

19 November 2013

**NSW Planning Assessment Commission's Determination Report on the
Concept Plan application for Employment Lands at Black Hill.**

1. Delegation to the Commission

The concept plan proposal has been referred to the Commission for determination under the Minister's delegation date 14 September 2011. The reason for referral is due to the declaration of political donations.

The Commission constituted to determine the matter consists of Richard Thorp (chair) and Donna Campbell.

2. Background

The subject site was rezoned on 9 August 2013 by way of amendments to the *Cessnock Local Environment Plan 2011* and *Newcastle Local Environment Plan 2012*. The zonings include: 166.39 ha for light industrial lands, 16.41 ha for Environmental Conservation (to protect the Viney Creek riparian corridor) and 545 ha for National Parks and Nature Reserves for the Tank Paddock and (part of) Stockrington Lands.

The purpose of this application is to obtain concept plan approval so that future development applications for this proposal will be determined in a manner that is consistent with the approval.

3. Concept Plan Proposal

Coal & Allied (the proponent) is seeking concept plan approval that includes the following:

- An indicative lot layout;
- Indicative development staging;
- Employment generating uses;
- 'Core supporting facilities', comprising retail facilities for the future Black Hill work force;
- Provision of associated infrastructure; and
- Urban Design Guidelines.

4. Department of Planning and Infrastructure's Assessment

The Director-General's Environmental Assessment Report on the proposal recommends approval subject to modifications.

The report containing the recommendations is publicly available on the Department's website. The Commission must take the report into account in making its determination.

The report examines the following key issues:

- Land use and urban design;
- Biodiversity;
- Traffic and access;
- Infrastructure contributions and local services;
- Soil and water including stormwater management, flooding and contamination; and
- Aboriginal Heritage.

It recommends approval of the concept plan, as amended by the preferred project report, subject to the following modifications:

- the indicative lot layout is not approved;
- the Urban Design Guidelines must be revised, in particular, to adopt provisions in Council's DCP ;
- the proposed retail/commercial component, known as the Core Supporting Facilities and the additional permitted uses are not approved.

5. Consultation with the Council and the Department

The Council originally provided comments to the Department on the proposal by letter dated 30 June 2011. The Council also provided comments on the Department's proposed conditions of approval by email on 20 April 2012.

As a result of the time that has passed since those comments were provided, the Council requested the Commission to give it time to consider the Director General's Assessment Report before meeting with the Commission, The Commission agreed and held a teleconference with Newcastle City Council on Tuesday 5 November 2013.

As a result of that meeting, the Commission referred a number of Council's concerns to the Department for consideration. The Department responded on 18 November 2013.

6. Council concerns

In summary, whilst changes made through the *Preferred Project Report* and the Department's modifications have addressed some of Council's concerns, the following remain:

- Local contributions and the proposal in the Statement of Commitments to dedicate land to Council in lieu of s94A contributions;
- The width of the riparian corridors should be a minimum of 40 metres wide corridors (instead of 20 metres) with a 10 metres buffer either side;
- Council considers the perimeter roads and asset protection zones should be included within the development site as it is not council's responsibility to maintain the APZ;
- The requirement for management plans addressing environmental impacts such as air quality and noise should be clearly spelt out in the approval;
- Councils Draft Parks & Recreation Strategy is currently on exhibition and the proposal should be deferred until this is finalised;
- Council considers the APZ for the site should be 40 metres, not 20 metres;
- The offset area known as the Tank Paddock has been used previously (Minmi Project) and therefore the proponent is 'double dipping';
- The management and upkeep of the riparian corridor should be retained in a community title scheme, and not be a burden imposed on Council's rate payers;
- The water detention basins should be retained in a community title scheme, and not be a burden imposed on Council's rate payers;
- The concept plan lacks details as to how the lands will be developed; and
- Amendments to various conditions were requested to clarify the effect of those conditions.

6. Commission's Consideration

The Commission has carefully considered the Department's Assessment Report and recommendations, other relevant documents, written submissions and views expressed by the Council. The key issues that emerged for the Commission are discussed in more detail below.

Whilst the Commission generally accepts the recommendations of the Department, it has amended the Department's recommended conditions of approval to address certain concerns raised by Council and to clarify certain conditions.

6.1 Additional uses in Core Supporting Facilities Area

The concept plan seeks approval for additional uses in the development site and for provision to allow a maximum of 1300 sq metres of net lettable floor retail space. The proponent has justified the additional uses on the basis that they would provide basic convenience needs of employees on site.

The Commission agrees with the Department and the Council that the additional uses should not be approved as they will undermine existing centres in the region. The report notes that there is an existing local centre at Beresford, 6 kms to the north-east of the site which is zoned B2 Local Centre.

6.2 Local contributions and riparian corridor

In the Statement of Commitments, the proponent has agreed to pay contributions in accordance with Council's section 94A Development Plan 2006. However, the Statement goes on to provide that passive recreational space will be provided along the creek by the owner and these will be dedicated to Council in lieu of monetary contributions for open space.

The Council is of the opinion the dedication of the riparian corridor will provide no public benefit as the corridor is located within an industrially zoned precinct and will only provide for passive, as opposed to active, recreation. Its dedication will result in the burden of ongoing care and management being imposed on Council's rate payers.

