

PEER REVIEW OF ASSESSMENT OF DEVELOPMENT APPLICATION

**Proposed Clarence Valley Fire Control Centre
419 Airport Road, Glenugie**

Prepared by:

Lillian Charlesworth

Manager RSD Assessment

Department of Planning, Housing and Infrastructure

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1. EXECUTIVE SUMMARY

This report forms an independent peer review of Clarence Valley Council's assessment of development application DA2023/0627 (PPSNTH-256) for NSW Rural Fire Service Control Centre at 419 Airport Road, Glenugie. This review has been prepared at the request of Council, in line with Council's conflict of interest policy, as the development site is in council ownership.

This review considers the adequacy of the assessment process and Council's assessment report, as well as the proposed conditions of consent, having regard to the following matters:

- the assessment/determination pathway applicable to the development type
- the conduct of the public notification process
- the relevant matters listed in section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (the Act)
- matters under Part 4, Division 1 of the *Environmental Planning and Assessment Regulation 2021* (the Regulation)
- submissions received from the community and any response from the applicant on the issues raised in submissions
- referral responses from external agencies and authorities
- internal council referral responses, and
- under section 4.33 of the Act, Determination of Crown development applications, the Panel is unable to impose a condition of consent without the approval of the applicant or the Minister. Therefore Council should ensure that agreement has been reached with the applicant regarding the draft conditions, prior to submitting its assessment report to the Panel for determination.

The peer review found the assessment process to be satisfactory, although the following matters within the assessment report should be addressed by Council (these matters are further detailed within the body of this peer review):

- The assessment response is considered to be inconsistent with the referral response from the Civil Aviation Safety Authority (CASA).
- Insufficient assessment has been undertaken regarding:
 - Chapter 3 of SEPP (Sustainable Buildings) 2022
 - the provisions of any proposed instruments
 - the Regulation
 - traffic impacts during construction and operation, including cumulative impacts
 - access arrangements
 - operational noise, including cumulative impacts
 - obstacle limitation surface
 - landscaping
 - addressing issues raised in public submissions, particularly regarding traffic impacts, flooding, access, impact on the dam network, maneuvering, waste water management and details of the proposed training pad with helicopter capability.

The above matters may either require new information to be obtained, an issue that has not been canvassed to be addressed, or further detail to be provided to justify the conclusions reached by the assessment.

- The following statements made in the assessment report should be reworded to ensure accuracy and clarity:
 - on page 23, a comment stating that no significant vegetation occurs on or adjacent to the site.
 - on page 23, a comment stating that all utilities are available to the site.
- More detail should be provided within the report regarding:
 - proposed car parking and access arrangements
 - the type and quality of vegetation within the site and locality
 - the applicable bushfire hazard vegetation category
 - whether or not Eight Mile Road is flood affected, and
 - C5 Building Design Requirements should be specified in Appendix B
- Council should consider amending the draft conditions of consent in accordance with the recommendations in Part 5 of this review.

In addition, the review identified the following typographical errors:

- under heading 1.1 The Site, the assessment report indicates that the site is identified in the *Clarence Valley Regional Airport Masterplans* (The Airport Group, 2019). For clarity and accuracy, this should be amended to refer to the *Clarence Valley Regional Airport Master Plan 2018-2033* (The Airport Group, 2019).
- the word “or” is misplaced just prior to heading 3.1
- under heading 4.2, an incorrect reference has been made to the Act
- in the table on page 13, the year “2021” should be added after SEPP (Resilience & Hazards) and the year “2011” should be added after the name of the DCP.
- on page 16, the words “Clarence Valley” should be in italics ahead of the words “*Local Environmental Plan 2011*”
- on page 19, the blue text “Transport and Infrastructure SEPP” should be black text and be amended to read “SEPP (Transport and Infrastructure) 2021.”
- on page 21, last paragraph, remove the letter “s” from the word “employments”
- on page 21, the reference to Planning Circular D6 should include the name of the circular i.e. “Crown Development Applications and Conditions of Consent.”
- on page 22, the first paragraph, add the word “the” after the words “being within”
- on page 22, the words “Regionally Significant Development (RSD) Supported Assistance Program and input/suggestions/concerns raised by the RSD team” should be reworded to read “Regionally Significant Development (RSD) Assessment Team under the RSD Supported Assessment Program Pilot and input/suggestions/concerns raised by the RSD Assessment Team.”
- on page 23, under the heading “Access and Traffic”:
 - delete the words “that the development at”
 - remove the letter “d” from the end of the word “generated”
 - add the letter “d” to the word “anticipate”
 - add a comma after the words “background traffic”
- on page 27, under 4.3 Community Consultation, delete the words “a rough estimate of the number of letters sent” or include a figure to indicate the actual number of letters sent.

- on page 29, under the heading “Bushfire” part of a sentence is missing after the words “the location of the.”

Note: the above does not constitute a complete list of all typographical errors within the assessment report and Attachments A and B, but is provided to assist Council in improving the overall quality of the report.

The following administrative suggestions are also made:

- the eight (8) figures (i.e. diagrams) included in the report should be referenced within the body of text, so that the reader is aware that diagrams are available to illustrate the details discussed.
- It is not necessary to provide any attachments to the assessment report other than the draft schedule of conditions and the DCP compliance table, otherwise all the many documents mentioned on page 33 would need to be uploaded to the ePlanning Portal with the file names indicated and this would unnecessarily duplicate the documents within the Portal.

This peer review concludes that additional information and assessment is required to address the issues raised within this review, which may then result in the need for additional conditions of consent. Furthermore, the development application should not be determined by the Northern Regional Planning Panel (the Panel) until such time as a review requirement requested by CASA has been undertaken, or CASA agrees that the review may be conditioned. This is important to ensure that potential impacts of the proposed development on the safe operation of the airport have been taken into consideration and inform the Panel’s determination decision.

