

COUNCIL ASSESSMENT REPORT ADDENDUM

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-82 DA 2021/55
PROPOSAL	Waste Transfer Station
ADDRESS	Lot 10 DP 1131270 32 – 36 Glen Munro Road, Muswellbrook
AUTHOR	Hamish McTaggart –Development Coordinator
DATE	27 July 2022

1. Description of relevant Planning Agreements and their status

The applicant has made two (2) offers to Council to enter into Planning Agreements. Respectively, the offers relate to an ongoing contribution related to off-setting damage and maintenance requirements to Council's Road network associated with heavy haulage related to the development and a one-off contribution to be used by Council for the upgrade of the Thomas Mitchell Drive Glen Munro Road intersection. The particulars related to each offer to enter into a planning agreement have been set-out in the sub-headings below:

Operational haulage contribution

Council received an offer to enter into a Planning Agreement related to operational haulage in correspondence dated 21 December 2021.

The offer put forward the payment of a contribution of \$0.11 per tonne of material transported to the site for Council's use toward road maintenance.

The offer was reported to Council's 1 February 2022 Meeting where it was agreed to in principle.

A recommended condition of consent has been put forward requiring a draft Planning Agreement to be submitted to Council prior to the issue of a Construction Certificate. Once received Council would proceed to notify this Planning Agreement in accordance with the requirements of its Community Participation Plan. Following this and after considering any representations received through the community consultation process Council would seek to complete the process of entering into this Planning Agreement.

A recommended condition of consent has been put forward to require the Planning Agreement to be entered into prior to the issue of an Occupation Certificate.

This process of a consent being determined subject to a condition requiring a Planning Agreement to be entered into and the particulars of that Planning Agreement being resolved to finality after the determination of a development application conforms with this Council's experience regarding Planning Agreements. It is commonplace for State Significant Development Applications for Mining Development in this LGA to be approved subject to a condition requiring a Planning Agreement being entered into between a proponent and Council as a condition of consent.

The Independent Planning Commissions Determination of the Mangoola expansion project is a recent example of a consent issued which required Council and a proponent to enter into a Planning Agreement as a condition of consent.

Thomas Mitchell Drive/Glen Munro Road Intersection Upgrade Contribution

Council received an offer to enter into an agreement related to the impact of the proposed development on the Thomas Mitchell/Glen Munro Road intersection dated 20 July 2022. The offer put forward the payment of a one-off monetary contribution of \$135,000+GST to Council toward Council's improvement of this intersection.

This offer was reported to Council's 26 July 2022 Meeting where it was agreed to in principle.

A recommended condition of consent has been put forward related to this Planning Agreement being entered into. The recommended condition requires this Planning Agreement to be entered into prior to the issue of a Construction Certificate unless otherwise agreed by Council in writing.

It is intended that the Planning Agreement entered into between Council and the proponent imposes an obligation for Council to use the contribution toward the upgrade of the Thomas Mitchell/Glen Munro intersection and to carry out its upgrade to a BAR turn within a reasonable period agreed to by the relevant parties from the date of the contribution payment.

2. Clause 7.6 Earthworks Consideration

Clause 7.6 of the Muswellbrook LEP 2009 prescribes matters to be considered by a consent authority when determining a development application involving earthworks. These matters have been considered in relation to the proposed development. The following table references each of the prescribed matters and provides commentary related to their review in relation to the proposed development.

Clause 7.6 Matter for consideration	Planning Comment
<i>the likely disruption of, or any detrimental effect on, existing</i>	The proposed earthworks are considered unlikely to have any detrimental impact on the drainage pattern or soil stability in the locality.

