

Technical Report			
TRIM Number:	PA20/699	Synergy Number:	PA20/699
Lodgement Date:	10/09/2020	DAU Date:	
Address:	Lot 805, 63 Northerly Lane, Oakford		
Proposal:	Placement of Fill		
Land Use:	'Stables'	Permissibility:	Discretionary
Owner:	Carole Indriolo		
Applicant:	As above		
Zoning:	Rural Living A	Density Code:	R2
Delegation Type:	12.1.1	Officer:	Ryan Fleming
Site Inspection:	No		
Advertising:	Yes		
Outstanding Internal Referrals:	No		
External Referrals:	No		
Within a Bushfire Prone Area:	Yes		
Part 10A, Cl. 78B of the Planning and Development (Local Planning Schemes) Regulations 2015 exempts the requirement for a BAL assessment.			

Introduction:

A planning application has been received on 10 September 2020 for proposed placement of fill at Lot 805, 63 Northerly Lane, Oakford.

The subject property is zoned 'Rural Living A' under the Shire's Town Planning Scheme No. 2 (TPS2). The applicant has advised that the fill is intended to top dress the paddocks associated with an existing equine land use. The proposal therefore falls within the 'Stables' land use which is a discretionary land use in the subject 'Rural Living A' zone, in accordance with TPS2.

The proposal is reported to Council for determination as Officers do not have delegation to determine a 'Stables' use where objections are outstanding.

This report recommends that the placement of fill as proposed be approved subject to appropriate conditions.

Background:

Existing Development

The subject site of 20,940.3m² (2.09ha) is located within a rural residential area of Oakford. The site is currently developed with a single house, stable, water tank, horse shelters, paddocks and an uncovered arena. There is an approved equine land use occurring on the site. A bridle trail and swale drain directly abuts the site to the northern boundary.