2. DETAILS OF THE DEVELOPMENT

The NSW Rural Fire Service seeks approval for a Fire Control Centre consisting of:

- an administration building (Fire Control Centre)
- a stores shed with seven (7) bays
- a radio telecommunications tower
- rainwater tanks and fire water storage tanks
- a training pad with capability for helicopter landings
- internal access loop road
- 100 car parking spaces (including 2 accessible spaces) and 5 truck parking spaces
- associated infrastructure, such as drainage and landscaping
- signage, and
- associated earthworks

3. INVOLVEMENT OF THE NORTHERN REGIONAL PLANNING PANEL

The Northern Regional Planning Panel (the Panel) was briefed by Council on the proposed development on 12 December 2023. The associated briefing report was prepared by Council on 28 November, although the exhibition period closed on 4 December and therefore no submissions had yet

been received. The only issue identified in the briefing report was contamination. At the briefing the Panel were informed of the issues raised in submissions and the Panel made the following comments:

- Car parking requirements to be clarified

Comment: Attachment B – DCP Compliance Table indicates that there is no specified car parking requirement and as such, the *Traffic and Parking Impact Assessment* has calculated that 100 spaces will adequately meet parking demand. This is considered reasonable and Council’s traffic engineer has raised no objections.

- Legislative requirements must be considered for groundwater and acid sulfate soils

Comment: Table 4 of the assessment report indicates that part of the site contains class 5 acid sulfate soils. Clause 7.1 of the LEP requires consent for certain works impacting class 5 soils, although this requirement is not triggered by the proposed development.

- Waste water sizing to be confirmed

Comment: Table 7 of the assessment report indicates that the proposed waste water treatment facility will have a capacity of 21,000L.

The assessment report has therefore adequately addressed matters raised by the Panel.

4. CONSISTENCY OF DEVELOPMENT WITH THE RELEVANT LEGISLATION

The following provides a review of whether the assessment has adequately considered the relevant legislation.

4.1 Classification of Application

The development has been correctly classified by Council’s assessing officer as being Regionally Significant Development in accordance with both clauses 3 and 4 in Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The application is classified as Regionally Significant Development as it is:

- clause 3(b): Council related development with a Capital Investment Value (CIV) of over \$5 million where the Council is the owner of land on which the development is to be carried out, and
- clause 4: Crown development with a Capital Investment Value (CIV) of over \$5 million.

Therefore, the application is to be determined by the Northern Regional Planning Panel.

In addition, Council’s assessing officer has correctly indicated that the development is not Designated Development under schedule 3 of the Environmental Planning & Assessment Regulation 2021 (EP&A Regs). Nor is the development integrated development under section 4.46 of the Environmental Planning and Assessment Act 1979 (EPA&A Act).

4.2 Determination of the Application

Clause 4.16(1) Determination General, of the Act, indicates that *a consent authority is to determine an application by:*

- (a) granting consent to the application, either conditionally or subject to conditions, or*
- (b) refusing consent to the application.*

Although the assessment report clearly intends to recommend that the Panel approve the development, the report includes a typographical error in the Executive Summary stating that the proposal is recommended for approval pursuant to section 4.16(b) of the Act. This should be amended to refer to section 4.16(1)(a) of the Act, as section 4.16(1)(b) indicates refusal of the application. This section of the Act is correctly referred to in the Recommendation section of the assessment report.

5. CONSISTENCY OF COUNCIL'S ASSESSMENT WITH SECTION 4.15 (1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following provides an overview of Council's assessment process in accordance with the matters for consideration under Section 4.15(1) of the Act.

5.1 The Provisions of Any Environmental Planning Instrument

5.1.1 Consistency with Relevant State Environmental Planning Policies

Council's assessment reviewed the proposal against the following relevant State Environmental Planning Policies (SEPPs).

5.1.1.A State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2, Vegetation in non-rural areas, is considered in Council's assessment to apply to the proposal as the land is zoned SP2 Infrastructure and this is a zone identified in clause 2.3(1)(b) of the SEPP. The site is not identified on the Biodiversity Values Map and is not within an area of outstanding biodiversity value. Removal of one Blackbutt tree is considered insignificant, particularly as a condition requiring offset of the tree has been proposed.

Chapter 4, Koala Habitat Protection, aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. Clarence Valley is listed in Schedule 2 as a local government area (LGA) to which the SEPP applies. The site lies within the North Coast Koala Management Area. Clarence Valley Council has prepared a Koala Plan of Management for the Ashby, Woombah and Illuka localities of the LGA only, which does not apply to the subject site. Where there is no koala plan of management and the site is at least 1ha (the site area is approximately 110.8ha), clause 4.9(2) requires that council assess whether the development is likely to have any impact on koalas or koala habitat. Although removal of one feed tree is proposed, the tree is isolated, the Biodiversity Assessment indicates that it's unlikely to be used for nesting or denning and Council's Koala Sighting Register has indicated no koala sightings in the vicinity. Furthermore, council has proposed a condition requiring that the tree removal be offset at a rate of

5:1 on a like for like basis. It's therefore considered that Council has adequately considered the SEPP and the development is not likely to impact koalas or koala habitat.

5.1.1.B State Environmental Planning Policy (Planning Systems) 2021

This SEPP is discussed above under "classification of application". The assessment is consistent with the SEPP.

5.1.1.C State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4, Remediation of Land, aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Section 4.6 requires that the consent authority:

- Considers whether the land is contaminated.

Comment: Due to council awareness of site contamination (regarding a fuel spill and uncontrolled fill), a Detailed Site Investigation (DSI) was undertaken (refer to the *Environmental Site Assessment* prepared by Earth Water Consulting). The DSI confirmed the existence of contamination.