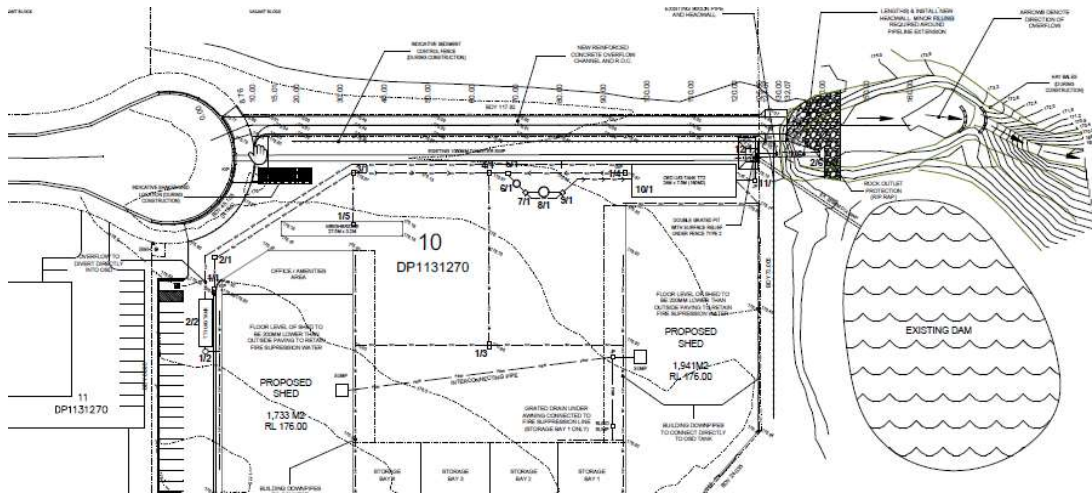
<i>drainage patterns and soil stability in the locality</i>	<p>A stormwater management plan has been prepared in relation to the management of stormwater related to the proposed development and the re-routing of Council's overland drainage within the development site. This plan has been reviewed by Council Roads and Drainage Engineers who supported the measures proposed to manage stormwater and adjust the Council's infrastructure. Specifically in relation to soil stability Council Officers note that fill used to level the site compound will be held in place by retaining walls. Prior to the issue of a Construction Certificate for these retaining walls it will be necessary for a Certifying Authority to be provided detailed design drawings demonstrating that they will achieve the relevant Building Code of Australia construction requirements.</p> <p>Complies</p>
<i>the effect of the proposed development on the likely future use or redevelopment of the land</i>	<p>The proposed cut and fill works work not adversely impact the potential for the lands redevelopment or future use. The works proposed would provide a level site pad which would remain conducive to other industrial land uses permitted at the site and its potential to be redeveloped in the future.</p> <p>Complies</p>
<i>the quality of the fill or of the soil to be excavated, or both</i>	<p>The site subject to this development application was created in 2008 as the result of a 22 Lot subdivision approved by Council (DA 266/2005). The land has remained vacant since its subdivision and thereby the quality of any soil material located on the site is unlikely to be subject to any significant contamination. A Preliminary Site Investigation was also submitted in relation to the proposed development which did not identify an issue related to soil contamination.</p> <p>A recommended condition of consent has been put forward related to ensuring that any fill material transported to the site for use as part of the development is free of contaminants and meets the relevant criteria for use as part of the development.</p> <p>Complies</p>
<i>the effect of the proposed development on the existing and likely amenity of adjoining properties</i>	<p>The earthworks proposed would have a limited impact on the amenity of adjoining properties. The site subject to this development application is located within an established industrial precinct. The earthworks proposed would not adversely impact the use or functionality of industrial land within this precinct.</p> <p>Complies</p>
<i>the source of any fill material or the destination of any excavated material</i>	<p>The EIS advises that excavated material will be reused on-site where possible with any excess material excavated from the site will be disposed of at an appropriately licensed facility.</p>

	A recommended condition of consent has been put forward to ensure any fill material imported to the site is appropriately sourced and suitable for use.
<i>the likelihood of disturbing relics</i>	An aboriginal cultural heritage assessment was prepared in relation to the proposed development. This assessment did not identify any places or objects of aboriginal significance within the development site. Accordingly, the risk of disturbing relics or items of historical significance is considered to be low. A standard condition of consent has been put forward to ensure that appropriate steps are taken should aboriginal objects be uncovered during the carrying out of works. Complies
<i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area</i>	A sediment and erosion control plan has been prepared in relation to the proposed development and earthworks proposed. The proposed development was also referred to the NSW Natural Resource Access Regulator in relation to the works proximity to a watercourse (Ramrod Creek) who provided General Terms of Approval for the proposed development. Where the works are carried out in accordance with the submitted erosion and sediment controls and the requirements of NSW Natural Resource Access Regulator (DPIE – Water) it is anticipated that the proposed earthworks would not have an adverse impact to any water course, drinking water catchment or environmentally sensitive area. Complies

Summary Comment: in view of the above considerations Council Officers are satisfied that the proposed development and earthworks would be compatible with the relevant matters for consideration where carried out in accordance with the recommended conditions of consent.