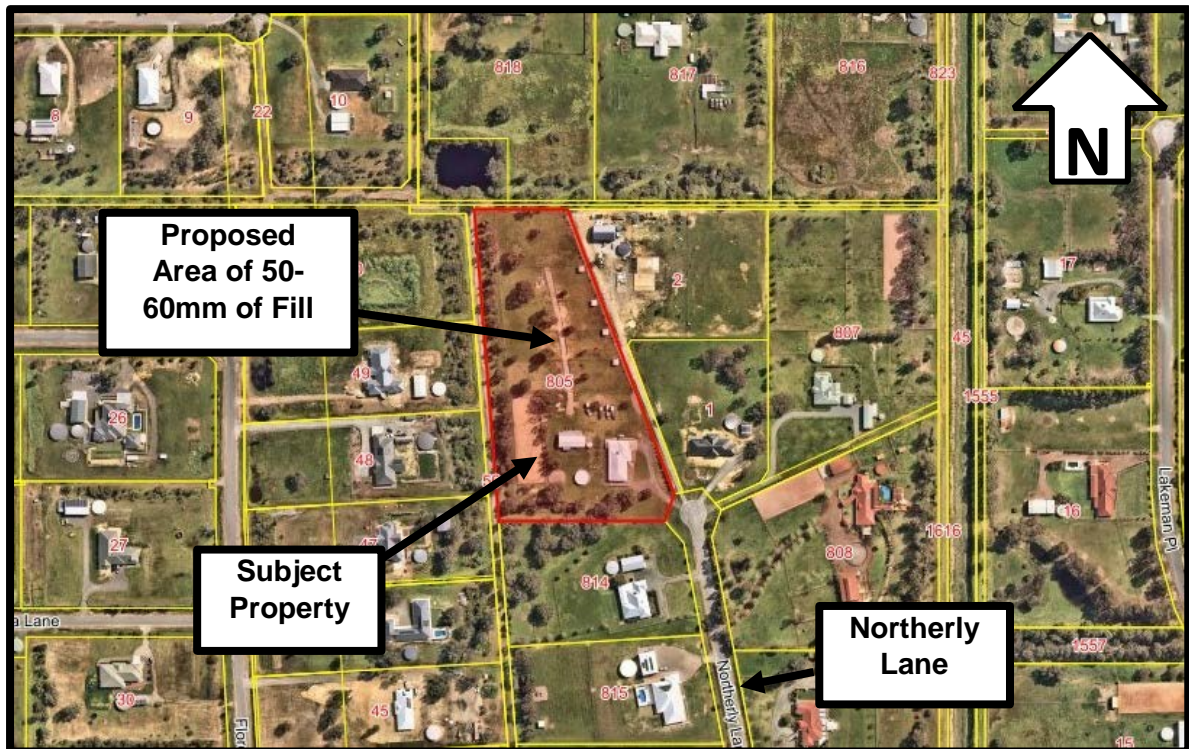


Figure 1: Aerial imagery

The general area is very low lying, mapped historically as comprising multiple use wetlands prone to waterlogging and shallow overland flooding during winter. The general locality comprises of rural living properties used predominantly for equestrian activities and rural lifestyle lots. Filling is a common feature for the development of structures, tanks, effluent disposal systems and the like to achieve separation from groundwater levels.

The subject site was created as part of a subdivision approved by the Western Australian Planning Commission (WAPC) on 9 December 2015. A condition of this subdivision approval stated as follows:

“The land being filled, stabilised, drained and/or graded as required to ensure that:

- (a) lots can accommodate their intended development, and*
- (b) finished ground levels at the boundaries of the lot(s) the subject of this approval match or otherwise coordinate with the existing and/or proposed finished ground levels of the land abutting, and*
- (c) stormwater is contained on-site, or appropriately treated and connected to the local drainage system”*

This condition was imposed to ensure that drainage is managed appropriately. Ensuring that finished levels at boundaries are coordinated with abutting land enables water flow paths to be maintained, which is very important given the fragility of the area and its risk of water management.

Proposed Development

The development application seeks approval for the placement of 50mm to 60mm of fill on the existing paddocks, associated with the approved equine land use. Full details of the proposal are contained within **attachment 1**.

The purpose of the fill is to top dress the paddocks to level the land, covering divots created from equine activities. The extent of the proposed fill is detailed in figure 2 below.



Figure 2: Extent of proposed fill

Generally fill of this type would be exempt from requiring development approval in accordance with Local Planning Policy 4.7 – Placement of Fill (LPP4.7) however as the site is located within the flood plain, development approval is required.

Community / Stakeholder Consultation

The application was advertised for a period of 21 days to the adjoining landowners to the east and south. The consultation was conducted from 2 September 2020 – 22 September 2020 in accordance with Local Planning Policy 1.4 – Public Consultation for Planning Matters (LPP1.4). During this period, one submission was received objecting to the proposed development. An additional late objection was received after the closing of the advertising period, though Officers have addressed it through the assessment. The submissions can be viewed in the summary of submissions. In summary, the objections raises the following concerns:

- No more than 10mm of top dressing should be allowed as per the policy;
- Water flow being directed into the objector's property and spoon drain; and
- A recommendation for the applicant to install a spoon drain at the north-west of the subject site.

These matters are discussed later in the report.

Department of Water and Environmental Regulation (DWER)

DWER have provided a submission stating they do not object and have provided the following recommendations and advice:

Issue

Floodplain Management

Advice

The Department provides advice and recommends guidelines for development on floodplains with the object of minimising flood risk and damage.

The Birrega and Oaklands Flood Study shows that the general area is affected by shallow overland flooding with the 1 in 100 (1%) AEP flood level estimated to be ~ 19.5 m AHD as shown on attached plan.

When development is proposed within the floodplain our department assesses each proposal based on its merits and the factors examined include depth of flooding, velocity of flow, its obstructive effects on flow, possible structural and potential flood damage, difficulty in evacuation during major floods and its regional benefit.

With regard to this proposal the following comments are provided:

- Almost the entire lot is expected to be affected by shallow overland flooding during major events with the general flow direction being south westerly (ie, from east to west at a slight angle to the Lot – similar to the hashed lines through the paddocks on P34 on information provided).
- Flood depths during 1% AEP flood are expected to be shallow, less than 0.5 m;
- Because of the shallow depths, small amounts of fill may obstruct the existing drainage flow paths and cause water to pond on the adjacent property to the east. Such an impact is evident in the photographs provided showing water ponding behind the constructed driveway in front of the dwelling under construction on the neighbouring property. This is also evident in the attached aerial photography.