The Council considers that the riparian corridors can be effectively managed through a community title scheme in conjunction with the management of the adjoining industrial land uses to ensure the protection of the conservation values (water quality and aquatic habitats etc) from the potential adverse effects of such land activities.

The Commission agrees with the Council on both these points.

Accordingly, the approval should require local contributions to be paid in accordance with Council's section 94A Plan with no offset for the riparian corridor.

6.3 Riparian buffer zone

The Council is of the opinion that the 20 metre buffer zone to Viney Creek should be increased to 40 metres.

The Commission agrees with the Department that the proposed 20 metres is sufficient for the reasons outlined in the Director-Generals Assessment Report.

6.4 Recreation Facilities

Council advised the Commission that its Draft Parkland & Recreation Strategy is currently on exhibition and therefore should be taken into consideration for this project.

The Commission notes that the concept application has been assessed by the Department and considers that it is not reasonable for the project to be unduly deferred by a strategy that is currently on public exhibition and which may be revised following this period.

The Commission considers that it is more appropriate to determine the nature and extent of information required at the development application stage at which time the Draft Parkland & Recreation Strategy may have been finalised and adopted by Council.

6.5 Mine Subsidence

Parts of the development site are underlain by coal mine workings. The Department has recommended that geotechnical investigations be carried out to demonstrate that any risk of mine subsidence has been removed as appropriate to ensure the intended use of the land is achievable.

Council agrees but has raised concern that the proposed condition does not clearly identify which land is to be the study of investigations.

The Commission has clarified the condition to ensure that geotechnical investigations and works are required to be carried out on the relevant land prior to issuing a subdivision certificate.

6.6 Visual Impacts

The Council raises concern with the 10 metre visual landscape buffer to the northern boundary, adjacent to John Renshaw Drive indicating that Council's experience has shown similar buffers have incrementally decreased over time, primarily due to 'creep' encroachment. Council is of the opinion the buffer should be increased to 20 metres along the northern boundary fronting John Renshaw Drive.

The Commission acknowledges Council's concern and the potential for incremental degradation of the visual buffer and therefore has modified the condition to increase the northern visual buffer from 10 metres to 20 metres.

6.7 Traffic and Transportation

The Council raised concern about the level of information required by way of condition with respect to traffic and transportation issues. In particular, it considers that the road layout may develop in an inefficient and piecemeal fashion and requests that a condition of the concept approval require more detailed information to ensure a functional road network.

The Department's recommended approval requires the internal road network, including adequate provision for bicycles and pedestrian paths to be agreed with Council prior to lodgement of any subdivision application.

The Commission agrees with the Department's approach and considers that it is more appropriate to determine the nature and extent of information required at the subdivision application stage when the proposed layout of lots has been finalised by the proponent.

6.8 Water Sensitive Urban Design

The Commission notes Council's concern with the proposed dedication to it of a number of detention basins (9).

The Council is of the opinion the dedication of the water sensitive urban design features (stormwater and detention basins) will provide no public benefit and would result in a significant financial burden through the ongoing care and management of the basins especially noting the adjoining land use and the potential for pollution to occur.

The Council considers that the basins should be managed at the source by the relevant land owner/s and in this case have indicated that the basins could be managed through an appropriate community title or neighbourhood scheme.

The Commission agrees that the dedication of these basins will impose a significant and unreasonable financial burden on Council with little or no public benefit.

6.9 Social Planning & Infrastructure

The Council raised concern with the perceived lack of social planning and provision of infrastructure. The Commission consider that the Department has adequately considered these aspects of the project and applied the appropriate conditions.

6.10 Other Matters

The Council is of the opinion that the proposed offset of Tank Paddock is 'double dipping' when considered with the recent Minmi project approval. The former Department of Environment, Climate Change & Water (DECCW) reviewed the proposed offset strategy for both of these proposals stating the offset lands at Tank Paddock and (part of) Stockrington would be adequate 'like for like' offsets consistent with the DECC's offset principles identified in the Lower Hunter Regional Conservation Plan. The Commission therefore is satisfied that this concern has been adequately addressed.

The Commission is satisfied that the conditions as recommended by the Department are appropriate regarding noise and air quality, subject to clarification. For other issues of concern to the Council including vegetation and conservation issues, the Commission considers these are more appropriately matters for future applications.

7. Commission's Determination

The Commission has carefully considered the Director-General's Environmental Assessment Report and recommendations, as well as the submissions received including the comments provided by Newcastle City Council, and the proposal has been considered in its context. The Commission notes that the concept plan is generally consistent with the objectives of the LEP zonings and the *Newcastle – Lake Macquarie Western Corridor Planning Strategy*.

The Commission accepts the recommendations of the Assessment Report subject to the following further modifications to address Council concerns –

- The riparian corridor and the detention basins should be retained and managed by the landowners and not used to offset s94A contributions;
- The visual landscape buffer to the northern boundary should be increased from 10 metres to 20 metres; and

- Clarification of a number of conditions including requirements relating to revision of the Urban Design Guidelines, the contents of the public transport, cycleway and pedestrian network plan and the contents of the construction management plan.

The Commission has determined that approval be granted to the Concept Plan application subject to the modifications and requirements as contained in the attached *Instrument of Approval*.

A handwritten signature in black ink, appearing to read 'Richard Thorp'.

Richard Thorp
Member of the Commission

A handwritten signature in black ink, appearing to read 'Donna Campbell'.

Donna Campbell
Member of the Commission