

Wollongong Local Planning Panel Assessment Report | 19 November 2020

WLPP No.	Item 3
DA No.	DA-2020/1033
Proposal	Industrial - installation of a container dome storage and Signage - advertisement - one (1)
Property	Lot 101 DP 737118 - Lot 101 Lawrence Hargrave Drive, HELENSBURGH
Applicant	Plannex Environmental Planning
Responsible Team	Development Assessment and Certification - City Wide Team (JP)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel - Determination

The proposal has been referred to the Local Planning Panel for determination pursuant to part 2(b) of Schedule 2 of the Local Planning Panels Direction as the application is the subject of 10 or more unique submissions by way of objection.

Proposal

The installation of a domed structure between two shipping containers for use as storage, being works ancillary to the existing concrete batching plant, and one sign.

Permissibility

The proposal is ancillary to the existing approved *general industry* (concrete batching plant), which may be considered under existing use provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

Consultation

The proposal was exhibited in accordance with the Community Participation Plan 2019 and notified between the 28 September and 12 October 2020. Twenty submissions were received during this period. The submissions received are discussed at section 1.5 of the assessment report.

Main Issues

The main issues noted in the submissions are:

- Use prohibited within the E3 Zone
- Use as a bus depot without consent
- Impact on the environment
- Bushfire impacts
- Impact on surrounding land uses

RECOMMENDATION

Development Application DA-2020/1033 be approved subject to the conditions contained in Attachment 3.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

SEPP No. 55 – Remediation of Land

SEPP No. 64 – Advertising and Signage

SEPP (Koala Habitat Protection) 2019

Local Environmental Planning Policies:

Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

Wollongong Development Control Plan (WDCP) 2009

Other policies

Wollongong City-Wide Development Contributions Plan (2019)

Wollongong Community Participation Plan 2019.

1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal comprises the installation of a container storage dome structure in the south-eastern corner of the subject site. The structure consists of a pair of 40 foot (12m) metal shipping containers placed 12.2m apart and parallel to each other, with a curved metal roof frame erected between the two.

The use of the structure shall be for the storage of mobile plant, spare parts for the existing batching plant; plant and equipment associated with the existing concrete batching plant, concrete moulds and associated componentry.

No change to the existing operation is otherwise proposed.

The proposal also includes a business identification sign associated with the existing use of the site.

1.3 BACKGROUND

The development history of the site is as follows:

Application No.	Description	Decision	Decision Date
DA-1986/275	Subdivision - 2 Lots	Approved	25/7/1986
DA-1987/483	Concrete Batching Plant	Approved	23/2/1988
BA-1988/2679	Concrete Batching Plant	Approved	20/12/1988
DA-1993/436	Additional Cement Silo And Wash Out Bin	Approved	25/8/1993
BA-1993/1286	Proposed New Cement Silo	Approved	9/9/1993

DA-1987/483/B	Concrete Batching Plant	Approved	11/2/1998
MP-2007/103	The proposal involves the drilling of approximately 20 exploratory wells to a depth of 50m below the base of the Illawarra Coal Measures to test goaf gas from abandoned mine workings and to determine the gas potential in un-mined coal seams	None	28/5/2009
MP-2007/103/A	The proposal involves the drilling of approximately 20 exploratory wells to a depth of 50m below the base of the Illawarra Coal Measures to test goaf gas from abandoned mine workings and to determine the gas potential in un-mined coal seams - Modification proposed extra gas exploration borehole A119 off Darkes Forest Road - revised Environmental Assessment dated December 2010	None	13/12/2010
MP-2007/103/B	Apex Energy Gas Exploration Project. Modification request for minor changes to the conditions of approval to allow an additional three years to complete the drilling of its approved exploration boreholes.	None	01/11/2012

No pre-lodgement was held for the proposal.

Customer service actions:

There are no outstanding customer service requests, nor any historical requests that would preclude the development.

1.4 SITE DESCRIPTION

The site is located at Lot 101 Lawrence Hargrave Drive, HELENSBURGH, and the title reference is Lot 101 DP 737118. The subject site is a rectangular-shaped allotment of land situated on the western side of Baines Place at Helensburgh. The area is characterised by a variety of land uses ranging from residential to tourist-related, industrial and agricultural.

Property constraints

Council records identify the land as being impacted by the following constraints:

- Bushfire prone land (100m buffer)
- Flood affected (levels undetermined)
- Ecologically sensitive land (part)



Figure 1: Aerial photograph

1.5 SUBMISSIONS

The proposal was exhibited in accordance with the Wollongong Participation Plan 2019 and notified between the 28 September and 12 October 2020. Twenty unique submissions were received during this period. The issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. Incorrect address/Location unclear	Noted. References to both 5 Baines Place in the submission and Lot 101 Lawrence Hargrave Drive may have caused confusion; however the application was notified with the correct address and Lot and DP.
2. Zoned E3 - use is prohibited	Noted; however the application has been made using the existing use rights provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment Regulation 2000</i> as discussed further below under Section 2.2.4.
3. Existing use rights do not apply/not appropriate	Noted. Council considers that the proposed structure and use is intended to be ancillary to the existing approved concrete batching plant. Council concurs with the permissibility of the proposal under existing use rights provisions
4. Buses parked on site/ Use as bus depot/related traffic generation	Noted. This use is not consistent with any consent on the site, and not likely to be supported with the current zoning. The proposal is for storage which is ancillary to the existing concrete batching plant. This matter has been referred to Council's

