove or significantly reduce any potential impact upon emergency services.</p> <p>Detailed flood studies and associated evacuation plans will be required to be developed for each stage of the proposed development as a part of the future development application submission.</p> <p>It is considered that the proposed development has sought to minimise risk to life and property associated with the use of the land through the abovementioned measures. These measures have been imposed as a condition of consent.</p> <p>(b) The impact of climate change cannot be assessed or addressed at concept stage; the subsequent future development applications and the supporting detailed flood studies will address this matter at that time.</p> <p>(c) The filling of the residential components of the site to the flood planning level requires the filling of the lots for the most part by approximately 0.5 to 1 metre, with 10 isolated lots in Stage 5 being filled between 1 and 2 metres due to their location adjacent to Black Creek.</p>

The tourist and visitor accommodation component and the evacuation route will require filling of up to 3.5 metres to ensure these areas are at or above the PMF level.

Upon completion of the final detailed design for the future stages, all proposed filling of the subject site will need to be modelled and assessed within the flood study prepared for each future stage. As such, compliance with this control will be addressed by subsequent development applications for these future stages.

- (d) The selection of the PMF as the flood planning level for the tourist and visitor accommodation component and the 1% AEP flood level plus 500mm freeboard as the flood planning level for the residential components, will allow the safe occupation of these portions of the site by people in the event of a flood.

The selection of the PMF level for the evacuation route for the tourist and visitor accommodation and the 1% AEP flood level plus 500mm freeboard as the level for the evacuation route for the residential components, will allow the safe evacuation of people who may be affected by flooding.

A condition of consent has been imposed to reflect this requirement.

Clause 5.21(2)(a)-(e)

- (a) Whilst the subject site is affected by both the 1% AEP flood and PMF events, the development proposes to adopt appropriate flood planning levels for the individual components of the proposed development.

The construction of the tourist and visitor accommodation and evacuation route being set at or above the PMF; and the construction of the residential lots and subdivision road at the flood planning level, will allow for the self-evacuation of these areas in a timely and straight forward manner that minimises risk to occupants of the various components of the development. The adoption of the differing flood planning levels is also reflective of the vulnerability of the end user and level of occupant awareness with respect to flooding.

The additional protections afforded by the adoption of the PMF as the flood planning level for the tourist and visitor accommodation will allow an increased lead-time or advanced warning time before the evacuation of the more densely populated portions of the site is required, and as such, will remove or significantly reduce any potential impact upon emergency services.

Detailed evacuation plans will be required to be developed for each stage of the proposed development as part of the future development application submission. The evacuation plans will need to be developed in conjunction with the detailed flood studies required to support future stages and development applications.

It is considered that the proposed development will be compatible with the flood function and flood behaviour on the land through the adoption of the abovementioned measures. These measures have been imposed as conditions of consent.

- (b) The filling of the residential components of the site to the flood planning level requires the filling of the lots for the most part by approximately 0.5 to 1 metre, with 10 isolated lots in Stage 5 being filled between 1 and 2 metres due to their location adjacent to Black Creek.

The tourist and visitor accommodation component and the evacuation route will require filling of up to 3.5 metres to ensure these areas are at or above the PMF level.

Upon completion of the final detailed design for the future stages, all proposed filling of the subject site will need to be modelled and assessed within the flood study prepared for each future stage. As such, compliance with this control will be addressed by subsequent development applications for these future stages.

- (c) Whilst the subject site is affected by both the 1% AEP flood and PMF events, the development proposes to adopt appropriate flood planning levels for the individual components of the proposed development.

The construction of the tourist and visitor accommodation and evacuation route being set at or above the PMF, and the construction of the residential lots and subdivision road at the flood planning level, will allow for the self-evacuation of these areas in a timely and straight forward manner that minimises the risk to occupants of the various components of the development. The adoption of the differing flood planning levels is also reflective of the vulnerability of the end user and level of occupant awareness with respect to flooding.

The additional protections afforded by the adoption of the PMF as the flood planning level for the tourist and visitor accommodation will allow an increased lead-time or advanced warning time before the evacuation of the more densely populated portions of the site is required, and as such, will remove or significantly reduce any potential impact upon emergency services.

Detailed evacuation plans will be required to be developed for each stage of the proposed development as part of the future development application submission. The evacuation plans will need to be developed in conjunction with the detailed flood studies required to support future stages and development applications.

A condition of consent has been imposed to reflect this requirement.

- (d) The adoption of the flood planning level for the finished surface level of the residential lots and the associated evacuation route, will ensure that future dwellings will be located at least 500mm above the 1% AEP flood level, as will the evacuation routes associated with the residential lots.

Similarly, the adoption of the PMF as the flood planning level for the tourist and visitor accommodation components and their associated evacuation routes, ensures that these structures are at the level of the extreme flood event for the catchment at this location.

These two factors will ensure that rising flood free evacuation routes are provided to Wine Country Drive. These evacuation routes will ensure that residents and occupants can safely self-evacuate the various components of the proposed development in a safe and orderly fashion.