It should be noted that failure to adhere to these that recommendations will result in a greater exposure to risks of flood damage.

Issue

Industry Regulation

Advice

Based on the information provided in support of the application for Development Approval, Waste Industries, Industry Regulation does not consider that the proposed 50-60mm topdressing using clean fill meets the definition of a Prescribed Premises under Schedule 1 of the *Environmental Protection Regulations 1987*; and therefore is not subject to the licensing provisions of Part V Division 4 of the *Environmental Protection Act 1986*.

However, this advice is based on the assumption that the proposed fill material (sand) meets the definition of "Clean fill" under the *Landfill Waste Classification and Waste Definitions 1996* (as amended 2019). i.e.

Clean fill means raw excavated natural material such as clay, gravel, sand, soil or rock fines that:

- (a) has been excavated or removed from the earth in areas that have not been subject to potentially contaminating land uses¹ including industrial, commercial, mining or intensive agricultural activities; and*
- (b) has not been processed except for the purposes of:
 - i. achieving desired particle size distribution; and/or*
 - ii. removing naturally occurring organic materials such as roots; and**
- (c) does not contain any acid sulfate soil; and (d) does not contain any other type of waste.*

Officer Comment:

It is acknowledged that the placement of fill on the subject site has the potential to impact on the existing drainage flow paths. Officers have therefore recommended a condition to ensure the fill is set back from the paddock fences to allow for the pre-development flow paths to be maintained.

In relation to the nature of the fill, a condition is also recommended to ensure that prior to any fill being brought onto the site, evidence of its commercial (uncontaminated and clean) source is provided to the Shire, in accordance with the Local Planning Policy.

Statutory Environment

Legislation

- *Planning and Development (Local Planning Schemes) Regulations 2015*

Local Planning Framework

- Shire of Serpentine Jarrahdale Rural Strategy Review 2013 (Strategy)
- Shire of Serpentine Jarrahdale Town Planning Scheme No.2 (TPS2)
- Shire of Serpentine Jarrahdale Draft Local Planning Scheme No.3 (LPS3)
- Local Planning Policy 1.4 – Public Consultation for Planning Matters (LPP1.4)
- Local Planning Policy 4.7 – Placement of Fill (LPP4.7)

Planning Assessment

A full technical assessment was carried out against the current planning framework in accordance with Clause 67, Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. For the purpose of this report, discussion is confined to the objections resulting in the item being presented to Council and where Council is required to exercise discretion.

Land Use

The subject property is zoned 'Rural Living A' under the Shire's Town Planning Scheme No. 2 (TPS2). The applicant has advised that the fill is intended to top dress the paddocks

associated with an existing equine land use. The proposal therefore falls within the 'Stables' land use which is a discretionary land use in the subject 'Rural Living A' zone, in accordance with TPS2.

Rural Strategy 2013 Review (Strategy)

The Shire's Rural Strategy 2013 Review (Strategy) outlines key themes that future development within rural areas should be considered against. Generally, the Strategy requires rural areas to maintain a rural character, retain natural assets and facilitate productive rural areas by ensuring the areas are economically productive. The land is located within the Rural Living policy area under the Rural Strategy. The objectives and provision of the strategy relating to this policy area seeks to preserve residential amenity while facilitating rural uses. The proposed development is considered to be acceptable in accordance with the strategy in this regard, as it is intended to facilitate the existing approved 'Stables' land use occurring on site. The proposal does not result in the removal of any natural assets and facilitates an equine use, which is rural in character.

It is important to acknowledge that the subject area is low-lying and it is common for fill to be brought to properties to facilitate development and decrease the site areas that are useable due to inundation. Officers consider the filling of the site is consistent with the purpose of the 'Rural Living A' zone by making the land more suitable for accommodating development and is therefore capable of being considered for approval.