	Regulation and Enforcement section for further investigation.
5. Impact on riparian corridor/headwaters of Hacking River/Protection of National Park	The application does not propose any change to existing operations. The application was referred to Council's Environment section, which supported the application on the basis of its stated purpose (storage ancillary to existing use) and recommended appropriate conditions of consent. The proposal is not expected to adversely impact on the environmental qualities of the surrounding area.
6. Noise generation	No change to existing operations proposed as part of this application.
7. Impact on Symbio Wildlife Park	The application does not propose any change to existing operations. The application was referred to Council's Environment section, which recommended appropriated conditions of consent. The proposal is not expected to adversely impact on the operations of the adjoining wildlife park.
8. Spilling/ leaching of chemicals or waste	The application does not propose any change to existing operations. The application was referred to Council's Environment section, which recommended appropriated conditions of consent, including bunding.
9. Bushfire risk is high/ assessment is incorrect	Noted. The application was assessed by the NSW Rural Fire Service and found to be satisfactory subject to conditions of consent.
10. Removal of vegetation prior to submission of DA	While it is acknowledged that gravel has recently been applied to the proposed location of the structure, historic aerial photography indicates that this part of the site is highly disturbed, and any vegetation was recent regrowth.
11. Impact on threatened species	The application does not propose any change to existing operations. The application was referred to Council's Environment section, which recommended appropriated conditions of consent. The proposal is not expected to adversely impact on threatened species.
12. Expansion of carparking requirements	The application does not propose any change to existing operations. Nevertheless, the application has acknowledged the current carparking requirements which are based on floor area. Council considers that sufficient parking is provided on site.

13. Use of/ need for structure not clear							Council considers that the justification provided, being that the proposed structure is to be used for storage associated with the existing concrete batching plant, is reasonable. Consent will only be given for the use identified in the application. Given the temporary nature of the structure, Council will propose a two-year restricted consent period for any consent issued, which may be extended in the future.							
14 Expanding existing uses creates dangerous precedent							The application of existing use rights and their proposed expansions are regulated by the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment Regulation 2000</i> . Each proposal is assessed on its merits, and in this instance the application meets the relevant tests.							
Matter	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Submissions	5	18	8	10	7	3	8	3	11	2	6	1	2	1

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Council's Environment Officer has reviewed the application submission and provided a satisfactory referral response subject to conditions.

1.6.2 EXTERNAL CONSULTATION

The proposal involves construction within bushfire prone land. The application was referred to the Rural Fire Service, which provided a satisfactory referral, subject to conditions.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment. No vegetation is proposed to be removed to facilitate this development. Entry into the Biodiversity Offsets Scheme is not triggered.

2.1 SECTION 4.14 CONSULTATION AND DEVELOPMENT CONSENT—CERTAIN BUSH FIRE PRONE LAND

The proposal involves construction within bushfire prone land. The application was referred to the Rural Fire Service, which provided a satisfactory referral, subject to conditions. With these conditions, the proposal is considered to conform to the specifications and requirements of the Planning for Bushfire Protection 2019. As such the application is considered to be satisfactory in this regard.

2.2 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.2.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

7 Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it 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 to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The proposal is for storage containers and will not involve a change of use. There are no major earthworks proposed and the proposal does not comprise a change of use. The subject lot is not considered potentially contaminated and is considered suitable for the proposed use. Therefore, the requirements of clause 7 are considered satisfied.

2.2.2 STATE ENVIRONMENTAL PLANNING POLICY NO. 64 – ADVERTISING AND SIGNAGE

The proposed business identification sign is considered to be satisfactory with regard to the aims of this policy and the assessment criteria in Schedule 1 as follows:

1 Character of the area

Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?

Y

Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?

Y

2 Special areas

Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?

N

3 Views and vistas

Does the proposal obscure or compromise important views?

N

Does the proposal dominate the skyline and reduce the quality of vistas?

N

Does the proposal respect the viewing rights of other advertisers?

Y

4 Streetscape, setting or landscape

Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?

Y

Does the proposal contribute to the visual interest of the streetscape, setting or landscape?

Y

Does the proposal reduce clutter by rationalising and simplifying existing advertising?

NA

Does the proposal screen unsightliness?

NA

Does the proposal protrude above buildings, structures or tree canopies in the area or locality?

N

Does the proposal require ongoing vegetation management?

N

5 Site and building

Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?

Y

Does the proposal respect important features of the site or building, or both?

Y

Does the proposal show innovation and imagination in its relationship to the site or building, or both?

Y

6 Associated devices and logos with advertisements and advertising structures

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?

NA

7 Illumination

Would illumination result in unacceptable glare?

N

Would illumination affect safety for pedestrians, vehicles or aircraft?

N

Would illumination detract from the amenity of any residence or other form of accommodation?

N

Can the intensity of the illumination be adjusted, if necessary?

NA

Is the illumination subject to a curfew?

NA

8 Safety

Would the proposal reduce the safety for any public road?

N

Would the proposal reduce the safety for pedestrians or bicyclists?

N

Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?

N

2.2.3 STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2019

The City of Wollongong is identified within Schedule 1 as land to which this Policy applies. Wollongong is located within the South Coast Koala Management Area. The site is partially mapped on the Koala Development map. However, the development is located just outside of the mapped areas. Further, the proposal does not involve the removal of or impact on any native vegetation.