As such, it is considered that the proposed development effectively minimises risk to life through the adoption of an appropriate flood planning level for the relevant land uses and the provision of appropriately located, safe evacuation routes.

- (e) Any adverse effect on the environment, the causation of avoidable erosion, siltation, the destruction of riparian vegetation or a reduction in the stability of river banks or

<p>watercourses in the event of flood as a result of the proposed development, is not able to be determined at this stage.</p> <p>Future development applications will need to include detailed flood studies demonstrating that compliance with the requirements of the CLEP 2011 and the NSW Flood Risk Management Manual will not result in any adverse impacts upon the environment as a result of the proposed development.</p>
Clause 5.21(3)(a)-(d)
<p>(a) The impact of climate change cannot be assessed or addressed at concept stage; the subsequent future development applications and the supporting detailed flood studies will address this matter at that time.</p> <p>(b) Not applicable to the concept approval or 7 lot Community Title subdivision as no new buildings and/or physical works are proposed.</p> <p>(c) The adoption of the flood planning level for the finished surface level of the residential lots and the associated evacuation route will ensure that future dwellings will be located at least 500mm above the 1% AEP flood level, as will the evacuation routes associated with the residential lots.</p> <p>Similarly, the adoption of the PMF as the flood planning level for the tourist and visitor accommodation components and their associated evacuation routes, will ensure that these structures are at the level of the extreme flood event for the catchment at this location.</p> <p>These two factors will ensure that rising flood free evacuation routes are provided to Wine Country Drive. These evacuation routes will ensure that residents and occupants can safely self-evacuate the various components of the proposed development in a safe and orderly fashion.</p> <p>As such, it is considered that the proposed development effectively minimises risk to life through the adoption of an appropriate flood planning level for the relevant land use and the provision of appropriately located, safe evacuation routes.</p> <p>(d) Not applicable to the concept approval or 7 lot Community Title subdivision as no new buildings are/or physical works are proposed.</p>

Table 1: Clause 5.21 assessment

Clause 5.22

In its entirety, Clause 5.22 reads as follows:

5.22 *Special flood considerations*

- (1) *The objectives of this clause are as follows—*
- (a) *to enable the safe occupation and evacuation of people subject to flooding,*
 - (b) *to ensure development on land is compatible with the land's flood behaviour in the event of a flood,*
 - (c) *to avoid adverse or cumulative impacts on flood behaviour,*
 - (d) *to protect the operational capacity of emergency response facilities and critical infrastructure during flood events.*
 - (e) *to avoid adverse effects of hazardous development on the environment during flood events.*

- (2) *This clause applies to—*
- (a) *for sensitive and hazardous development—land between the flood planning area and the probable maximum flood, and*
 - (b) *for development that is not sensitive and hazardous development—land the consent authority considers to be land that, in the event of a flood, may—*
 - (i) *cause a particular risk to life, and*
 - (ii) *require the evacuation of people or other safety considerations.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered whether the development—*
- (a) *will affect the safe occupation and efficient evacuation of people in the event of a flood, and*
 - (b) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
 - (c) *will adversely affect the environment in the event of a flood.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.*
- (5) *In this clause—*
- Considering Flooding in Land Use Planning Guideline** – see clause 5.21(5).
 - flood planning area** - see clause 5.21(5).
 - Flood Risk Management Manual** - see clause 5.21(5).
 - probable maximum flood** has the same meaning as in the Flood Risk Management Manual.
 - sensitive and hazardous development** means development for the following purposes—
 - (a) *boarding houses,*
 - (b) *caravan parks,*
 - (c) *correctional centres,*
 - (d) *early education and care facilities,*
 - (e) *eco-tourist facilities,*
 - (f) *educational establishments,*
 - (g) *emergency services facilities,*
 - (h) *group homes,*
 - (i) *hazardous industries,*
 - (j) *hazardous storage establishments,*
 - (k) *hospitals,*
 - (l) *hostels,*
 - (m) *information and education facilities,*
 - (n) *respite day care centres,*
 - (o) *seniors housing,*
 - (p) *sewerage systems,*
 - (q) *tourist and visitor accommodation,*
 - (r) *water supply systems.*

An assessment of the relevant subclauses contained within Clause 5.22 is provided below:

Clause 5.22(1)(a)-(e)
<p>(a) The selection of the PMF as the flood planning level for the tourist and visitor accommodation component and the 1% AEP flood level plus 500mm freeboard as the flood planning level for the residential components, will allow the safe occupation of these portions of the site by people in the event of a flood.</p> <p>The selection of the PMF level for the evacuation route for the tourist and visitor accommodation and the 1% AEP flood level plus 500mm freeboard as the level for</p>

the evacuation route for the residential components, will allow the safe evacuation of the people who may be affected by flooding.

A condition of consent has been imposed to reflect this requirement.