3. Off-site stormwater works proposed

The stormwater management plan included the attachment below and included in Council Report attachments outlines the stormwater works proposed in relation to the proposed development.



Stormwater works proposed to be carried out on the adjoining Lot 9 DP 113270 relate to the realignment of Council's overland stormwater drainage. These works include an outlet for the new proposed overland stormwater channel, the construction of a gravel rock mattress and related earthworks and shaping.

An aerial image of Lot 9 DP 113270 has been included below with an overlay of Council stormwater infrastructure from our mapping information system.



This Lot is owned and managed by Council as a drainage reserve. The works proposed to adjust Council's drainage infrastructure on this site would have a limited disturbance area. An inspection of the site noted that this disturbance area would be largely within Council's existing drainage overflow outlet. Vegetation observed within the footprint of the works included the grassed base of the basin and three (3) regrowth trees growing within Council's shaped overland flow path and related drainage outlet.

The scope of the stormwater works proposed would be within the scope of stormwater works that Council could carry out as development permitted without consent and/or exempt development under the SEPP (Transport and Infrastructure) 2021.

Having regard to the above, particularly the limited disturbance area and scope of the proposed works, Council Officers are satisfied that the drainage works are unlikely to have any significant adverse environmental impact where carried out in accordance with the recommended conditions of consent including the General Terms of Approval issued by NSW NRAR related to their proximity to the Ramrod Creek watercourse.

4. BAR Assessment

Council's Chief Engineer has provided the following commentary in relation to the BAR assessment

Council has received the Road Safety Assessment from SMEC including a sketch layout of the inclusion of the works to provide a BAR treatment within the current road environment with only minor adjustments to the existing barrier fencing on the opposite side of the intersection. Although this does not represent a final design we are confident the consultant has considered the size of this BAR within the details provided such that Council plan to enact the upgrade of this intersection using in part the funding received from the applicant under a VPA.

It is understood that Thomas Mitchell Drive remains a Council road at this time, so once final design is complete we would be ready to undertake a tender for the upgrade works. If the VPA is resolved reasonably quickly, we don't anticipate the intersection upgrade should cause any delay to the construction of the proposed facility, if approved.

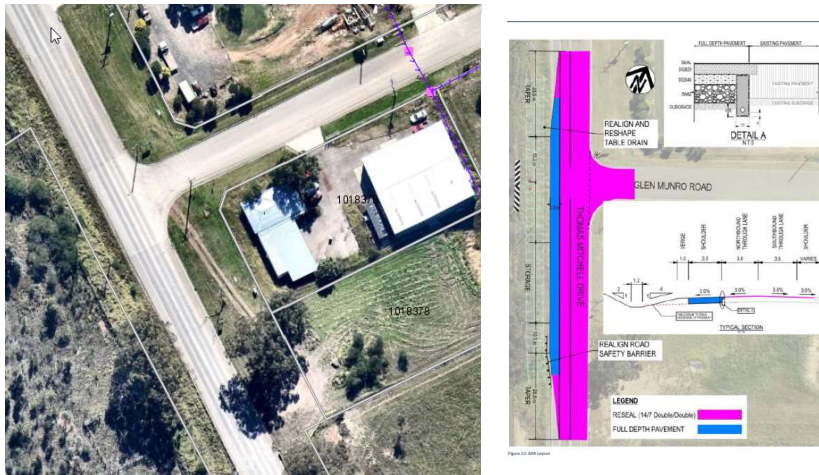
Part of the intersection upgrade refers to lighting improvements, vegetation management such as tree removal and the inclusion of painted speed markers on the roadway, providing interim safety improvements prior to the full construction of this intersection.