2.2.4 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 1 Preliminary

Clause 1.4 Definitions

industry means any of the following –

(a) general industry,

(b) heavy industry,

(c) light industry,

but does not include –

(d) rural industry, or

(e) extractive industry, or

(f) mining.

general industry means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.

industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned E3 Environmental Management Zone as demonstrated by Figure 2 below.



Figure 2: WLEP 2009 zoning map

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.

The proposal is satisfactory with regard to the above objectives, if considered in relation to existing use rights provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

The land use table permits the following uses in the zone.

Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Community facilities; Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Farm stay accommodation; Forestry; Home-based child care; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Roads; Secondary dwellings; Tank-based aquaculture.

The proposal is categorised as **general industry** as defined above and is prohibited in the zone. The proposal relies on existing use rights provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* (see discussion of existing use rights below).

Existing Use Rights

The applicant has provided the following argument in support of the proposal under 'existing use rights' pursuant to the relevant provisions of as follows:

At the time of the 1988 consent the land was zoned 1(b) Rural 'B' under the provisions of Wollongong Local Environmental Plan No.38 (WLEP 38) and the use of the site as a concrete batching plant was an additional permitted use on the land pursuant to Schedule 8, having been inserted by Wollongong Local Environmental Plan No.62. Subsequent to the granting of development consent, Wollongong Local Environmental Plan 1990 was gazetted on 28th December 1990 and zoned the land 7(d) Hacking River Environmental Protection Zone, having the effect of prohibiting the concrete batching plant. In 1993 consent was granted for an additional cement silo and a wash out bin (D93/436). As the development proposal would have

been prohibited in the 7(d) zone at the time, Council's consent would have been issued based on the acceptance of "existing use rights".

Section 4.66 of the EP&A Act allows an existing use to continue to operate, provided that use is not abandoned. Section 4.66(3) states that a use is presumed to be abandoned if it ceases to be so used for a continuous period of twelve (12) months [extended to three (3) years during the period 25th March 2020 to 25th March 2022]. Sub-section 4.67(1) of the EP&A Act enables the Regulation to make provisions with regard to existing uses, including provisions relating to "the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use" and provisions relating to "the enlargement or expansion or intensification of an existing use".

Clause 41 of the Environmental Planning and Assessment Regulation, 2000 enables an "existing use" to:-

- (a) be enlarged, expanded or intensified, or*
- (b) be altered or extended, or*
- (c) be rebuilt, or*
- (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
- (e) if it is a commercial use – be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
- (f) if it is a light industrial use – be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*

In terms of items (a), (b) and (c) above, the Regulations stipulate that any such works can only be undertaken with development consent; must be for the existing use and for no other use; and, must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

Clause 42 of the Regulations specifies that development consent is required for any enlargement, expansion and intensification of an existing use. Furthermore, subclause 42(2) states that any such enlargement, expansion or intensification:-

- (a) must be for the existing use of the building or work and for no other use, and*
- (b) must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

With regard to the matters raised in clause 42 the following is noted:-

- The proposed shelter structure is ancillary to, and will be used in connection with, the existing concrete batching plant. As evidenced in this report, the concrete batching plant is the use to which the "existing use rights" apply.*
- The proposed shelter structure is to be erected upon Lot 101 DP 737118, which is the land to which the "existing use rights" apply.*

Having regard to the history of the development of the subject site for the purposes of a concrete batching plant, which commenced with the granting of the original development consent in 1988 and included a subsequent development consent issued in 1993 on the basis of "existing use rights", it is apparent that "existing use rights" continue to apply to the subject site and concrete batching plant. The proposed development is for the erection of a structure to be used for purposes ancillary to the concrete batching plant and is consistent with the provisions of clauses 41 and 43 of the Regulation.

Comment: Given that the proposed structure and use is intended to be ancillary to the existing approved concrete batching plant, Council concurs with the above assessment. Council records indicate that the statements with respect previous planning instruments and issued consents are accurate and Council concurs that the batching plant enjoys existing use rights. Council agrees that the proposal satisfies the regulations with respect to the enlarging of the use.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed maximum building height of 5.9m does not exceed the maximum of 9m permitted for the site.

Clause 4.4 Floor space ratio

Not applicable.

Part 5 Miscellaneous provisions

Not applicable

Part 6 Urban release areas

Not applicable

Part 7 Local provisions – general

Clause 7.2 Natural Resource Sensitivity–Biodiversity of Wollongong LEP 2009

The site is partially mapped under this clause, however all works are outside of any mapped areas. The proposal was referred to Council's Environment Officer who did not raise any concerns in this regard.

2.3 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

Not applicable.

2.4 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.4.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The development has been assessed against the relevant chapters of WDCP 2009 and compliance tables can be found at Attachment 2 to this report.

2.4.2 WOLLONGONG CITY-WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2019

The estimated cost of works is \$40,000 and a levy is not applicable under this plan as the threshold value is \$100,000.

2.5 SECTION 4.15(1)(A) (IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.6 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

Not applicable.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable.

2.7 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

There are not expected to be adverse environmental impacts on either the natural or built environments or any adverse social or economic impacts in the locality.

This is demonstrated through the following:

- The proposal is satisfactory with regard to the applicable planning controls as detailed in the body of this report.
- Submissions raised following notification would not preclude the development.
- Internal and external referrals are satisfactory subject to appropriate conditions of consent

2.8 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

Notwithstanding the E3 Environmental Zoning and given the consideration of the existing use rights provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*, the proposal is considered appropriate for the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

Notwithstanding the E3 Environmental Zoning and given the consideration of the existing use rights provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* there are no site constraints that would prevent the proposal.