- (b) Whilst the subject site is affected by both the 1% AEP flood and PMF events, the development proposes to adopt appropriate flood planning levels for the individual components of the proposed development.

The construction of the tourist and visitor accommodation and evacuation route being set at or above the PMF and the construction of the residential lots and subdivision road at the flood planning level, will allow for the self-evacuation of these areas in a timely and straight forward manner that minimises the risk to occupants of the various components of the development. The adoption of the differing flood planning levels is also reflective of the vulnerability of the end user and the level of occupant awareness with respect to flooding.

The additional protections afforded by the adoption of the PMF as the flood planning level for the tourist and visitor accommodation will allow for an increased lead-time or advanced warning time before the evacuation of the more densely populated portions of the site is required, and as such, will remove or significantly reduce any potential impact upon emergency services.

Detailed evacuation plans will be required to be developed for each stage of the proposed development as a part of the future development application submission. The evacuation plans will need to be developed in conjunction with the detailed flood studies required to support future stages and development applications.

A condition of consent has been imposed to reflect this requirement.

- (c) The filling of the residential components of the site to the flood planning level requires the filling of the lots for the most part by approximately 0.5 to 1 metre, with 10 isolated lots in Stage 5 being filled between 1 and 2 metres due to their location adjacent to Black Creek.

The tourist and visitor accommodation component and the evacuation route will require filling of up to 3.5 metres to ensure these areas are at or above the PMF level.

Upon completion of the final detailed design for the future stages, all proposed filling of the subject site will need to be modelled and assessed within the flood study prepared for each future stage. As such, compliance with this control will be addressed by subsequent development applications for these future stages.

- (d) The adoption of the flood planning level for the finished surface level of the residential lots and the associated evacuation route will ensure that future dwellings will be located at least 500mm above the 1% AEP flood level, as will the evacuation routes associated with the residential lots.

Similarly, the adoption of the PMF as the flood planning level for the tourist and visitor accommodation components and their associated evacuation routes will ensure that these structures are at the level of the extreme flood event for the catchment at this location.

These two factors will ensure that rising flood free evacuation routes are provided to Wine Country Drive. These evacuation routes will ensure that residents and occupants can safely self-evacuate the various components of the proposed development in a safe and orderly fashion. As such, it is considered that the proposed development will not place an additional load on emergency services or critical infrastructure during a flood event. The operational capacity of these services and infrastructure will also not be lessened by the proposed development.

- (e) Any adverse effect on the environment in the event of flood as a result of the proposed development is not able to be determined at this stage.

Future development applications will need to include detailed flood studies demonstrating that compliance with the requirements of the CLEP 2011 and the NSW Flood Risk Management Manual will not result in any adverse impacts upon the environment as a result of the proposed development.

Clause 5.22(2)(a)-(b)

- (a) The tourist and visitor accommodation component of the proposed development is defined as a form of sensitive and hazardous development as it is located within the area of affectation of the PMF event.

The flood planning level for this component will therefore be the PMF. A condition of consent has been imposed to reflect this requirement.

- (b) Residential components of the proposed development have been provided with evacuation routes at the flood planning level (1% AEP flood plus 500mm freeboard). Residential lots located within the flood fringe are also proposed to be filled to the flood planning level (1% AEP flood level plus 500mm freeboard).

The residential component of the proposed development is not defined as sensitive or hazardous development, and as such, the adoption of the 1% AEP flood event is considered appropriate. The provision of an evacuation route at the flood planning level and the filling of the residential lots to the flood planning level will both minimise risk to life and will allow for the self-evacuation of affected residents in events up to and including the 1% AEP flood event.

The filling of the residential lots and the construction of the residential subdivision roads to the flood planning level (1% AEP flood level plus 500mm freeboard) has been imposed as a condition of consent.

Clause 5.22(3)(a)-(c)

- (a) The applicant proposes to establish an evacuation route from the tourist and visitor component of the development to Wine Country Drive that is at or above the PMF flood level. This will ensure that occupants of the tourist and visitor accommodation are afforded a rising evacuation route out of the site towards the portions of the site that are not affected by the PMF and ultimately to Wine Country Drive.

Whilst no detailed design has been included within the Section 4.55(2) Application, details of the earthworks and filling required will be provided within the future development application for the appropriate stage. The final level and extent of the evacuation route will be determined by the supporting detailed flood study prepared in conjunction with the development application.

A condition of consent has been imposed to reflect this requirement.

- (b) The adopted flood planning level for the tourist and visitor accommodation component will be the PMF. All proposed accommodation structures will therefore require finished floor levels being set at or above the PMF flood level.

The adoption of the PMF as the flood planning level for this portion of the development will ensure occupants are not at risk due to potential flooding of the site during an extreme event as all finished floor levels and the evacuation route will be set at or above the PMF flood level.

The final landform and degree of filling required to achieve compliance with this requirement will be addressed within the detailed flood study prepared in conjunction with the future development application for this stage.

The adoption of the PMF as the flood planning level for the tourist and visitor accommodation components of the development has been imposed as a condition of consent.