- If the land is contaminated, is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed.

Comment: The DSI indicated that the site is generally suitable for the proposed development subject to remediation.

- If the land requires remediation to be made suitable for the proposed development, it is satisfied that the development will be remediated before it is used for that purpose.

Comment: Council has included a draft condition that all recommendations of the DSI be included in a Construction Environment Management Plan prior to remediation works commencing and that remediation to be undertaken prior to the commencement of building works. Note: This is discussed further in this review report under Part 6 Adequacy of the Recommended Conditions of Consent.

Council's assessment has therefore adequately addressed the provisions of the SEPP.

5.1.1.D State Environmental Planning Policy (Transport and Infrastructure) 2021

The application is not classified as Traffic Generating Development in accordance with schedule 3 of the SEPP as it is not in proximity to a classified road and is anticipated to generate only 12 trips per hour.

The assessment correctly identifies that clause 2.51 of the SEPP allows a development for the purpose of an emergency services facility to be carried out with consent in a prescribed zone by or on behalf of

the NSW Rural Fire Service. Clause 2.49 Definitions, indicates that a prescribed zone includes SP2 Infrastructure.

5.1.1E State Environmental Planning Policy (Sustainable Buildings) 2022

This SEPP applies to developments lodged after 1 October 2023. As the subject DA was lodged on 31 October 2023 the SEPP applies, although it has not been considered in Council's assessment, despite not falling within the savings and transitional provisions. This SEPP is also not mentioned in the Statement of Environmental Effects. Chapter 3 Standards for Non-Residential Development applies to non-residential development with a CIV of \$5m or more. As the CIV for the proposal is over \$11m, this chapter applies. The proposal does not fall within any of the exemptions where the chapter does not apply i.e.

- Development permitted with or without consent of that is exempt or complying development under SEPP (Exempt and Complying Development Codes), SEPP (Resources and Energy) or Chapter 5 of SEPP (Transport and Infrastructure) which relates to Port Botany, Port Kembla and the Port of Newcastle.
- Development on land wholly within certain zones (the SP2 zone is not listed); and
- Development for the purposes of residential care facilities.

Council's assessment report should be updated to include consideration of Chapter 3 of the SEPP, given the proposal was lodged after 1 October 2023, is for non-residential development with a CIV of greater than \$5m and does not fit within any of the exemptions.

5.1.2 Consistency with the Clarence Valley Local Environmental Plan (LEP) 2011

The subject site is zoned SP2 Infrastructure (Air Transport Facility) under the provisions of the *Clarence Valley Local Environmental Plan 2011* (the LEP). The proposed development comprises the construction of a Fire Control Centre, which is defined as an Emergency Services Facility under the LEP.

Despite the proposed development being a prohibited use within the SP2 zone under the LEP, the proposal is permitted with consent under clause 2.51 of SEPP (Transport and Infrastructure).

Council's assessment of the proposal against the LEP, the objectives of the SP2 Infrastructure zone and the relevant LEP controls is deemed to be adequate. The relevant site constraints have been identified and assessed, including acid sulfate soils, bushfire prone land and contamination (there are no LEP controls applicable to the latter two constraints), with the exception of the obstacle limitation surface (this is discussed in more detail below, as there is no control regarding the OLS in the LEP).

5.2 The Provisions of any Draft Environmental Planning Instrument

The assessment report indicates that there are several proposed instruments that have been the subject of public consultation and are relevant to the proposal, but only mentions one such proposed instrument. The report should be amended to include details of all relevant draft instruments, which provisions impact the proposal and whether the proposal is consistent, OR if applicable, it should state that there is only one relevant draft instrument (i.e. the Draft Remediation of Land SEPP).

5.3 The Provisions of any Development Control Plan

5.3.1 Clarence Valley Development Control Plan (DCP) for Development in Environmental Protection, Recreation and Special Use Zones 2011

Council undertook an assessment of the proposal against the relevant provisions of the DCP. The results of this assessment are included in Attachment B – DCP Compliance Table. The assessment found that the proposed development is fully compliant with all relevant DCP provisions.

The assessment under C5.1 (this heading should read C5) Building Design Requirements in Attachment B is inadequate as the requirements relating to these relevant controls have not been identified. Therefore, it's not possible to verify using Attachment B, whether or not the proposal is consistent with the requirements under C5. Similarly, some of the requirements under C26 Provision of Essential Services and F2 Delivery Service Vehicles have not identified in the DCP Compliance Table.

Under F5 Manoeuvring, Loading and Unloading, the assessment report indicates that swept path testing of the proposed design has been undertaken (by the applicant) and the development can provide suitable onsite manoeuvring. Although, concern was raised in a public submission that the swept path testing did not allow for the design of the airport terminal which has a fixed section of roof that protrudes into the car park area such that the swept path marked in Annexure B-Site Circulation-AV is not successful with a high chance of damage to the existing terminal building, traffic island and vehicles. This issue raised in a submission has not been, and should be, addressed in the assessment report or within Attachment B.

19 Stormwater Management in Attachment B does not include any detail on how the proposal meets the requirements, although the assessment report indicates that all stormwater will be collected and discharged to meet Council's standards.

Council's assessment of the proposal against the DCP is generally adequate, although extra detail is needed regarding C5 and further assessment of maneuvering should also be included.

5.3.2 The Provisions of any Contributions Plan

Although Contributions Plans are not Development Control Plans, they form a relevant consideration. The assessment report correctly reached the conclusion that based on advice *in Planning Circular D6 – Crown Development Applications and Conditions of Consent*, the council is unable to levy contributions on the development, either because the type of levy is not considered appropriate, or the levy is not justified/supported by a Contributions Plan.