2.9 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Twenty unique submissions were received and are discussed above in section 1.5.

2.10 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the history of the site, the established existing use rights and the character of the area and is therefore not considered to be contrary to public interest.

3 CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section S4.15(1) of the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, the provisions of *Wollongong Local Environmental Plan 2009* and all relevant Council DCPs, Codes and Policies. The proposal is considered acceptable with regard to the likely impacts and

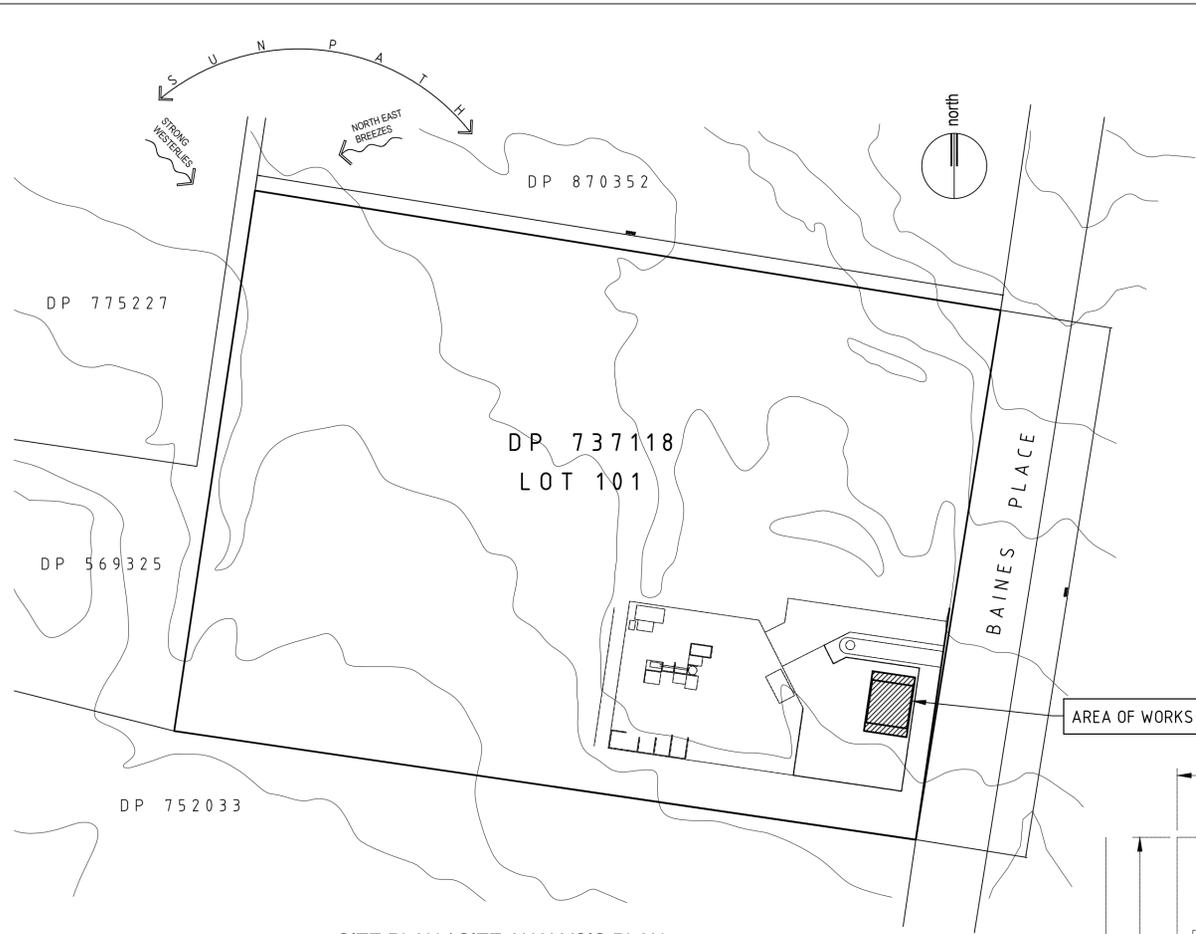
public submissions are not considered to warrant redesign or refusal. The proposal is considered supportable in its current form.

4 RECOMMENDATION

Development Application DA-2020/1033 be approved subject to the conditions contained in Attachment 3.