- (c) Any adverse effect on the environment in the event of a flood as a result of the proposed development is not able to be determined at this stage.

Future development applications will need to include detailed flood studies demonstrating that compliance with the requirements of the CLEP 2011 and the NSW Flood Risk Management Manual will not result in any adverse impacts upon the environment as a result of the proposed development.

Table 2: Clause 5.22 assessment

In respect of Clause 5.22, it is noted that the Section 4.55(2) Application was lodged on 23 January 2023 and Clause 5.22 was introduced on 10 November 2023.

In order to ascertain the relevance of Clause 5.22, Council sought legal advice, which in summary, states as follows:

'In determining an application for modification of a consent made under section 4.55 of the EPA Act, the consent authority must take into consideration such of matters referred to in section 4.15(1) as are of relevance to the development the subject of the application (s. 4.55(3) of the EPA Act).

Section 4.15(1)(a) includes the provision of any environmental planning instrument. Accordingly, the consent authority must take clause 5.22 of the CLEP into account in its assessment of the Modification Application, however because it is not the determination of a development application, it does not operate to prevent approval of the Modification Application.

An assessment of the merits of the changes to the proposed development must be carried out against the objectives and controls in clause 5.22.

The consent authority is not revisiting the decision to grant the development consent but must look at the changes to the development against the controls and consider whether the development in its modified form is acceptable in the context that development consent has already been granted'

As outlined within the initial assessment report referred to the Planning Panel, it is considered that the development (as modified), will be substantially the same development as the development for which consent was originally granted. The Section 4.55(2) application does not:

- Vary the uses proposed on the site under the initial approval.
- Vary the number of dwellings or tourist and visitor accommodation units proposed on the site under the initial approval.
- Vary the point of access to Wine Country Drive, as proposed under the initial approval
- Introduce any new uses to the site.

The detailed assessment of issues relating to flooding will be undertaken when subsequent development applications are lodged for future stages. This approach is consistent with the detail contained within Planning Circular PS 21-024, dated 2 December 2021, which states as follows:

‘A new provision (section 4.22(5)) makes it clear that a consent authority need not consider the likely impact of development that may be the subject of subsequent development applications when determining a concept development application. For example, if the concept proposal does not include physical works, the impact of those works can be deferred until a subsequent development application for those works is made’.

Section 4.22(5) of the *Environmental Planning and Assessment Act 1979*, states as follows:

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

Note—*The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).*

On the basis of the above, deferral of the detailed consideration of the likely impact of the carrying out of development (i.e., the physical works associated with the development), is consistent with Section 4.22(5) of the *Environmental Planning and Assessment Act 1979* as the concept proposal and Stage 1 do not involve any physical works. As explained in the note above, the proposals for detailed development of the site will be assessed under Section 4.15 when development applications for future stages are lodged.

A condition of consent exists on the notice of determination relating to the initial development consent (Condition 26) requiring the lodgement of a flood assessment prepared by a qualified hydraulic engineer in conjunction with the development application for each stage of the proposal. It is proposed to amend Condition 26 to reflect the matters outlined in the above tables and the specific requirements of Clauses 5.21 and 5.22.

The Concept and Management Plan (prepared by Hunter Development Brokerage Pty Ltd, Revision 6, dated 13 May 2024), has been amended to include information in respect of flooding. Specifically, the following sections refer to flooding:

- Section 1.3.2 - Flooding
- Section 9.1 – Flood prone land, incorporating Sections 9.1.1 – 9.1.5 (inclusive)

Notwithstanding the inclusion of this information, it is noted that the Concept and Management Plan will require further refinement as specific development applications are lodged for future

stages as this is when the detailed assessment will occur in respect of a range of issues, including flooding.

A condition of consent has been proposed to reflect this requirement, i.e., that the Concept and Management Plan be updated in conjunction with the lodgement of each development application for future stages (refer to Attachment A).

Point (ii)

A designing with country framework that demonstrates how aboriginal cultural heritage and landscape elements will be protected and considered in future DA's including how works including the golf course works can protect and compliment these elements

Applicant's submission

In their correspondence dated 14 May 2024, the applicant has advised as follows:

This s4.55(2) application was submitted on 23 January 2023, before the Connecting with Country Framework was formally adopted in November 2023. Its principles were therefore not explicitly addressed in the original application.

Notwithstanding, Aboriginal cultural heritage will be protected on the site under the framework of the Aboriginal Cultural Heritage Assessment Report (ACHAR) for the proposed development.

The Aboriginal community has been involved in relation to the proposed development through consultation and engagement in the preparation of the ACHAR. This ACHAR includes field survey work, which was not completed for the 2022 McCardle ACHAR submitted with the original application. In preparing the ACHAR, 57 Representative Aboriginal Parties were contacted and 5 ultimately participated in the field work, which was completed in September and November 2023 and identified 4 Potential Archaeological Deposits (PADs).