5.4 The Provisions of any Planning Agreement or Draft Planning Agreement

No Planning Agreement or Draft Planning Agreement is applicable to the site or proposal.

5.5 The Regulations

Matters contained within Part 4, Division 1 of the 2021 Regulations are required to be considered under section 4.15(1)(a)(iv) of the Act. The assessment report has inadequately discussed the relevant

matters within the Regulations as it has not fully described when each key provision of the Regulation applies and why the provisions do not apply in relation to the subject development application.

Clause 66A *Council related development applications*, indicates that a council related development application must not be determined unless the council has adopted a conflict-of-interest policy and the policy has been considered in determining the application. Council's conflict of interest policy requires that all regionally significant development applications must be independently reviewed and therefore Council has requested the Department of Planning, Housing and Infrastructure to prepare this independent review.

The assessment report (page 22) indicates that the provisions of the Regulation "have been considered and are addressed in the recommended draft conditions (where necessary)." As there is no discussion in this section of the assessment report to indicate that any conditions have arisen as a result of requirements under the Regulations, the previous statement is misleading. This statement should be amended to either delete any reference to the conditions, or to indicate that no conditions are required to address the regulations.

5.6 The Likely Impacts of the Development

5.6.1 Context and Setting

Under this heading in the assessment report, it is stated that "no significant vegetation occurs on or adjacent to the site." This comment is not reinforced with any details and is not considered to be accurate. The report should include additional information from the Biodiversity Assessment prepared by ReconEco that confirms that the project footprint is highly disturbed, cleared and includes an asphalt track, hardstand areas, dumped soil, slashed grassland and two native trees. The Biodiversity Assessment further indicates that the constructed dam to the north of the project footprint contains native aquatic vegetation, provides aquatic habitat for waterfowl and turtles and may be utilised by grazing macropods and birds. There is no commentary in the Biodiversity Assessment to indicate the level of significance of the vegetation at the dam. Furthermore, the Bushfire Assessment indicates an area of Clarence Lowland Ironbark-Spotted Gum Grassy Forest only 140m to the west of the development site. Therefore, the comment in the assessment report should be amended in light of the above and comments made at 4.1.1A of this peer review to accurately reflect the type and quality of vegetation within the site and the locality.

The proposed landscaping will provide a natural setting for the proposed development and assist to integrate the development with the environment. The assessment report does not include a heading for landscaping and does not provide any assessment of this aspect of the development, other than one sentence at C4.8 of Attachment B – DCP Table of Compliance. The assessment is incomplete in this regard and some commentary should be included in the report regarding the adequacy of the Landscaping Plan, despite there being limited landscaping controls.

5.6.2 Access, Traffic and Parking

A Traffic and Parking Impact Statement (the statement) was prepared in support of the proposal which assessed the potential traffic and parking impacts from operation of the development on the surrounding road network. The statement did not give any consideration to traffic impacts and

parking requirements during the construction phase of the development. The application did not require referral to Transport for NSW. It is noted that the DCP does not contain a parking standard applicable to this development type and therefore the statement has calculated a reasonable worst case scenario provision of 100 spaces, based on the maximum number of persons anticipated on site at any one time. This is considered reasonable.

The assessment report with regard to traffic and access is considered to be inadequate as:

- Although council staff carried out a road safety inspection of the surrounding road network, there are limited details provided to indicate that this considered all issues raised in submissions e.g. the condition of the roads after a rain or flood event or included viewing the passing of cars and trucks on the narrowest sections of road.
- The assessment report does not individually address all traffic and access concerns raised in submissions.
- The Traffic and Parking Impact Assessment:
 - has used the worst-case scenario of a maximum of 100 people on site to calculate car parking demand, and yet inconsistent with this approach, has taken an average attendance of 50 people on site for the purposes of calculating traffic volumes, although:
 - medium use occupation - training and large meetings held fortnightly are expected to have an average attendance of 50 people, although may have a maximum attendance of up to 100 people up to 4 times per year, and
 - high use occupation – operational campaign events having a typical 24/7 attendance for up to one month of typically 75 people, but up to a maximum of 100 people. There is no estimate provided of how frequently high use occupation may occur during the year.
 - has not undertaken a traffic count of local traffic volumes, particularly in light of submissions that raise the issue of cumulative impact on the road network due to the correctional facility.
 - has not provided any information on heavy vehicle traffic generation during the construction period for remediation works, extensive cut and fill and building works, nor indicated the estimated time-period for these stages of work. It's not possible to produce an accurate assessment of potential traffic impacts on the local road network without this information.
 - has not indicated the likely vehicle route for heavy vehicle traffic during the remediation or construction phase or advised which of the roads along the route are sealed or unsealed or provided minimum actual road widths (given the concern raised in submissions regarding the suitability of the local road network to safely cater for traffic generated by the proposal).

- The assessment report does not adequately address access and parking. Information on the adequacy of parking provision should be included in the assessment report, not just at Attachment B. Access is mentioned in Attachment B, although inadequate details are provided to demonstrate that a thorough assessment has been undertaken.

Given that traffic and access are a key concern raised in submissions, it would be helpful for the applicant to provide a response to the submissions or a revised Traffic Impact Assessment that specifically addresses the public submissions and those matters identified above, relating to traffic and access. It is understood that council provided a copy of submissions to the applicant for comment, although no response was received. Despite this, Council staff should address these matters in more detail within the assessment report.