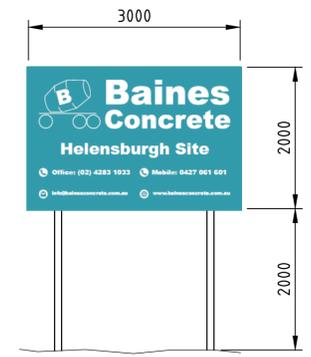
5 ATTACHMENTS

- 1 Plans
- 2 WDCP 2009 Compliance Table
- 3 Conditions

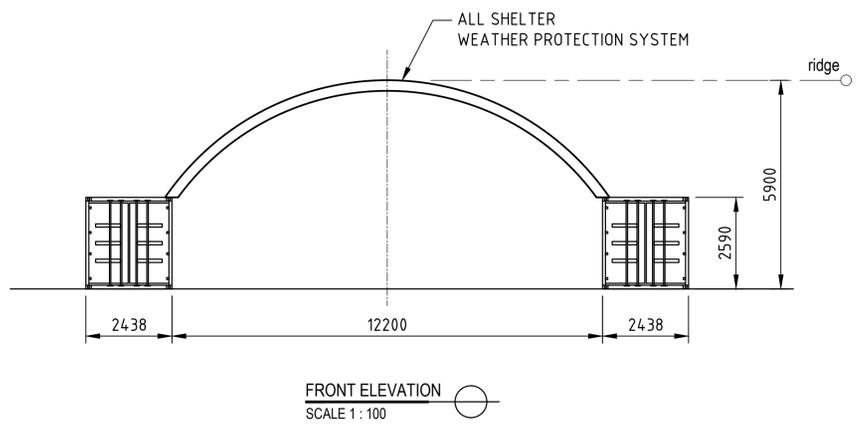


SITE PLAN / SITE ANALYSIS PLAN
SCALE 1:1000

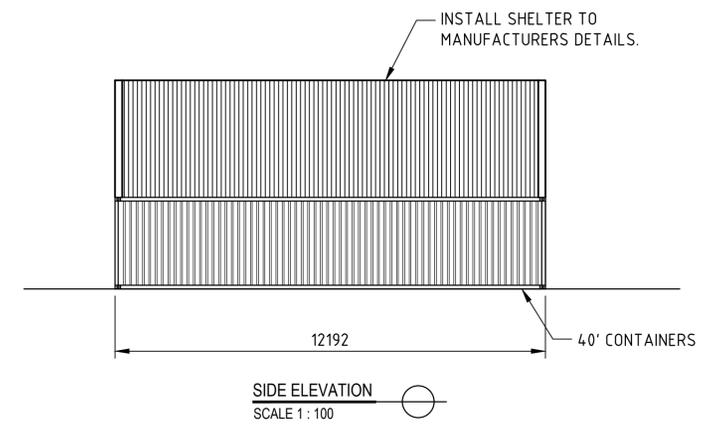
AREAS	
AREA OF LAND	32642.00 m ²
SHELTER AREA	150.00m ²