The ACHAR recommends the following actions, which will be completed with the endorsement and involvement of the local Aboriginal community:

- *Salvage excavations within the PADs, and preservation of archaeological items, subject to obtaining an AHIP.*
- *Identifying a return to Country site for salvaged items.*
- *Preparation and implementation of an Interpretation Strategy.*

An amended Concept and Management Plan Revision 6 has been prepared which addresses how the proposed development responds to the Connecting with Country Framework Healthy Country Outcomes (page 22).

Council's assessment and response

As outlined within the applicant's response, a new Aboriginal Cultural Heritage Assessment Report (ACHAR) has been submitted (prepared by Navin Officer Heritage Consultants Pty Ltd, dated 6 May 2024).

The ACHAR outlined that a previous Aboriginal Cultural Heritage Assessment (ACHA) was commenced and reported on in 2022 (being the ACHAR prepared by McCardle Cultural

Heritage Pty Ltd, dated 14 December 2022), however the test excavation phase did not proceed.

Subsequently, the ACHAR included fieldwork and testing the identified Potential Archaeological Deposits (PADs), along with completing the AHIP process for the proposed development. This involved carrying out the work needed to address the identified gaps in knowledge, assessing the Aboriginal heritage values, understanding the likely impacts on those values and developing recommendations to mitigate those impacts.

In preparing the ACHAR, 57 representative Aboriginal parties (RAPs) were contacted and four (4) ultimately participated in the field work, which commenced on 25 September 2023. In summary, four (4) PADs and three (3) other locations of Aboriginal objects were identified on the site, and these have all been registered on the AHIMS database. The report states:

Information in this report relating to the exact location of Aboriginal sites should not be published or promoted in the public domain. No information provided by Aboriginal stakeholders in this report has been specifically identified as requiring access restrictions due to its cultural sensitivity. Appendix 1 should be restricted from public distribution as it may contain the addresses and contact details of individuals.

The ACHAR confirms that all seven (7) Aboriginal sites identified in the report (being four PADs and three (3) other locations of Aboriginal objects), will be directly impacted/harmed by the proposed project. To mitigate the impact on the recorded sites, extensive salvage of two sites is proposed. These two sites are the largest areas of presumed insitu cultural material. Two other sites where test excavation revealed lower densities of material will be partially salvaged. Furthermore, it is proposed that following analysis of the salvaged material, that public interpretation of the Aboriginal cultural heritage will be developed in consultation with the RAPs.

The ACHAR makes eight (8) recommendations addressing matters such as how artefacts are proposed to be managed and/or salvaged; and identification of, based on Aboriginal input, a designated return to country location, should that be required, following the salvage and analysis of the material.

The specific recommendations of the ACHAR are as follows:

1. A copy of this final report should be provided to the registered Aboriginal stakeholders.
2. A copy of the final report should be submitted to the NSW Department of Planning, and Environment for registration on the AHIMS database.
3. Given that the development will be subject to staged DAs it is recommended that prior to construction and/or ground disturbance works commencing in the vicinity of the recorded site locations (see Figure 6-100); nearby sites should be fenced as exclusions zones until such time as an AHIP has been approved and the sites identified in Recommendation 6 (see Figure 8-2) that are within that relevant DA area have been salvaged.
4. Due to the evidence of a sparse background scatter of Aboriginal stone artefacts across the landscape an Aboriginal Heritage Impact Permit (AHIP) is recommended prior to development proceeding.

5. Development activity may proceed without an AHIP and further archaeological investigation but with an Unexpected Finds protocol in place, across all areas except the exclusion areas as noted in Recommendation 3 (see Figure 8-2).
6. Salvage excavation of certain areas as follows:
 - a. Sample salvage excavation of the 2 localised areas of artefact concentration ailing the higher creek banks as follows:
 - i. Lovedale 1 (at location PAD 1 Transect 7)
 - ii. Lovedale 2 (at location PAD 2 Transect 3 vicinity of pit 5).
 - b. Salvage excavation of Lovedale 3 (the whole of former PAD 3) where the highest numbers and diversity of Aboriginal stone artefacts were recovered will require salvage. The excavation will aim to recover information relating to the nature of activities undertaken at the site as well as the time period over which the site was occupied.
 - c. Salvage excavations will occur at Lovedale 4 (former PAD 4) aimed at determining the deepest extent of the occupation deposit (which was unable to be determined via the test excavation methodology under the Code of Practice), the nature of the site and the time period over which the sand body formed. OSL or other dating samples will be required.
7. Salvage excavation will allow for RAP participation in the excavation and input into the final excavation report.
8. Designing with country principles
 - a. Provision should be made in the final development design for the inclusion of heritage interpretation of the salvaged material and what it reveals about the past Aboriginal heritage of the subject land. Such interpretation should be informed both by the scientific evidence from analysis of the salvaged material and the knowledge and interpretation of the RAPs.
 - b. Aboriginal input into elements of the landscape design should be considered including a designated return to country location should that be required following the salvage and analysis of the material.