5.6.3 Utilities and Waste Water Treatment

The assessment report indicates that “all utilities are available to the site.” This is not accurate, as the Statement of Environmental Effects indicates that there is no town sewer network servicing the site and all waste water needs to be collected and treated onsite. The assessment report states that “the development triggers the need for the installation of a new onsite waste water facility to service the use.” The Wastewater Management Plan prepared by Earth Water Consulting advises that a 21,000L holding tank system is proposed, although during peak events up to 5,000L per day of will be generated. Based on pump out of 5,000L when storage reaches 15,000L, this will require up to 12 pump-outs during a 3-week peak fire season event. Council has included condition no. 22 to require an Onsite Wastewater Management Application and a Wastewater Consultants report prior to works commencing. This should address how adequate pump-out is to be achieved when roads are closed due to hazard events, preventing tanker access for pump-out purposes.

5.6.4 Heritage

Council’s assessment has confirmed that the site does not contain Aboriginal or non-Aboriginal heritage and has recommended a condition of consent regarding unexpected finds, which seems appropriate given that the land was erroneously identified on the Aboriginal Heritage Information Management System (AHIMS) as containing an Aboriginal cultural heritage site.

5.6.5 Noise

There was no noise impact assessment submitted with the proposal to identify the likely noise impacts during construction and operation of the development. The Statement of Environmental Effects only includes the comment that the locality is dominated by the airport precinct and that the closest residence (utilised by the Airport Manager) would anticipate a reasonable noise incurrence. The assessment report makes no comment on operational noise and only indicates that construction hours will be reduced on Saturdays in recognition of several dwellings located within 800m of the site. It is noted that the draft conditions include a requirement for a Construction Environmental Management Plan which is to include all reasonable and feasible mitigation measures to reduce potential noise impacts to sensitive receivers.

The assessment report should include an assessment of operational noise, given the centre caters for five fire trucks (with potential impact from sirens), up to 100 staff in attendance during peak season fire events, training and meetings, potential helicopter noise from the training pad and a large outdoor BBQ area catering for up to 100 people.

5.6.6 Bushfire Hazard

The assessment report indicates that the site is bushfire prone, although it should provide additional detail to indicate that Vegetation Category 1 (high bushfire risk vegetation) and Vegetation Buffer Areas apply. A Bushfire Assessment prepared by Peterson Bushfire carried out an assessment of the proposal against the requirements of *Planning for Bushfire Protection 2019* and made a number of recommendations (including preparation of a Bushfire Emergency Management and Evacuation Plan and the building to be designed and constructed to comply with BAL-19 construction specifications) which are implemented by the draft conditions of consent.

5.6.7 Obstacle Limitation Surface

Although the site is located within the Grafton Regional Airport Precinct, the NSW Spatial Viewer does not indicate that the site is affected by an Obstacle Limitation Surface (OLS). Nonetheless, the Civil Aviation Safety Authority has indicated that it has no objection on condition that proposal has been reviewed by the Aerodrome Manager at the airport, to ensure that it will not penetrate the obstacle limitation surfaces associated with the airport and has been reviewed for potential impact on instrument flight procedures and navigation equipment as required by CASA's Manual of Standards Part 139, para 7.20. This has been discussed at section 4.8.2.A of this review. The assessment report is inadequate with respect to this issue, as it does not include an assessment of the potential impacts of the proposal on the safe operation of the airport.

5.6.8 Cumulative Impact

Without an assessment of the potential impacts of operational noise, it's not possible to comment on whether the proposed development may have a negative cumulative impact in terms of noise. Also, all four (4) submissions raised concern with potential cumulative traffic safety impacts on the local road network, particularly following development of the correctional centre. Cumulative traffic impacts have also not been assessed.

5.7 The Suitability of the Site for the Development

Council's assessment of the suitability of the site for the proposal is deemed to be adequate, particularly given the location of the proposed development within the Grafton Regional Airport Precinct and as the site already contains the NSW Rural Fire Service Clarence Valley Aviation Support Centre. Nonetheless, the assessment report does not provide sufficient detail to demonstrate that the existing local road network is suitable for the proposed development without road upgrades such as improving the road surface, road widening, improved drainage and centre line marking. The traffic issues raised in submissions and this review should be assessed in more detail to adequately justify Council's conclusion that no local road upgrades are required.

5.8 Submissions made in Accordance with the Act

5.8.1 Public Submissions

The application was notified to adjoining and nearby landowners. The proposed development was placed on public exhibition from 31 October to 4 December 2023 and four (4) submissions were received. On 15 January 2024, Council forwarded a copy of submissions to the applicant for comment, however no formal response was received.

Council staff undertook a review of all submissions received during the public exhibition period and provided a response in their assessment report. This document reviews the adequacy of Council's response to community submissions received for the application to ensure Council have properly considered the submissions received in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979 (the Act).

The issues raised in submissions and the adequacy of Council's response is provided below:

- Road safety given additional traffic on narrow rural roads with blind spots, crests, potholes, a sinking roadway, erosion and stock movement on roads.

Comment: In response to submissions council staff undertook a road safety inspection of the surrounding road network and did not identify any areas of significant risk to motorists or that warranted modification to service the development. The roads were considered to be an acceptable standard for rural roads. This is not considered an appropriate response, as even though the roads are an acceptable standard for rural roads, this do not mean that the existing nature and condition of the roads are adequate and suitable for the anticipated car and heavy vehicle traffic that will be generated by the proposed use. Traffic impacts on the local road network should be based on the worst-case scenario during the construction and operational stages i.e. up to 200 vehicle movements per day during fortnightly high occupation events, rather than based on 12 staff per typical day.