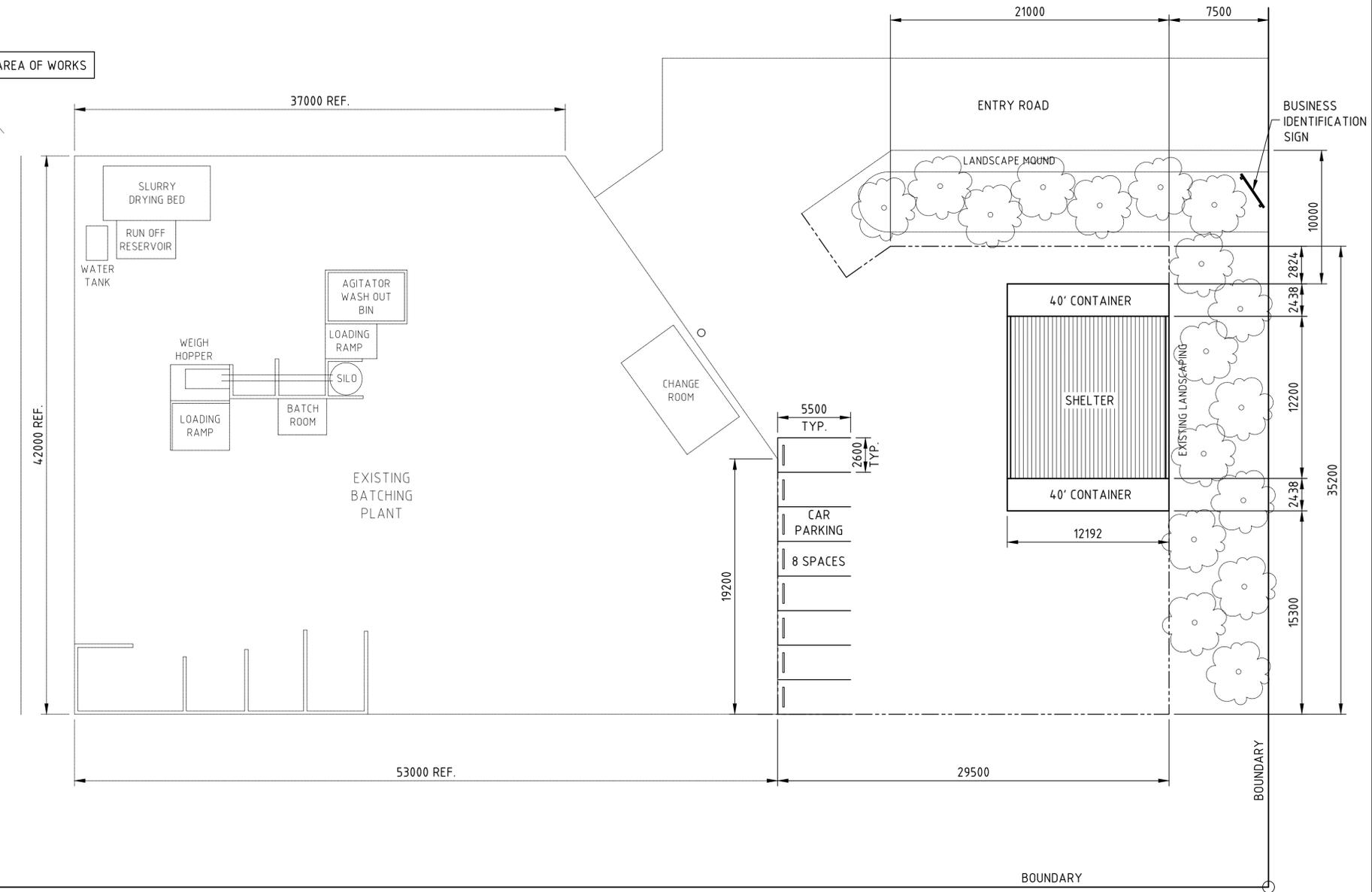
BUSINESS IDENTIFICATION SIGN
SCALE 1:50



FRONT ELEVATION
SCALE 1:100



SIDE ELEVATION
SCALE 1:100



SITE PLAN
SCALE 1:200

REV	DATE	DESCRIPTION	TITLE	CLIENT	DESCRIPTION	SCALE:	DRAWING NO.	rev:	A1
			PROPOSED SHELTER LOT 101 DP 737118, BAINES DRIVE HELENSBURGH, NSW	BAINES TRANSPORT	DEVELOPMENT APPLICATION SITE PLAN / SITE ANALYSIS PLAN	1:1000, 1:200, 1:100 (A1)	202006-01		
						DRAWN:	D. FOSTER		D
						DATE:	JUNE 2020		
							SHEET 1 OF 1		

Attachment 2 - WOLLONGONG DEVELOPMENT CONTROL PLAN 2009 – COMPLIANCE TABLES

CHAPTER B5 INDUSTRIAL DEVELOPMENT

This chapter is of limited applicability; however, the proposal is consistent with its objectives. The proposal is for a storage shelter, which is ancillary to the existing concrete batching plant, and is well-screened from the road. Other applicable matters are addressed in the other DCP Chapters below.

Given the temporary nature of the structure, Council proposes a two-year restricted consent period, which may be increased to five years in the future through an amendment to the consent.

CHAPTER C1 – ADVERTISING AND SIGNAGE

8 General requirements for advertising signs and structures

8.1 Advertising Signage must relate directly to lawful use of the land

Satisfactory.

8.2 Design and Location

The design of the proposed signage is considered to be compatible with the built form and the locality.

8.3 Proportion

The scale of the proposed signage is consistent with the bulk and scale of the built form and other advertising in the locality.

8.4 Colour

The colour complements the colour finish of the building and colours are limited to the advertising signs.

8.5 Illumination

None proposed.

8.6 Rationalisation of Advertising Signage

Not applicable.

8.7 Advertising Signs and Structures maintained in good repair and in a clean and tidy condition

Satisfactory.

8.8 Advertising Signs must be displayed in English Language

Satisfactory.

8.9 Advertising Signs or Structures – Public Safety

The signage does not pose any public safety risk.

9 Specific controls for advertising signs and structures

9.5 Pole or Pylon Signs

Meets requirements for pole/pylon signs except 2.6 clearance – pedestrian or vehicle access under sign never required.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

The application does not propose any change to the existing operations. Nevertheless, carparking for industrial uses under this chapter is calculated on the basis of floor area, and this results in a

requirement of 8 carparking spaces (demonstrated on the plan). Much more on-site carparking is available, but not required.

Access will not change.

CHAPTER E7: WASTE MANAGEMENT

A Site Waste Minimisation and Management Plan has been provided in accordance with this chapter. The application was referred to Council's Environment section which provided a satisfactory referral, subject to conditions.

CHAPTER E16: BUSH FIRE MANAGEMENT

The proposal involves construction within bushfire prone land. The application was referred to the Rural Fire Service, which provided a satisfactory referral, subject to conditions.

CHAPTER E17: PRESERVATION AND MANAGEMENT OF TREES AND VEGETATION

No vegetation is proposed to be removed or impacted upon to facilitate this proposal. While it is acknowledged that gravel has recently been applied to the proposed location of the structure, historic aerial photography indicates that this part of the site is highly disturbed, and any vegetation was recent regrowth.

CHAPTER E20: CONTAMINATED LAND MANAGEMENT

The proposal is for a storage structure and will not involve a change of use. There are no major earthworks proposed. The subject lot is not considered potentially contaminated and is considered suitable for the proposed use. The application was referred to Council's Environment section which provided a satisfactory referral, subject to conditions.

CHAPTER E22: SOIL EROSION AND SEDIMENT CONTROL

Conditions of consent are recommended with regard to appropriate sediment and erosion control measures to be in place during works. The application was referred to Council's Environment section which provided a satisfactory referral, subject to conditions.

Attachment 3 – Draft Conditions

Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Drawing 202006-01-D dated June 2020 prepared by D. Foster and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

- 2 **NSW Rural Fire Service (RFS)**

Pursuant to Section 4.14 of the Environmental Planning and Assessment (EP&A) Act 1979 – requirements imposed by the NSW RFS dated 16 October 2020 as attached shall form part of this Notice of Determination.

- 3 **Use for Storage**

This approval permits the use of the structure for storage of plant, equipment and materials associated with the concrete batching plant. Any other use shall be subject to separate Council approval.

- 4 **Building Work - Compliance with the Building Code of Australia**

All building work must be carried out in compliance with the provisions of the Building Code of Australia.

- 5 **Restricted Consent Period**

This development is valid for a period not exceeding two (2) years from the date shown as “endorsement date of consent” on this notice unless otherwise approved by Council. At the end of this period the development must cease and shipping containers and dome must be removed from the land.