Council officers have reviewed the new ACHAR and are satisfied that it adequately addresses the issues raised by the Panel. The conditions of consent (refer to Attachment A) have been updated to remove the references to the previous ACHA (prepared by McCardle Cultural Heritage Pty Ltd, dated 14 December 2022), and instead reflect the new ACHAR and its recommendations.

The Concept and Management Plan has been updated to include a specific section in relation to Designing with Country (Section 5). This provides an overview that addresses the integration of outcomes associated with healthy country, healthy community, cultural competency and better places.

In addition, the Concept and Management Plan contains information and requirements in respect of Aboriginal heritage (Section 7), which outlines the archaeological significance of the site and provides guidance for the management and protection of Aboriginal heritage.

Council officers have reviewed the amended Concept and Management Plan and are satisfied that it adequately addresses the issue raised by the Panel; and provides an appropriate strategy that will protect, compliment and integrate Aboriginal cultural heritage and landscape elements.

Point (iii)

Reduction in the size of the lots facing Wine Country Drive to closer reflect the size of lots originally proposed in the original consent. A minimum of 100-120 metres along Wine Country Drive should be landscaped as community lands – it does not need to be golf course. This will require a change in the size of Lot 1.

Applicant's submission

In their correspondence dated 14 May 2024, the applicant has advised as follows:

The amended Concept Plan documentation shows that the landscaped buffer between Wine Country Drive and lots within the development has been widened from 50 to 100 metres. Views into the site will be natural, as the buffer will be planted and mounds of varying heights will be constructed in a 'natural', meandering pattern. The 100-metre-deep setback zone will be Community Property and included in Lot 1. The amended Stage 1 subdivision plan shows that Lot 1 has increased in size accordingly.

The buffer will be visually extended by a further 20 metre deep 'Rear Build Zone' across the rear of residential lots adjacent to Wine Country Drive. The Rear Build Zone prohibits any habitable structures and limits height of any structure to 3.1 metres.

Council's assessment and response

The Concept Master Plan (prepared by HACHEM, Revision 9, dated 13 May 2024) has been amended to ensure that the residential lots adjacent to Wine Country Drive are of a similar size to those approved in conjunction with the initial approval. Furthermore, a 100-metre setback to Wine Country Drive is proposed, as illustrated below.



Figure 1: Proposed concept plan (prepared by HACHEM, Revision 9, dated 13 May 2024)

In addition, the Concept and Management Plan has been amended to reflect the 100-metre setback of the residential lots to Wine Country Drive. Other supporting documentation such as the Landscape Plan (prepared by Moir Landscape Architecture, Revision D, dated 13 May 2024) has also been updated to reflect the amended setback.

A vegetated buffer will be established within the first 50 metres of the setback from Wine Country Drive, and this will be landscaped in accordance with the Landscape Plan. The remaining 50 metres will be retained in Lot 1, i.e., as community property. In addition, a 20 metre 'rear build zone' will be established whereby only non-habitable structures limited in height to 3.1m will be permitted. This restriction is contained within the draft Community Management Statement. The 'build zone' for residential dwellings on the affected lots will be 40 metres in depth. This is illustrated below.