In considering the relationship of the intersection improvement works with the proposed works Council Officers have also had regard to the pathway for completing these works and the potential environmental impacts. In relation to these points Council notes:

- The carrying out of the BAR intersection widening by Council would meet the criteria of development permitted without consent under Clause 2.109(1) of the SEPP (Transport and Infrastructure) 2021. As part of the carrying out of these works Council would undertake a comprehensive Review of Environmental Factors prior to the carrying out of the works concerned. While a comprehensive Review of Environmental Factors is yet to be undertaken Council Officers have visited the site and part of the road reserve where the works would be carried and made observations related to potential environmental impacts. These preliminary observations identified that the road shoulder at this location was largely clear of significant established vegetation, except for one (1) tree located toward the edge of the road reserve and southern part of the works area. While it is possible that this vegetation could be located outside the disturbance footprint of the BAR Council Officers have assumed that this would not be the case. While comprehensive Review of Environmental Factors would give full consideration to any environmental impact associated with the works Council Officers have noted that its removal or related clearing would not exceed the Biodiversity Conservation Act 2017 land clearing threshold. Accordingly, Council Officers are of the view that its removal is unlikely to have a significant adverse environmental impact where carried out in

accordance with reasonable environmental controls and subject to the findings of a comprehensive Review of Environmental Factors to be carried out at the design phase for these works.

- In addition to the BAR treatment the SMEC report recommends additional site distance maintenance by the removal of vegetation in the northbound Thomas Mitchell Drive intersection approach. This vegetation maintenance may be carried out by Council as Exempt Development pursuant to Clause 2.113(1)(d) of the SEPP (Transport and Infrastructure) 2021. The vegetation to be cleared to improve site distances is identified in the image below.



BAR Scoping Design and Aerial View comparison



Site line vegetation management

5. Draft Conditions related to Planning Agreements

The following conditions of consent have been put forward and are included in Attachment A as recommended condition of consent related to the entering into of a Planning Agreement.

- (7) *Road Maintenance Planning Agreement Requirement*

Prior to the issue of a Construction Certificate the person acting with this consent shall submit to the satisfaction of Council a Planning Agreement drafted by an appropriately qualified legal professional to be entered into between Council and the proponent.

The terms of the Planning Agreement related to road maintenance are to be generally in accordance with those put forward in the proponent's offer to enter into a Planning Agreement dated 21 December 2021 and endorsed at Council's 1 February 2022 Meeting for the payment to Council of an annual contribution of \$0.11 per tonne of material delivered to the facility.

The Planning Agreement should be drafted in accordance with the provisions of the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2021 and the NSW Government Planning Agreement Practice Note, February 2021.

Evidence is to be provided to the Certifying Authority demonstrating compliance with this requirement prior to the issue of a Construction Certificate.

Note: Council Officers have no objection to a single Planning Agreement being prepared to encompass the payment of contributions related to both the road maintenance and intersection upgrade.

(8) Thomas Mitchell/Glen Munro Intersection improvement Planning Agreement Requirement

Prior to the issue of a Construction Certificate the person acting with this consent shall submit to the satisfaction of Council a Planning Agreement drafted by an appropriately qualified legal professional to be entered into between Council and the proponent.

The terms of the Planning Agreement related to road maintenance are to be generally in accordance with those put forward in the proponent's offer dated 20 July 2022 to pay Council a voluntary contribution to the value of \$135,000 +GST to be used by Council for the upgrade of the Thomas Mitchell Drive /Glen Munro Road intersection to a Basic Right Turn Treatment (BAR) and ancillary works in line with the recommendations of the SMEC Road Safety Review commissioned by Council and dated 23 June 2022.

The Planning Agreement should be drafted in accordance with the provisions of the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2021 and the NSW Government Planning Agreement Practice Note, February 2021.

This Planning Agreement is to be entered into prior to the issue of a Construction Certificate, unless otherwise directed by Council. Evidence is to be provided to the Certifying Authority demonstrating compliance with this requirement prior to the issue of a Construction Certificate.

Note: Council Officers have no objection to a single Planning Agreement being prepared to encompass the payment of contributions related to both the road maintenance and intersection upgrade.

(36) Planning Agreement Requirement

Prior to the issue of an Occupation Certificate the proponent is to enter into Planning Agreement's generally in accordance with the written offers that have informed Council's assessment of the development application and the related conditions of consent contained in this Notice of Determination.