The assessment report indicates that no pavement upgrades are required to service the development, although a submission indicates that Airport Road is in extremely poor condition with a rough surface sign in position for over 2.5 years. The need for a road warning sign suggests that the road pavement does require upgrade, particularly considering that up to 100 people (200 vehicle trips) are anticipated on a fortnightly basis to attend meetings/training. In addition, up to 100 people (200 vehicle trips) are anticipated on a daily basis for up to one month at a time during operational campaign events. Furthermore, the submission indicates that Airport Road is 4.2m wide at some points, which is insufficient for a 1.94m wide car and a 3m wide fire truck to pass without one or both vehicles utilising the road shoulder, which can be unsafe, particularly after rain events. It is also mentioned in the submission that flooding of Six Mile Lane leads to serious erosion of the road surface. It is therefore recommended that Council reconsider whether any road upgrades, including road widening, resurfacing or a turning lane into the airport are warranted, or other safety measures such as lower speed limits.

The assessment report would benefit from a diagram indicating anticipated operational and construction traffic routes, photographs showing the nature of the road surface along the route, as well as the location of problematic sections of road indicated in public submissions.

- Flooding of the access from Six Mile Lane

Comment: the assessment report indicates that an alternative access is available via Eight Mile Lane if necessary, although additional detail should be provided regarding whether or not Eight Mile Road is also flood affected.

- Safety of access considering the proximity to existing fuel storage areas

Comment: this concern seems to have been misinterpreted in the assessment report as concern regarding the danger of having refuelling infrastructure within a bushfire prone area, although two submissions raise concern that the vehicular access points should not be in close proximity to the fuel storage area, due to a vehicle circulation conflict with fuel trucks accessing the fuel depot. The assessment report has therefore not adequately addressed this issue.

- Concerns regarding the waste water management system

Comment: Council has responded to this concern by a requiring section 68 approval under the *Local Government Act 1993* prior to the commencement of works to ensure the facility meets Council's Waste Water Management Strategy. Although, Circular D6 Crown Development Applications and Conditions of Consent, indicates that the Crown is not required to obtain approval under section 68 to erect a building or do anything incidental to the erection of a building. This would indicate that the proposed condition cannot be applied and should be amended. The draft condition also requires preparation of a Wastewater Consultants report to ensure compliance with AS/NZS 1547:2012 that was mentioned in the submission.

- Unsuitability of the site given bushfire prone, not connected to sewage system and requires room for future expansion

Comment: site suitability has not been specifically addressed in the submissions section, although each factor in the submissions indicating unsuitability has been separately addressed and site suitability is discussed under heading 3.3 of the assessment report. Part 5.7 of this review makes further comment on site suitability.

- The exit gate presents a driver safety hazard and therefore should be moved, and a give way sign installed

Comment: This has not been addressed in the assessment report.

- Encroachment of the development into the dams maximum compacity limit

Comment: This has not been addressed in the assessment report.

- Inadequate soil sampling and lack of information on remediation

Comment: Council required additional sampling to be undertaken. Condition 12 requires site remediation to be carried out in accordance with the Environmental Site Assessment as well as various relevant policies and guidelines.

- Proposed landscape trees will grow to 30-40m and impact to OLS

Comment: Council proposed a draft condition to require that all tree plantings comply with the OLS requirements for the Grafton Regional Airport. It is noted that this condition does not appear in Attachment A. Nonetheless, CASA has required that a review be undertaken of the potential impact of the proposal on the OLS.

- Construction hours should be limited to 7am Monday to Friday and 8am to 1pm Saturdays

Comment: The draft conditions reflect these hours.

- Proposed fencing will restrict wildlife movement and access to the dam and the SEE does not mention several known endangered species that use the area.

Comment: Draft condition 11 requires fencing which allows the free passage of native ground moving animals.

- Although the SEE indicates that the proposal will include a training pad with capability for helicopter landings, this is not shown on the plans.

Comment: The assessment report does not address this issue. There is considered to be insufficient information provided within the SEE to enable an appropriate assessment of potential impacts from helipad use. Further details should be provided such as the purpose of the training pad, the location of the training pad, helicopter flightpaths, the frequency of use, noise impacts etc. Whether or not the training pad with helicopter capability is still proposed should be confirmed with the applicant, given this facility does not appear to be shown on the submitted plans. If the development proposal includes a helipad, this should be referred to the Airport Operations Manager for comment to enable adequate assessment of the helipad within Council's report.

This peer review of the submissions and the adequacy of Council's response has found:

- a satisfactory exhibition process has been undertaken in accordance with the relevant legislation and Council's Community Participation Plan, and
- the response to submissions detailed in the assessment report has not adequately addressed all the issues raised.

5.8.2 External Referrals

The application was referred to the following two (2) external authorities for review and comment.

5.8.2.A Civil Aviation Safety Authority

The proposal was referred to CASA for review and comment. CASA raised no objection to the proposal on condition that the proposal has been reviewed by the Aerodrome Manager at the airport, to ensure that it will not penetrate the obstacle limitation surfaces associated with the airport and has been reviewed for potential impact on instrument flight procedures and navigation equipment as required by CASA's Manual of Standards Part 139, para 7.20.

Council's consideration of the response from CASA is considered to be inadequate. The assessment report indicated that CASA provided no objection on the basis that "the OLS associated with the airport IS reviewed for potential impacts", whereas the email from CASA states that it has no objection on the basis that the OSL associated with the airport HAS been reviewed." Council's assumption is that the review requested by CASA can be conditioned and occur after consent is granted, whereas this peer review considers that CASA does object until such time as the requested review has been undertaken by the Aerodrome Manager at the Clarence Valley Regional Airport (also known as Grafton Airport).

It is recommended that Council immediately seek confirmation from CASA regarding whether this matter can be conditioned. If CASA indicates that it can not be conditioned, Council/the applicant should forward CASA's referral response to the Aerodrome Manager with a request that the required review take place. Until such time as this matter is resolved, the development application should not be determined by the Northern Regional Planning Panel given CASA's position may be considered as a Federal Government objection to the proposal, in the absence of the requested review or further correspondence from CASA to indicate otherwise.