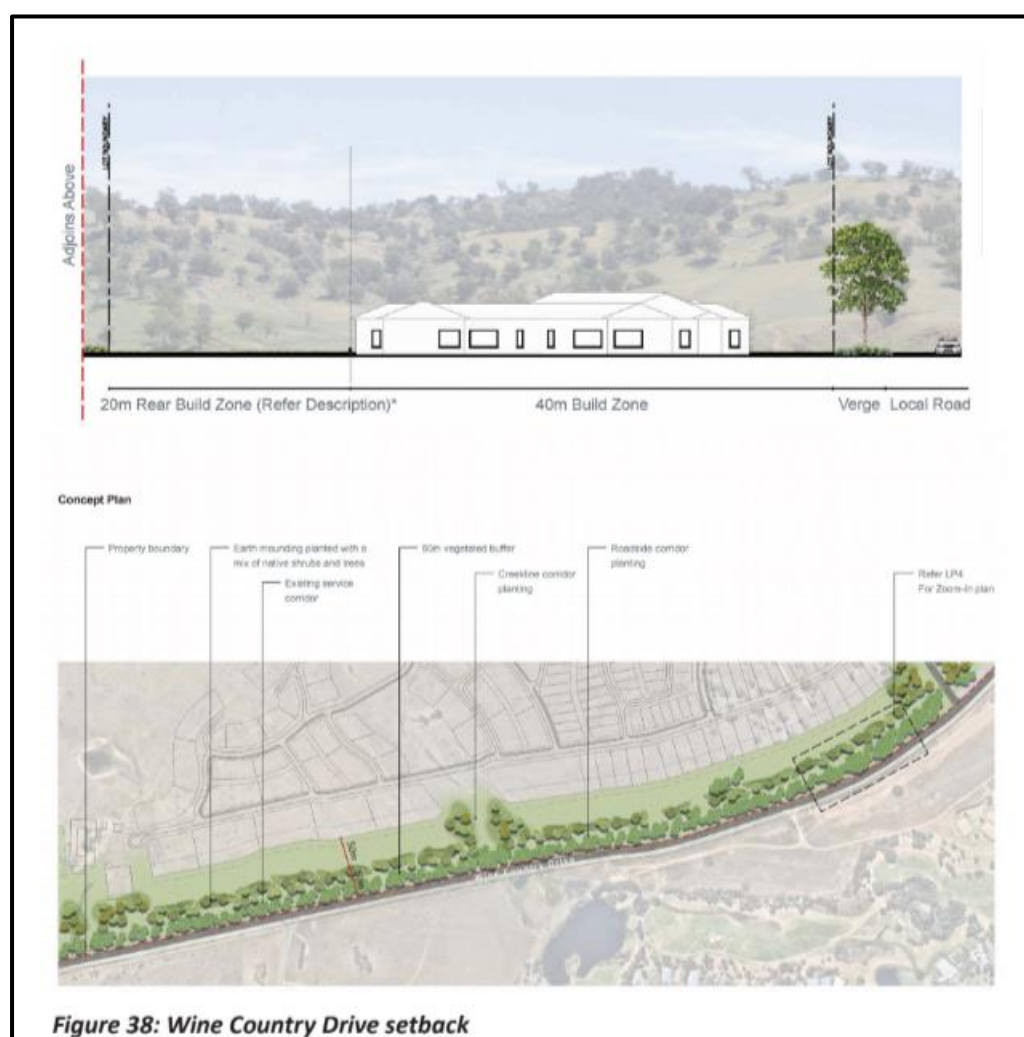


Figure 2 - Concept and Management Plan (prepared by Hunter Development Brokerage Pty Ltd, Revision 6, dated 13 May 2024)

The 100-metre setback area has been incorporated into Lot 1, and the Community Title Subdivision (prepared by Monteath & Powys, Revision 17, dated 23 March 2024) has been updated to reflect this, as illustrated below.

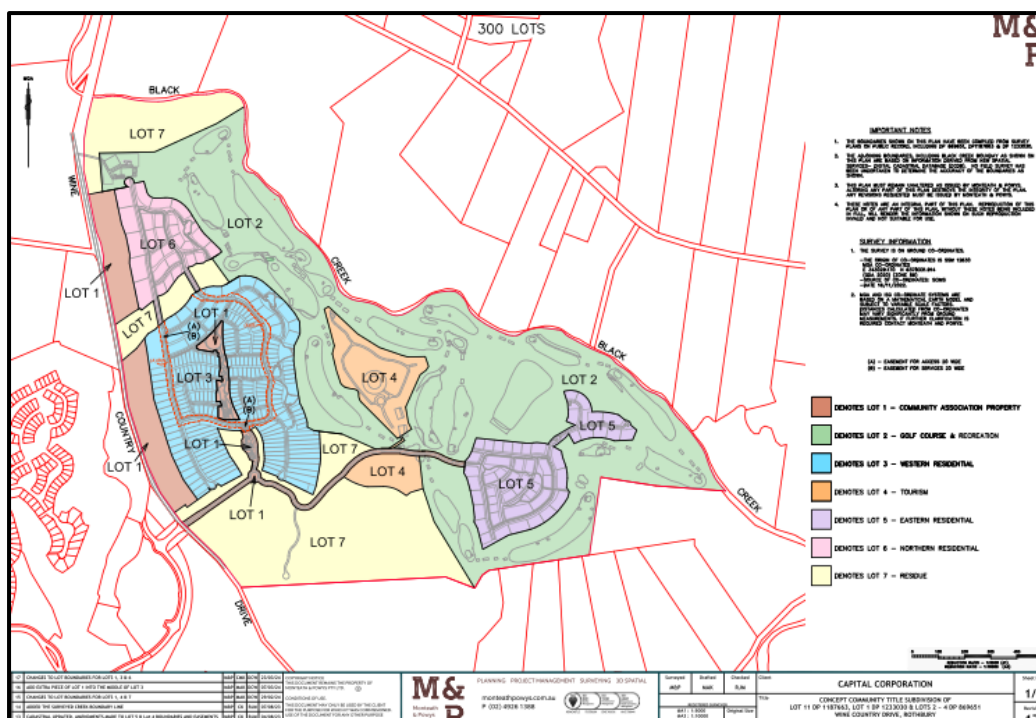


Figure 3: Community Title Subdivision Plan (prepared by Monteath & Powys, Revision 17, dated 23 March 2024)

Council officers have reviewed the amended plans and documentation and are satisfied that it adequately addresses the issue raised by the Panel.

Point (iv)

The design guidelines need to be amended and incorporated in the concept and management plan. The plan needs to make reference to lot size and landscape outcomes and identify how they contribute to maintaining the landscape and character. The landscape strategy needs to provide an appropriate framework for future DA's.