Local Planning Scheme No.3 (LPS3):

LPS3 has been advertised, endorsed by Council and is with the Western Australian Planning Commission for final approval. As such, it is a seriously entertained document and has to be considered during the planning assessment. It is noted that the subject property is proposed to be rezoned from 'Rural Living A' to 'Rural Residential' in LPS3. The proposed placement of fill would fall within the 'Rural Pursuit/Hobby Farm' land use in LPS3, which is a discretionary land use within the 'Rural Residential' zone. Therefore, Officers consider that the proposed placement of fill would not adversely prejudice the implementation of LPS3.

Building Envelope:

The placement of fill is proposed outside of the building envelope as depicted on the subdivision guide plan. Clause 5.12.9.d) of TPS2 states, *"no building shall be constructed on a lot other than within the approved building envelope without the written approval of the Council"*.

Part 9 Clause 79 (2) of the *Planning and Development (Local Planning Schemes) Regulations 2015* identifies that a Subdivision Guide Plan is to be considered as a structure plan. Schedule 2 Part 4 clause 27 (1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* states that *"A decision-maker for an application for development approval or subdivision approval in an area that is covered by a structure plan that has been approved by the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application"*. Therefore, the building envelope should be treated as a "structure plan" and the decision maker may give due regard as opposed to being bound by it.

In this instance, the fill proposed will not result in the removal of trees, or impact nearby development by way of visual bulk. Therefore, Officers consider that there is no adverse impacts of considering the fill where it is placed outside the envelope in this instance. Furthermore, the applicant has demonstrated a reasonable need to locate it outside the envelope, being that is where the paddocks are located and they require the top dressing to increase usability within the flood prone area.

Local Planning Policy 4.7 – Placement of Fill

Given Officers consider that the land use raises no concerns, it is the scale and design of the fill which requires consideration, especially to avoid impacts on surrounding landowners. This assessment has been guided by Local Planning Policy 4.7 – Placement of Fill (LPP4.7).

LPP4.7 sets out development standards for fill in Table 1. An assessment of the proposal against Table 1 of LPP4.7 is contained within the table below:

LPP4.7 – Table 1: Development Standards Assessment			
Criteria	Result	Description	Officer Comment
Nature of Fill	Acceptable Development	Consolidated clean, coarse, clay free sand. No presence of timber or other biodegradable material. Certification of fill as clean or evidence of the commercial source.	The applicant has not yet sourced the fill however has confirmed that the fill will be clean fill. A condition is recommended to require certification of the fill or evidence of the commercial source of clean fill prior to it being brought on site.
Drainage	Acceptable Development	Fill maintains existing drainage patterns in the locality. Fill is set back a minimum of 1m from side lot boundaries and a minimum of 3m from front and rear boundaries.	Officers consider that fill with a depth of between 50-60mm is minor in nature and would not significantly impact existing drainage patterns, subject to conditions. To ensure predevelopment flows are maintained, Officers recommend a condition requiring all fill to be set back 0.5m from the internal fence paddocks. This will enable channeling of water to occur and result in maintenance of the existing east to west flow path. The setbacks would result in the fill being 4m from the nearest property boundaries to the north (rear) and east (side).
Traffic	Acceptable Development	Low/No impact on surrounding road network.	The fill proposed is of a minor scale and would have a low impact on the surrounding road network.

Environmental	Acceptable Development	Fill is set back adequately from environmental features such as watercourses and wetlands.	The subject property is not in close proximity to any environmental features such as watercourses or wetlands.
	Performance Based	Some vegetation cleared. Protection of mature trees or provision of tree replacement (landscaping plan/flora fauna survey required). Fill occurs within the dripline of existing vegetation.	No tree clearing has been proposed. Fill would occur within the dripline of trees. The key concern is that fill can reduce the amount of oxygen that can enter into the soil, effecting existing tree roots. In this case it is considered that due to the amount of fill proposed, it would not adversely impact on the existing trees in the paddocks.
Amenity	Acceptable Development	No significant impact on the natural levels or landscape character of the area taking into account cumulative impacts.	Due to the amount of fill proposed, it is not considered to result in a visible change in the landscape character or natural levels of the site.
		Dust is controlled, therefore risks to health and safety are minimal.	Once the fill has been placed on site the paddocks will be reseeded therefore the fill would not be exposed to result in dust issues.
Purpose of Fill	Acceptable Development	Fill required for the purposes of a permitted or approved land use.	The fill is associated with the existing approved 'Stable' land use.