Note: The Council may, upon receiving an application under section 4.55 of the Environmental Planning and Assessment Act 1979, prior to the lapse date of this consent extend the period in which this consent is valid.

Any application under section 4.55 of the Environmental Planning and Assessment Act should be made to Council at least four (4) months prior to the lapse date of the consent in order to allow adequate processing/assessment of the application. This application must be on the prescribed form. Any application received after the lapse date cannot be considered.

- 6 **Construction Certificate**

A Construction Certificate must be obtained from Council or a Registered Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-147 of the Environmental Planning and Assessment Regulation 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The Certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within two (2) days after the date of the determination, the plans and documentation referred to in clause 142 (2) of the Environmental Planning and Assessment Regulation 2000.

- 7 **Advertising Signage**

This consent authorises the erection of one business identification sign only as shown on the approved plan. Any additional advertising signage will require separate Council approval.

- 8 **Occupation Certificate**

An Occupation Certificate must be issued by the Principal Certifier prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifier must be satisfied

that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

Prior to the Issue of the Construction Certificate

9 **Bushfire Emergency Management and Evacuation Plan**

The applicant is to provide a Bushfire Emergency Management and Evacuation Plan prepared in accordance with the NSW RFS document: *A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan* to the Principal Certifier prior to the issue of the construction certificate.

10 **Present Plans to Sydney Water**

Approved plans must be submitted online using Sydney Water Tap, available through www.sydneywater.com.au to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

The Principal Certifier must ensure that Sydney Water has issued an approval receipt prior to the issue of a Construction Certificate.

Visit www.sydneywater.com.au or telephone 13 20 92 for further information.

11 **Bushfire Attack Level (BAL)**

The proposed shelter's construction shall comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' and section 7.5 of 'Planning for Bush Fire Protection' or the applicable version (as prescribed by the current National Construction Code) NASH Standard 'National Standard Steel Framed Construction in Bushfire Areas' as appropriate or alternatively the proposed shelters building elements must meet the construction requirements as outlined in Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' by complying with the general fire safety construction provisions of the National Construction Code (NCC).

These construction details for the proposed shelter shall be reflected on the Construction Certificate plans and supporting documentation for the endorsement of the Principal Certifier prior to the issue of the Construction Certificate.

Prior to the Commencement of Works

12 **Sign – Supervisor Contact Details**

Before commencement of any work, a sign must be erected in a prominent, visible position:

- a stating that unauthorised entry to the work site is not permitted;
- b showing the name, address and telephone number of the Principal Certifier for the work; and
- c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

13 **Asset Protection Zones**

At the commencement of building works and in perpetuity the property around the building for a distance of twenty eight [28] metres or to the lot boundary, whichever is the lesser, shall be managed as an Inner Protection Area (IPA) as outlined within Appendix 4 of 'Planning for Bush Fire Protection 2019' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

14 **Works in Road Reserve - Minor Works**

Approval, under Section 138 of the Roads Act must be obtained from Wollongong City Council's Development Engineering Team prior to any works commencing or any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of this development.

The application form for Works within the Road Reserve – Section 138 Roads Act can be found on Council's website. The form outlines the requirements to be submitted with the application, to give approval to commence works under the roads act. It is advised that all applications are submitted and fees paid, five (5) days prior to the works within the road reserve are intended to

commence. The Applicant is responsible for the restoration of all Council assets within the road reserve which are impacted by the works/occupation. Restoration must be in accordance with the following requirements:

- a All restorations are at the cost of the Applicant and must be undertaken in accordance with Council's standard document, "Specification for work within Council's Road reserve".
- b Any existing damage within the immediate work area or caused as a result of the work/occupation, must also be restored with the final works.

15 **Erosion and Sediment Control Measures**

Erosion and sedimentation control measures are to be established in accordance with the requirements of the Erosion and Sediment Control Plan.

16 **Tree Protection**

Prior to commencement of any work on the site, including any demolition, all trees not approved for removal as part of this consent that may be subjected to impacts of this approved development must be protected in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970-2009).

Tree protection zones must be established prior to the commencement of any work associated with this approved development.

No excavation, construction activity, grade changes, storage of materials stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones.

During Demolition, Excavation or Construction

17 **Impervious Bund Walls**

Impervious bunds must be constructed around any fuel, oil and chemical storage areas or alternatively, all fuels, oils and chemicals shall be stored on spill trays. The bund/storage tray volume must be large enough to contain 110% of the volume held in the largest container.

18 **Piping of Stormwater to Existing Stormwater Drainage System**

Stormwater for the land must be piped to the existing stormwater drainage system.

19 **No Adverse Run-off Impacts on Adjoining Properties**

The design and construction of the development shall ensure there are no adverse effects to adjoining properties, as a result of flood or stormwater run-off. Attention must be paid to ensure adequate protection for buildings against the ingress of surface run-off.

Allowance must be made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other property.

Prior to the Issue of the Occupation Certificate

20 **Bushfire – Compliance Certificate**

A Compliance Certificate shall accompany any Occupation Certificate for Bushfire construction works as have been completed, verifying that the development has been constructed in accordance with the relevant Bushfire Attack Level (BAL) requirements of the Development Consent and Construction Certificate.

Operational Phases of the Development/Use of the Site

21 **WorkCover Requirements - Hazardous Substances**

Any hazardous substances shall be stored in strict accordance with the requirements of the NSW WorkCover Authority.