Applicant's submission

In their correspondence dated 14 May 2024, the applicant has advised as follows:

The amended Concept and Management Plan addresses these matters as follows:

- *Page 45: Minimum lot sizes and location of lot types (Rural, Lifestyle, Village, Fairway) are set out in Figure 37. Minimum lot sizes range between 500m² and 1400m². The Design Guidelines in Appendix A of the Concept and Management Plan provide specific controls for each lot type.*
- *Chapter 5: The Landscaping Strategy sets out a framework for future development applications through establishing objectives and requirements for each precinct, and how they will achieve the desired landscape character.*
- *Appendix A: Objectives and controls for residential built form, fencing and landscaping of residential lots are set out in the Design Guidelines appended to the Concept and Management Plan. These Design Guidelines will be implemented through a Design Review Committee established under the residential Precinct Association and will provide a framework for the architectural and landscape plans that must accompany future development applications for all dwellings in the residential precincts.*

Council's assessment and response

The Design Guidelines (prepared by Hunter Development Brokerage Pty Ltd, Revision B, dated 13 May 2024) have been appended to the Concept and Management Plan as Appendix A.

The Design Guidelines clearly identify the different lot types proposed, and their location within the site.

In addition, controls in respect of matters such as site coverage, setbacks, building design, external colours/finishes, minimum floor area, fencing and landscaping are included within the Design Guidelines.

In respect of fencing and landscaping, controls relate to the following matters:

Fencing	Specific types of fencing for different lot types, including: <ul style="list-style-type: none">• rural and lifestyle lots• village lots• fairway lots
	Front, side and rear fencing controls based on different lot types
	Examples of fencing including materials and elevations
Landscaping	Explanation of objectives, landscape strategy and character vision
	Plant list, including explanation of the role and native and exotic plants
	Specific requirements for inclusion in a landscape plan
	Examples of landscape plans for different lot types
	Link between landscaping and fencing requirements
	Examples of indicative planting palettes for different zones (including front yard, boundaries and back yard)
	Examples of material palettes for different areas (including edging, access, mulching, driveway and letterbox)
	Comprehensive plant lists

Table 3: Fencing and landscaping controls (Design Guidelines)

It is considered that the landscape strategy provides an appropriate framework for the consideration of future development applications, and overall, will result in a consistent and cohesive landscape response throughout the site.

In addition to Appendix A (Design Guidelines), the Concept and Management Plan includes a specific section relating to landscaping, being Section 5, which sets out a framework for future development applications through establishing objectives and requirements for each precinct; and identifies how these will contribute to desired landscape character. Specifically, Section 5 of the Concept and Management Plan includes landscape strategies relating to:

- 5.4 Residential precincts
 - 5.4.1 Streetscape
 - 5.4.2 Green laneways
 - 5.4.3 Residential lots
- 5.5 Entry road precinct
- 5.6 Resort precinct
- 5.7 Riparian corridors
- 5.8 Bush regeneration corridors
- 5.9 Vegetation clearing and management
- 5.10 Wine Country Drive frontage

As outlined within the Design Guidelines, approval will be required from the Lovedale Farm Design Review Committee (DRC), prior to lodgement of a development application with Council. This will ensure that the Design Guidelines are implemented consistently.

Council officers have reviewed the amended documentation and are satisfied that it adequately addresses the issue raised by the Panel.

Point (v)

There needs to be consistency in documents

The plans submitted have been reviewed for accuracy and consistency. As a result of this, several of the amended plans, documentation and reports were re-submitted on 29 May 2024 to correct inconsistencies and/or incorporate additional detail.

It is considered that, for the purposes of the Section 4.55(2) Application, plans, documentation and reports are generally consistent with respect to the proposed development, including site layout; stages of the proposed development; components of the proposal; timing/stages of delivery; landscape and design considerations, and operational matters.

It is noted that some minor inconsistencies exist between certain documents. For example, The Bushfire Threat Assessment submitted with the initial Section 4.55(2) Application and referenced in Condition 3, refers to the now superseded masterplan that identified a 50m setback to Wine Country Drive rather than the setback currently proposed, being 100m.

This type of inconsistency is not considered major and does not raise any concerns regarding the modification being considered by the consent authority, particularly considering that the approved plans are clearly referenced in the amended Condition No. 3 (refer to Appendix A). In the example outlined above, the replacement of these plans would not change the conclusions reached in this particular report, noting that separate development applications are required to be lodged for each future stage of development.

Overall, Council is satisfied that a package of consistent documents and plans has been lodged in respect of the current proposal comprising the Section 4.55(2) Application.

CONCLUSION AND RECOMMENDATION

In view of the above considerations, it is recommended that the Section 4.55(2) Application proposing to modify Development Consent No. 2016/557, be approved subject to the conditions of consent included in Attachment A to this addendum assessment report.

It is noted that the recommended conditions have been amended to reflect the information and amendments that have been provided in response to the Panel's deferral of the application on 16 April 2024.