Drainage

The concerns raised in the objections primarily relate to the potential impact the proposal will have on drainage on the properties to the east and west, and also concern over the displacement of water affecting the locality more broadly. The proposal satisfies the 'Acceptable Development' criteria of LPP4.7 by way of drainage. Nevertheless, the relevant objective of LPP4.7 is to, "*Ensure that drainage is appropriately managed*".

Given the site is located within the floodplain seasonal inundation is common within the locality. Typically, natural surface flows traverse in an east to west direction. This is depicted in the contour map (figure 3) below. Also, shown in this, is a visual depiction of where swales could be aligned to maintain such flows (shown in yellow):

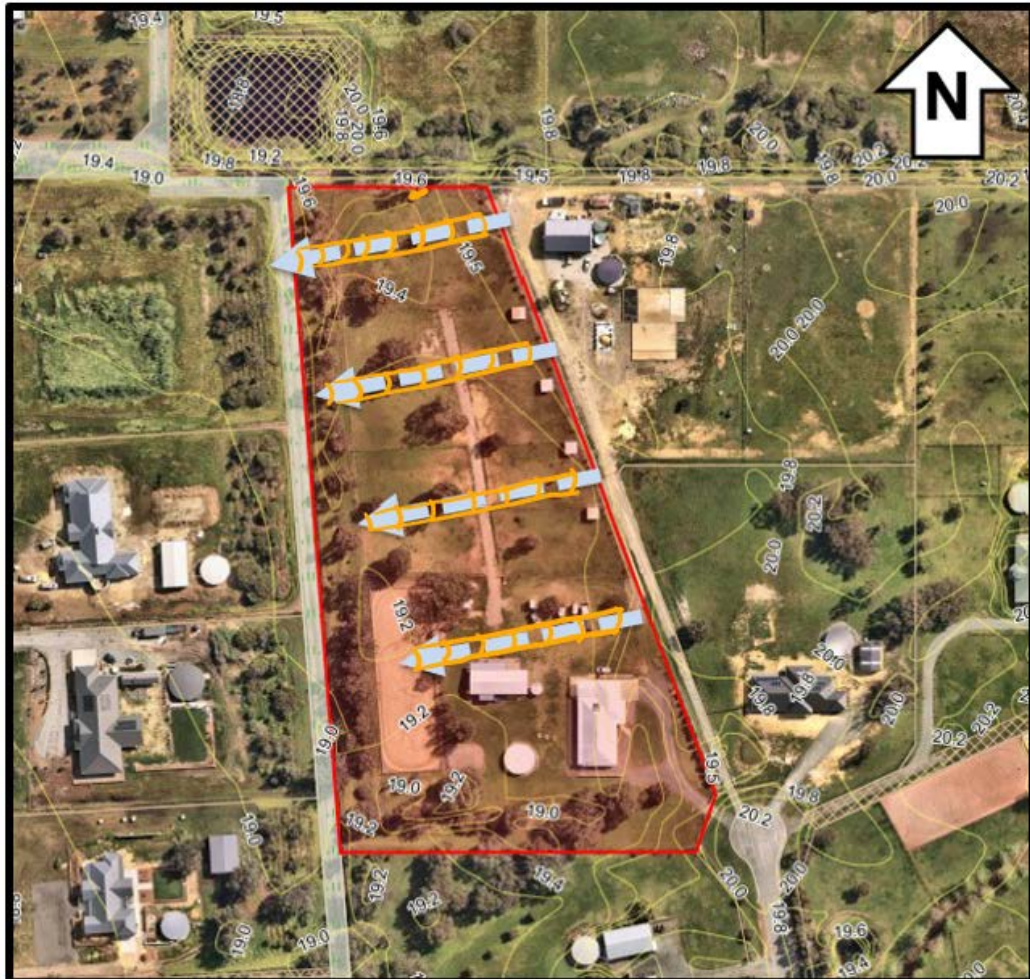


Figure 3: Contour map and natural surface flows

The eastern side of the subject site has an approximate height of 19.5 AHD while the western side is at 19.0 AHD, with a fall of 0.5m to the west side of the property. To appropriately manage drainage it is considered that the natural east to west flows should be maintained to ensure the development does not adversely impact on adjoining landowners.