5.8.2.B Bureau of Meteorology

The proposal was referred to BOM as they are located with the Grafton Regional Airport Precinct. Council did not receive a response from the BOM, although has included a draft condition to protect the interests of the BOM, requiring access to be maintained at all times to the weather station upon their leased site area.

5.8.3 Internal Referrals

The following six (6) internal referral responses were received:

5.8.3.A Engineering

The engineering response provided no comments or objections but included a long list of recommended conditions, many of which have been included in the draft conditions at Attachment A to the assessment report.

5.8.3.B Building Surveyor

The Building Surveyor raised no objections, although noted that significant fill is proposed under the Fire Control Centre and provided a list of recommended conditions. The recommendations of the Bushfire Assessment were supported, with the exception that the stores building be provided with ember protection (in addition to the main fire control building being constructed to BAL 19). This is reflected in conditions, although a further comment on this is made at Part 6 of this review.

5.8.3.C Environmental Health

Environmental Health did not propose any conditions as the proposal does not include a food premises, the site will have town water supply and noise levels are not a concern in relation to the building use. Although the Environmental Health Officer has indicated that noise levels are not a concern in relation to the building use, this review considers that this has not been established as there is no discussion in the Statement of Environmental Effects, no supporting study and no comment in the assessment report to verify this. This is considered further above under 5.6.5 of this review.

5.8.3.D Environment

Council considered the Contaminated Land Assessment and decided that additional information was required regarding contamination. A field investigation and sampling were required to determine the extent of a known fuel spill in 2021. Concern was raised that the proposed fill pad was historically used to dump fill, road and construction waste and may contain asbestos. An amended Contaminated Land Assessment was submitted that identified a contamination hotspot and recommended remediation, following which validation would be required to confirm acceptable concentrations of contamination. Four bitumen and roadbase stockpiles were identified and a bioremediation stockpile. Disturbance of the fill platform during earthworks should be limited and supervised by an environmental consultant. The report concluded the site could be made suitable for the proposed use subject to remediation and validation prior to commencement of works.

The Wastewater Management Plan was considered by Council, and it was concluded that the Plan is generally in accordance with the Australian Standard ASNZ 1547, the Environmental Health Guidelines and Council's OSM Strategy. The WMP will be submitted with a section 68 application for approval prior to works commencing and works must be completed prior to occupation.

All recommended conditions have been included at Attachment A.

5.8.3.E Trade Waste

The trade waste response provided no comments or objections but provided a list of recommended conditions. The recommended condition requiring a bunding area has not been

included in Attachment A and has therefore been recommended for inclusion in Part 6 of this review. This is considered warranted given the assessment report has not provided a reason for its exclusion and the proposal includes a storage area for flammable liquids.

5.8.3.F Open Spaces and Facilities

This referral response commented that there were no details available on the tree to be removed on the submitted plans, although this information was contained in the Biodiversity Assessment. The referral provided advice and conditions relating to vegetation protection and landscaping matters. All recommended conditions have been included at Attachment A with the exception of advice on tree selection, which is not considered necessary, given suitable landscaping trees have already been selected.

It is considered that the assessment has given due consideration to internal referrals, all of which raised no objection to the proposed development. A few conditions recommended within the referrals which have not been included at Attachment A are recommended for inclusion and are outlined in Part 6 of this review. Despite this, the internal referrals do not satisfy the concerns of this review discussed in Part 5.6, regarding operational noise and the suitability of the local road network to safely accommodate construction and operational traffic.

5.9 **The Public Interest**

The proposal is generally considered to be in the public interest, based on:

- a positive benefit for the community and local emergency service authorities through the provision of a new Fire Control Centre to service the Clarence Valley district, and
- the proposal being generally consistent with the objects of the Act, relevant state legislation, the North Coast Regional Plan 2041 (which identifies the Grafton Regional Airport as an emergency services hub), the LEP and DCP

and subject to the proposed conditions of consent (as amended following consideration of the recommendations of this review and comments from the applicant) and the insufficiencies identified within this peer review being adequately addressed.

Council's assessment of the likely impacts of the proposal including environmental impacts on both the natural and built environments, and social and economic impacts in the locality is insufficient as further detail and assessment is required to address all the issues.

6 **ADEQUACY OF THE RECOMMENDED CONDITIONS OF CONSENT**

A review of the recommended conditions of consent has been undertaken based on consideration of the proposal, Council's assessment of the proposal, internal and external referral responses and public submissions to ensure they are adequate for the application. Given the application is for Crown development, under section 4.33 of the Act, Determination of Crown development applications, the Panel is unable to impose a condition of consent without the approval of the

applicant or the Minister. On 2 February 2024, Council referred the draft conditions to the applicant for comment. At the time of writing, the applicant's comments are under consideration by Council.

It is noted that some conditions recommended via internal referrals have not been included in the draft conditions of consent, such as the need for an archival report and multiple conditions to be satisfied prior to the issue of a subdivision certificate (when no subdivision is sought) proposed by the Engineer. Not including some recommendations is appropriate where the condition bears no relation to the nature of the development proposal. This is reinforced by Planning Circular D6 *Crown Development Applications and Conditions of Consent*.

Council should check that condition 29 is as intended, given that the majority of works will be to a BAL 19 standard, but ember protection for the stores building is only sought to a BAL 12.5 standard.

The assessment report indicates that a draft condition would be included to ensure that all tree plantings comply with the CASA OSL requirements for the Grafton Regional Airport, although Council has not included this condition in Attachment A and should do so. Note: prior to finalisation of this review, Council assessment staff indicated that the draft conditions had since been updated to include this condition.

It is noted that condition no.'s 14 and 39 both require an identical Construction Environmental Management Plan to be prepared prior to remediation work and again prior to the commencement of building work. Therefore, Council should consider deleting condition no.39 and replacing this with a requirement for a Remediation Action Plan.