22 **Chemicals/Fuels/Oils Storage**

Any liquid chemicals, fuels, oils and wastes shall be stored in accordance with the guidance contained in the NSW Office of Environment and Heritage's "Storing and Handling Liquids: Environmental Protection Participant's Manual" (2007) (<http://www.environment.nsw.gov.au/resources/licensing/2007210liquidsManual.pdf>) and

“Environmental Compliance Report Liquid Chemical Storage, Handling and Spill Management Part B - Review of Best Practice and Regulation” (2005) (<http://www.environment.nsw.gov.au/resources/licensing/ecrchemicalsb05590.pdf>).

23 **Spill Clean-up**

Sufficient supplies of appropriate absorbent materials shall be kept on site to recover any liquid spillage. Liquid spills shall be cleaned up using dry methods, by placing absorbent material on the spill, and sweeping or shovelling the material into a secure bin. Absorbent materials used to clean up spills shall be disposed of to an appropriately licensed waste facility.

24 **Loading/Unloading Operations/Activities**

All loading/unloading operations are to take place at all times wholly within the confines of the site or within the road reserve under an approved traffic control plan.

25 **Maintenance of Inner Protection Area**

The Inner Protection Area must be maintained, at all times as follows:

- There shall be minimal fine fuel at ground level which could be set alight by a bushfire. Leaves and vegetation debris should be removed.
- Use of non combustible ground surfaces such as gravel roads, paved areas, in-ground pools, etc is acceptable.
- Lawn areas shall be maintained low cut and clear.
- Areas under fences, fence posts, gates and trees shall be raked and kept clear of fine fuel.
- Gutters, roofs and roof gullies shall be kept free of leaves and other debris.
- Verandahs, decks, carports, etc shall not be used to store combustible materials and shall be kept free of leaves and other debris.
- Areas within courtyards shall be maintained free of leaves and other debris.
- Climbing species are avoided to walls and pergolas;
- Reticulated or bottle gas services shall be installed and maintained in accordance with AS 1596.
- Gas cylinder relief valves shall be directed away from the building and away from any hazardous materials such as firewood, etc.
- Trees may be retained within the IPA where:
 - tree canopy cover should be less than 15% at maturity;
 - trees at maturity should not touch or overhang the building;
 - lower limbs should be removed up to a height of 2m above the ground;
 - the canopy is discontinuous such that such that tree canopies should be separated by 2 to 5m;
 - they are smooth barked species or, if rough barked, shall be maintained free of decorticated bark and other ladder fuels (rough barked species are not encouraged);
 - create large discontinuities or gaps in the vegetation to slow down or break the progress of fire towards a building should be provided;
 - shrubs should not be located under trees;
 - shrubs should not form more than 10% ground cover;
 - clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
 - no part of a tree shall be closer to a power line than the distances set out in the current edition of “Planning for Bush Fire Protection”.
 - the use of local native plants with features that minimise the extent to which they contribute to the spread of bush fires is encouraged within the above constraints.



NSW RURAL FIRE SERVICE

Wollongong City Council
Locked Bag 8821
WOLLONGONG DC NSW 2500

Your reference: (CNR-13366) DA-2020/1033
Our reference: DA20201015003762-Original-1

ATTENTION: Jim Ponton
ATTENTION:

Date: Friday 16 October 2020

Dear Sir/Madam,

Development Application
s4.14 - Other - Industry
5 BAINES PL HELENSBURGH NSW 2508, 101//DP737118

I refer to your correspondence dated 12/10/2020 seeking advice regarding bush fire protection for the above Development Application in accordance with section 4.14 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

General Conditions

1.

A Bush Fire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document *A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan*. The Plan should include planning for the early relocation of occupants. Detailed plans of all Emergency Assembly Areas including "on-site" and "off-site" arrangements as stated in Australian Standard AS 3745:2010 *Planning for Emergencies in Facilities* must be displayed, and an annual (as a minimum) trial emergency evacuation is conducted.

Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

2.

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

From the commencement of building works, the property around the building must be managed as an inner protection area (IPA) for a distance of 28 metres or to the property boundary (whichever comes first), in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*.

When establishing and maintaining an IPA, the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth-barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

Construction Standards

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

3.

In recognition that the proposed development falls within the Bush Fire Attack Level (BAL) 40, The Council should ensure either:

- The proposed shelter complies with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant BAL 40 requirements of the NASH Standard - *Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.

Or

- Be satisfied that the proposed building elements meet the construction requirements outlined in Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* by complying with the general fire safety construction provisions of the *National Construction Code (NCC)*. The NSW RFS has assessed the radiant heat flux exposure affecting the structure as being greater than 29kW/sqm. Consequently, the structure should be adequately protected to prevent the likely fire spread to the structure. The NSW RFS has not assessed the proposed performance solution for compliance with BAL 40, as this is the role of the Principal Certifying Authority (PCA). In this regard, the PCA may require additional reports to demonstrate that the proposed performance solution for BAL 40 has been satisfied.

Access - Property Access

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

4.

Property access must comply with Table 7.4a of *Planning for Bush Fire Protection 2019*.

Water and Utility Services

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

5.

The provision of all new and the modification of any existing water, electricity and gas must comply with Table 7.4a of *Planning for Bush Fire Protection 2019*.

For any queries regarding this correspondence, please contact Bradley Bourke on 1300 NSW RFS.

Yours sincerely,

Martha Dotter
Team Leader, Dev. Assessment & Planning
Planning and Environment Services