The proposed height of the fill is 50mm to 60mm which is considered of a minor scale and would not alter the existing drainage pattern. It is worth noting, both the subject site and the neighbour to the east have placed fill on the firebreaks approximately 250mm to 300mm in height. These works have been dealt with separately through previous development applications. Currently, water is therefore controlled to prevent flows from the east property to the subject site, with water from the east site moving north west, where a spoon drain has been placed. Officers consider that due to this existing height of fill on the firebreaks along the property boundaries, the proposed 50mm to 60mm of fill being placed on the paddocks would not push surface flows back onto the eastern property over the firebreaks.

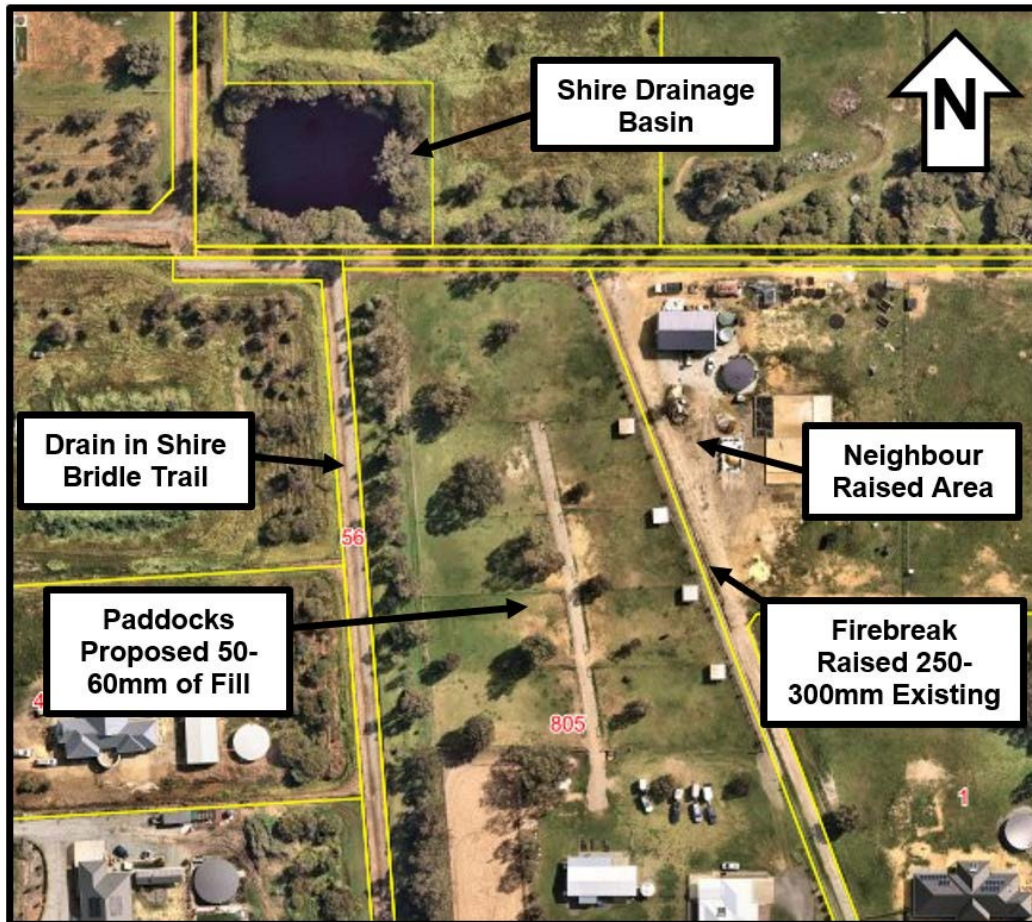


Figure 4: Existing and Proposed Fill

To ensure that predevelopment flows are maintained, Officers recommend a condition requiring that fill placed on the paddocks should be drawn back 0.5m from either side of the internal fences dividing the paddocks (seen as dashed lines in figure 2). This would encourage a channelization of water along the paddock fence lines, both helping reduce surface water on the paddocks and maintaining the east to west flows. This is nominally shaped by the swale diagram above.