Similarly condition no.'s 13 and 43 are identical, both requiring a Validation Report to be prepared at different stages of the development. It's suggested that condition no.13 be deleted, as the Validation Report would already have been prepared on completion of remediation work.

The review has found that the draft conditions of consent at Attachment A are generally satisfactory, although recommended improvements are outlined below. The condition numbers mentioned in this part of the review refer to the version of the conditions forwarded for peer review and do not match the condition numbers of subsequent versions of Attachment A.

Recommended Amendments and Additional Conditions

The following amendments to the draft conditions are recommended to ensure they:

1. adequately address all potential impacts of the proposal
 2. achieve the desired outcome
 3. are not inconsistent, and
 4. adequately reflect appropriate conditions recommended via internal and external referrals.
- Amend the title of the document to read "Attachment A - Draft Conditions of Consent."
 - Amend condition 1 to include a full list of all the latest plans and documents.

- Include the following condition in relation to a pavement condition report in accordance with Council's internal engineering referral:

A pavement condition report is to be provided for <insert location>. The report must be completed by a suitably qualified engineer and/or Geotechnical Testing Authority and is to be submitted to Council prior to commencement of works. The analysis in the report is to consider the impact of heavy vehicle and construction traffic and recommend measures to be taken to maintain the existing pavement condition during the construction phase of the development.

Payment of a bond is required to ensure maintenance of <insert location> road, in the amount of <\$XXXX>, prior to commencement of works. Should the pavement condition become unsafe Council may provide maintenance without notice to the applicant. Note: Council will endeavour to contact the applicant whenever Council considers maintenance is required.

Comment: The Engineering referral recommended a condition requiring a Pavement Condition Report prior to commencement of works, although instead the draft conditions have inserted a requirement at condition 14 for the Construction Environmental Management Plan to consider the pavement condition of local roads. This is considered inadequate as it seeks to "minimise disruption to the local community" rather than to minimise deterioration of the local road network.

- Include the following condition in relation to the design of buildings in accordance with Council's internal Building Surveyor referral:

No Construction is to be commenced until a Construction Certificate has been issued. The slab/footing design for all buildings shall be based on a geotechnical assessment of the foundation soils. Elevations of the 5 x 8.5m pump room shed shall be submitted with the construction certificate application.

Comment: the proposed pump room is shown on the floor plan, but no elevations have been provided. The Building Surveyor therefore recommended this condition to ensure compliance with NSW building regulations.

- Include the following condition in accordance with Council's internal trade waste referral.

Any substance which could adversely affect the environment must be stored in a roofed and bunded area. The bund must have the capacity to retain 110% of the volume of the largest container or alternatively, other acceptable means of containment must be provided. Substances accumulated in the bunded area must not be discharged to the environment.

Comment: refer to section 4.8.3.E above for details.

- Amend condition 4 to read as follows:

All existing remnant trees located within the development area, with the exception of the tree referred to in condition 5, are to be retained and protected.

Comment: Condition no.'s 4 and 5 as written are inconsistent.

- Amend condition 6 to read as follows:

The removal of the Blackbutt (Eucalyptus pilularis) is to be offset with Blackbutt trees at a rate of 5:1 within the proposed landscaped area. Should any of the offset trees die prior to reaching maturity, they're to be replaced with another Blackbutt tree.

Comment: This clarifies what offset vegetation is required and ensures the trees will be adequately maintained to maturity or replaced.

- Amend condition 10 to read as follows:

Vehicular access to the existing Bureau of Meteorology weather station must remain obstacle free at all times. Details of how this will be achieved to be submitted to Council for approval prior to works commencing.

Comment: To provide access to the adjacent property owner i.e. council, does not make sense. The current lease agreement is not relevant and may be replaced by an updated lease agreement, negating the benefit of this condition. Remaining obstacle free clarifies that the intent is to ensure vehicular access, not to maintain the condition of the access/driveway.

- Amend condition 14 by adding the following words after the words "warning signage":

or other traffic impact mitigation measures

Comment: To ensure that traffic impacts are mitigated, not just considered.

Given the application is for Crown development, section 4.33 of the Act, Determination of Crown Development applications requires approval of the applicant or the Minister in order to apply a condition of consent. Therefore any amendments to Attachment A, on the basis of the recommended amendments and additional conditions above, should be forwarded to the applicant for consideration prior to a determination by the Panel.

7. CONCLUSION

The peer review has found the assessment process to have:

- correctly classified the application as regionally significant development, and referred the application to the relevant authorities for review
- undertaken a satisfactory exhibition process in accordance with the relevant legislation
- undertaken a generally satisfactory, although incomplete, assessment of the proposal against the relevant matters for consideration under section 4.15 of the Act
- not included within the assessment report a sufficiently detailed assessment of matters under Part 4, Division 1 of the Regulations

- undertaken a generally adequate review of and response to public submissions, although some concerns have not been addressed or not considered in sufficient detail
- adequately addressed internal referrals
- not adequately responded to the external referral response from CASA
- drafted generally adequate conditions that should be amended as per the findings of this review, in order to address the likely impacts of the development identified in the assessment report. Note: Given the proposal is for Crown development, the final set of draft conditions should be agreed to by the applicant, following consideration by Council of the applicant's comments on the conditions. Any disagreement regarding any of the conditions needs to be resolved prior to determination of the application by the Panel.

Details of the above matters can be found in the Executive Summary, as well as the body of this review. A number of typographical errors were identified and are also listed in the Executive Summary, together with some administrative suggestions.

This peer review concludes that additional information and assessment is required to address the issues raised within this review. This may then result in the need for additional suitable conditions of consent to ensure the potential impacts of the development can be adequately mitigated/managed.