Documentary evidence is to be provided to the Certifying Authority demonstrating compliance with this requirement prior to the issue of any Occupation Certificate.

The Panel will note that the recommended conditions of consent require the entering into of a Planning Agreement and the payment of a contribution toward the Thomas Mitchell/Glen Munro intersection and not the delivery of a full BAR intersection upgrade as part of the development.

In preparing the report and recommended conditions Council Officers considered the possibility of such a condition to be imposed. The following points have been provided in

relation to Council Officers consideration of this issue and to provide context as to why such a condition was not included in the recommended conditions of consent:

- The subject site comprises 1 of 29 industrial lots accessed via the Thomas Mitchell Drive/Glen Munro Road intersection. A desktop map review suggested 18 of these lots have been developed for industrial type uses.
- The information contained in the Traffic Impact Assessment it is understood that the proposed development when operating at full capacity is anticipated to generate vehicle movements (particularly heavy vehicle movements) at a greater rate than a typical industrial development. The Traffic Impact Assessment notes that the proposed development would generate a total of 186 truck movements (half incoming and half outgoing).
- While the increase in traffic related to the proposed development was considered to impact the functionality of the intersection by increasing traffic (particularly heavy vehicle traffic) the Council commissioned SMEC Report suggested that there are existing functionality/safety issues with the intersection that required attention irrespective of the proposed development. It was considered that the proposed development would however increase the risk profile for the intersection and thereby the imperative for Council to bring forward improvement works that would remain relevant considerations for Council irrespective of the outcome of this application.
- Given the above point the outcome of this development application was not considered to be the only motivating factor informing the need for the intersection improvement works to be carried out by Council as the Road Authority. Accordingly, Council Officers did not recommend a condition of consent tying the intersection improvement works to the issue of an Occupation Certificate. However, the offer of a Planning Agreement was been accepted as a proportionate contribution to the work to be undertaken by the Road Authority to improve the intersection.
- As discussed above Council recognises that the carrying out of the proposed development elevate the risk profile for the intersection and the imperative for improvement works to be completed. To mitigate risk to Council as the Road Authority for the roads concerned it is intended that the final Planning Agreement entered into includes provisions that compel Council to deliver the intersection within a specified period of the contribution payment. The including of this timeline in the final Planning Agreement would enable it to be informed by Council Roads and Drainage Officers timeline for the completion of the works and perceived risk of any timing overlap between the completion of the development and commissioning of the intersection. As Council Engineers have expressed an interest in constructing the intersection and have established a budget for the works a significant overlap between the intersection improvement work and the completion of the proposed development should it be approved is not considered likely. In the event that there is an overlap between the delivery of the intersection and the issue of an Occupation Certificate (which was considered to be an unlikely outcome) Council would have the opportunity to consider completing some of the more easily completed intersection improvement works in the short term such as lighting improvements, vegetation management such as tree removal and the inclusion of painted speed markers on the roadway, providing interim safety improvements prior to the full construction of the intersection.
- Final considerations informing the recommendation was the ability of the consent to bind Council to completing the intersection work within a particular time period. It was

considered that a Planning Agreement would be the most effective pathway to bind Council to the delivery of the intersection work within any timeline specified.

The above notwithstanding, the Panel has the option of imposing a condition of consent requiring the completion of the BAR improvement prior to the issue of an Occupation Certificate. A draft condition of consent has been included below which would achieve this outcome for the Panel's consideration when determining this matter.

(#) *Thomas Mitchell Drive/Glen Munro Road Intersection Construction*

Prior to the issue of an Occupation Certificate, the applicant is to construct a basic right turn treatment (BAR) upgrade to the intersection between Thomas Mitchell Drive and Glen Munro Road.

This intersection is to be designed and constructed in accordance with the requirements of Council as the relevant Roads Authority.

Note: it is intended that Council shall complete the design and construction of these works once the proponent has entered into a Planning Agreement related to the works in accordance with related conditions of consent

Conclusion and Recommendation

In view of the above considerations, it remains the recommendation of Council Officers that the proposed development be approved subject to the conditions of consent included in Attachment A to the Council's 21 July 2022 Development Assessment Report.