In relation to the property to the west, water naturally flows in this direction however, there is a drain located in the bridle trail which separates the subject site from the property to the west. Water in this drain flows north to a drainage basin, as depicted in figure 4 above. Notwithstanding the objection, it is considered that due to the location of the drain and the amount of fill proposed, drainage patterns would be maintained and there would be no adverse impact on the adjacent property to the west.

Environmental

The proposed fill within the paddocks would extend into the dripline of approximately 11 trees and therefore, the proposal does not fall within the 'Acceptable Development' criteria of LPP4.7. To be able to support the proposal it is required to be demonstrated that the performance criteria and the objectives of the policy have been met. In this instance the relevant objectives of LPP4.7 are as follows:

- *“Ensure that the filling of land does not adversely impact on the amenity or environment of the locality in which it is being undertaken; and*
- *Minimise environmental impacts on water resources and vegetation.”*

Officers consider that there would not be an adverse impact on the health of the trees as the fill is minor in scale. The 50mm to 60mm of uncompacted fill within the dripline would not result in a significant impact on the soil oxygen exchange in the trees root zone, thereby not harming the trees. A 1m clearance from the trees trunks to the proposed fill, as recommended through a condition of approval, will ensure that there is no adverse impact to the trees. The condition is considered to ensure that the development meets both the performance criteria of the policy and the objectives.

Options and Implications:

Option 1: DAU may resolve to approve the application subject to conditions.

Option 2: DAU may resolve to refuse the application subject to reasons.

Option 1 is recommended.

Conclusion:

The application seeks approval for the placement of 50mm to 60mm of fill on the paddocks of the subject property. The application has received two objections from neighbours and this item is therefore presented to Council for determination. For the reasons outlined in the report, Officers consider that the application meets the objectives of LPP4.7 and that it would not adversely impact on the amenity of the neighbouring property by way of drainage or the environmental features on the site. It is therefore recommended that Council approve the application subject to conditions.

Attachments:

Deemed Provisions – Cl 67 Matters to be considered by local Government Land Use:

a) The aims and provisions of this Scheme and any other local planning scheme operating within the area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to TPS2 section			
b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting of approving	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to LPS3 section			

c) any approved State planning policy	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			
d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d) – None Applicable to this area from what I can determine	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			
e) any policy of the Commission	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			
f) any policy of the State	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			
g) any local planning policy for the Scheme area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to LPP4.7 section			
h) any structure plan, activity centre plan or local development plan that relates to the development	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			
i) any report of the review of the local planning scheme that has been published under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

Development:

k) the built heritage conservation of any place that is of cultural significance	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

l) the effect of the proposal on the cultural heritage significance of the area in which the development is located	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to planning assessment section			

n) the amenity of the locality including the following – I. Environmental impacts of the development II. The character of the locality III. Social impacts of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Proposal consistent with approved land use, thereby consistent with character of the locality. Conditions considered to manage environmental impacts of fill within flood plain			

o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Minor fill amount proposed, not considered to impact natural surface flows			

p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

r) the suitability of the land for the development taking into account the possible risk to human health or safety	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

s) the adequacy of – I. The proposed means of access to and egress from the site; and II. Arrangements for the loading, unloading, manoeuvring and parking of vehicles	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity off the road system in the locality and the probable effect on traffic flow and safety	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

u) the availability and adequacy for the development of the following – I. Public transport services II. Public utility services III. Storage, management and collection of waste IV. Access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities) V. Access by older people and people with disability	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
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Comment:

w) the history of the site where the development is to be located	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
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Comment:

x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
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Comment:

y) any submissions received on the application	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment: Refer to public consultation section

Za) the comments or submissions received from any authority consulted under clause 66	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
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Comment: Refer to DWER comments

Zb) any other planning consideration the local government considers appropriate	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
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Comment: