

<b>Technical Report</b>			
<b>Application No:</b>	<b>PA21/206</b>		
<b>Lodgement Date:</b>	<b>11 May 2021</b>	<b>DAU Date:</b>	
<b>Address:</b>	<b>48 Lewis Road, Serpentine</b>		
<b>Proposal:</b>	<b>Modificaitons and Additions and incidental Meditation Building</b>		
<b>Land Use:</b>	<b>Educational Establishment</b>	<b>Permissibility:</b>	<b>AA</b>
<b>Owner:</b>	<b>CENTRE FOR ATTITUDINAL HEALING INC</b>		
<b>Applicant:</b>	<b>ACTION SHEDS AUSTRALIA</b>		
<b>Zoning:</b>	<b>Rural</b>	<b>Density Code:</b>	<b>R2</b>
<b>Delegation Type:</b>	<b>12.1.1</b>	<b>Officer:</b>	
<b>Site Inspection:</b>	<b>No</b>		
<b>Advertising:</b>	<b>No</b>		
<b>Outstanding Internal Referrals:</b>	<b>No</b>		
<b>External Referrals:</b>	<b>No</b>		
<b>Within a Bushfire Prone Area:</b>	<b>Yes</b>		

## Introduction:

The purpose of this assessment is to consider a s31 request from the State Administrative Tribunal, pertaining to Council's decision on the development application for alterations and additions to the existing Educational Establishment at Lot 51, 48 Lewis Road, Serpentine.

On 16 May 2022, Council resolved to approve the development application for alterations and additions to the existing Educational Establishment subject to conditions including:

- "c. *Prior to issue of a Building Permit, a revised Bushfire Management Plan (including a verified independent peer review) must be submitted to and approved by the Council of the Shire of Serpentine Jarrahdale, addressing the following requirements:*
- i. The emergency access way being designed and upgraded at the full cost of the applicant, so that it meets a safe and trafficable standard for two way private vehicles, that can be utilised for emergency escape in the case of a fire;*
  - ii. Asset protection zones being established and maintained around all structures on the subject land;*
  - iii. Upgraded fire fighting water supply suitable for managing risk for the development being provided.*

*Once approved, the BMP must be fully implemented prior to the issue of a Building Permit, and thereafter maintained to the satisfaction of the Shire."*

The applicant requested review of the decision, specifically the condition (c), to the State Administrative Tribunal (SAT).

Following the mediation process, the applicant submitted amended plans and Council has been invited to reconsider its original decision, in light of the new proposed plans.

## Background:

### Existing Development

The subject site is currently developed as a Holistic Centre (Education Establishment) operated by the Serpentine Holistic Centre for Attitudinal Healing, which was approved by the Shire in 1986. The

operations include group workshops/group meetings provided by the Centre and also includes private bookings of the facility. The Centre features a two-bedroom cottage and a 12-room dormitory suitable for accommodating up to 50 people. The site also includes an ablution facility, barbeque area, kitchen/dining hall and other incidental buildings. The context of the site is bushfire prone.



Figure 1: Aerial View

Initial Application

The initial application sought approval for alterations and additions to the existing development. This is specific to alterations to the kitchen/dining hall, and the addition of a new meditation hall.

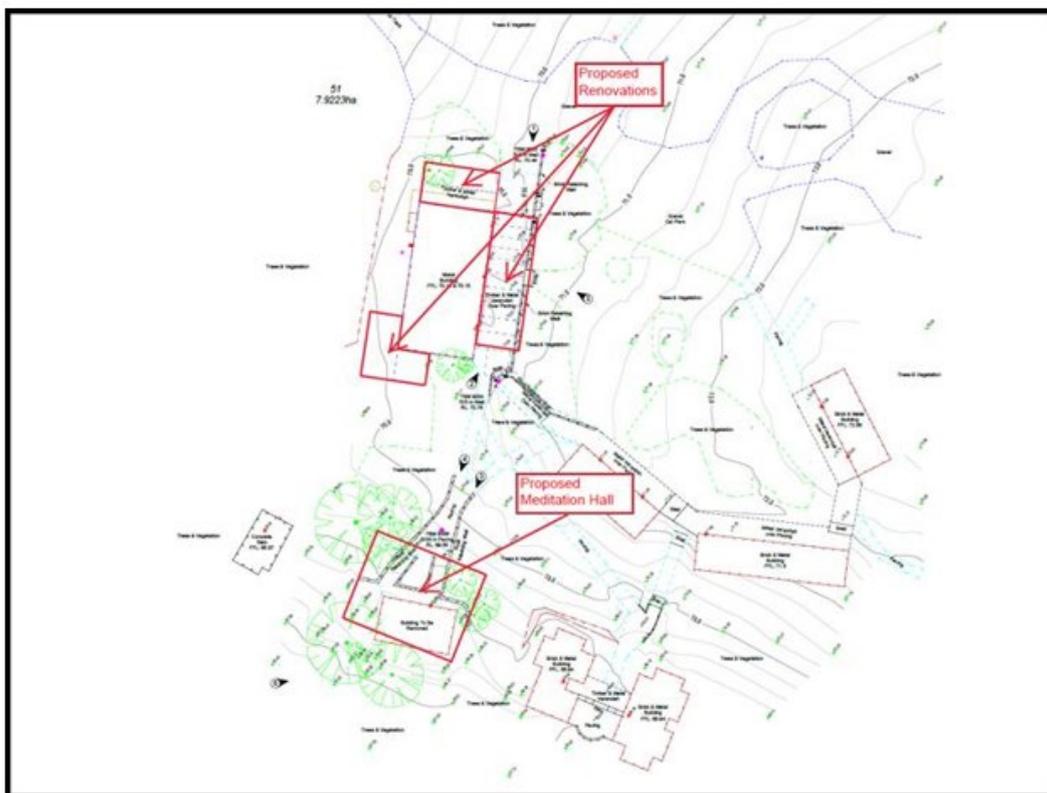


Figure 2: Site Plan

The proposed kitchen/dining hall alterations are primarily open sided awnings/verandahs, and extend the kitchen to create a pantry and service room. The proposed alterations and additions would increase the floor area of the existing building by 50.82m<sup>2</sup>.

The proposed Meditation Hall entailed the removal of an existing building to facilitate the construction of a new 9m by 6m building surrounded by a 2.5m verandah. The overall building measured 154m<sup>2</sup> with 64m<sup>2</sup> of enclosed internal space. This addition was considered to represent an intensification of the existing development.

### SAT Proceedings

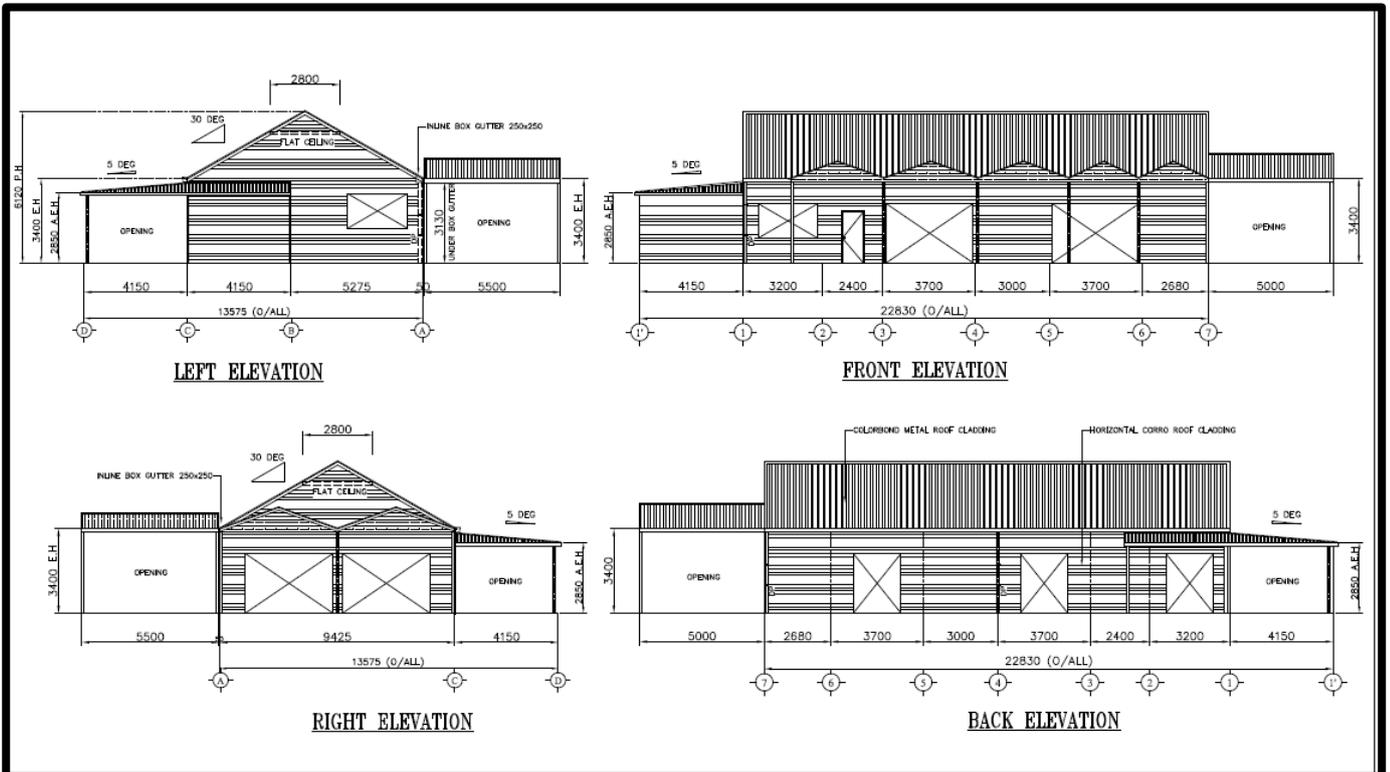
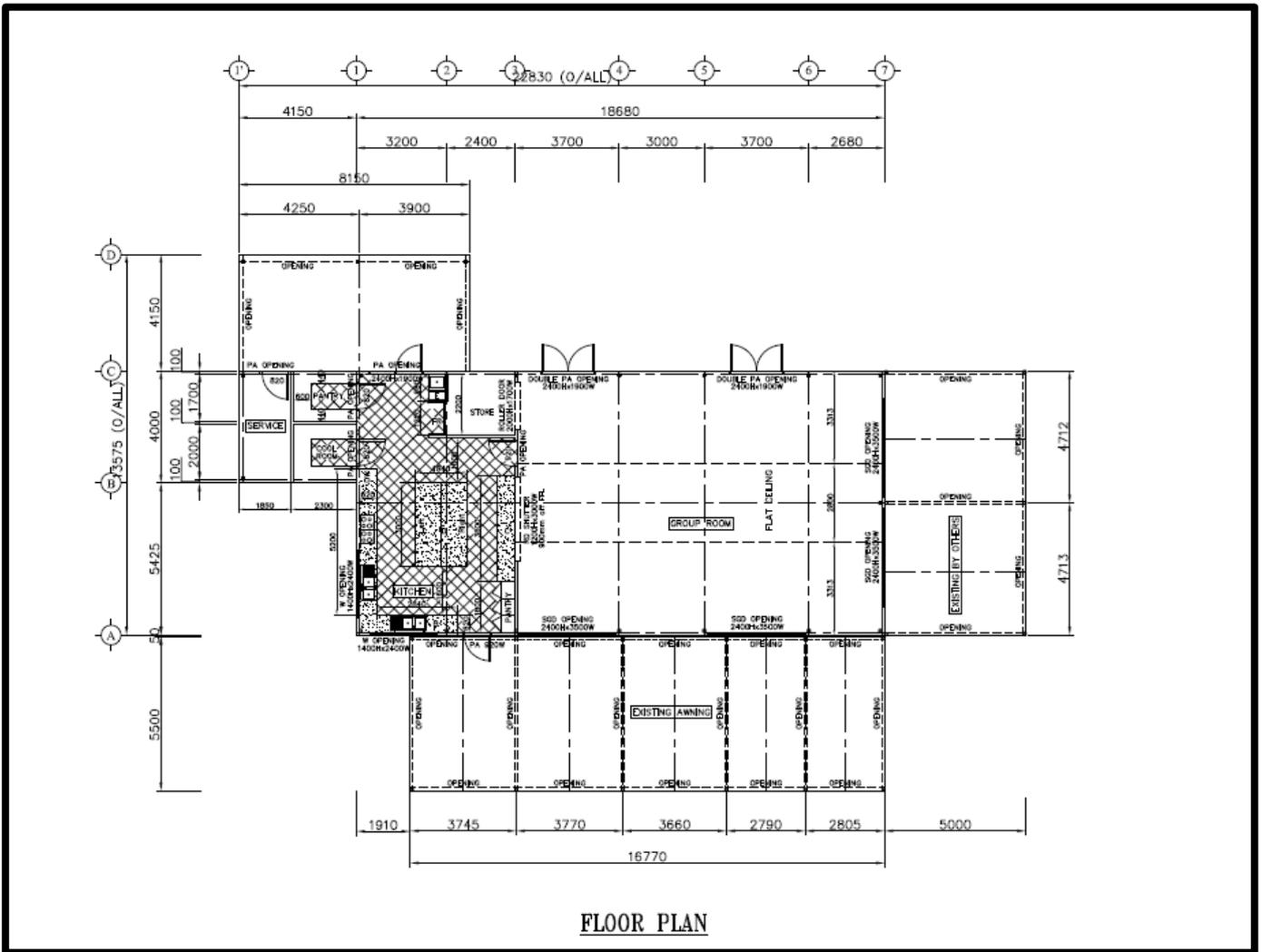
Following Council's decision, the applicant lodged an appeal with SAT in relation to the bushfire requirements imposed through Condition (c). The applicant has subsequently revised the proposal to remove the 'additions' component of the development, insofar that the meditation hall is no longer proposed. This has the effect of adjusting assessment considerations, given the alterations do not propose any increase in the intensification of the current use. The revised application before Council, solely relates to the alterations to the existing kitchen/dining hall building.

A reconsideration under Section 31(1) allows for Council to either:

- Affirm the decision;
- Vary the decision; or
- Set aside the decision and substitute a new decision.

### Revised Development

The revised development proposes alterations to the kitchen and dining hall only. The floor plan and elevations are depicted below:



The proposed kitchen/dining hall alterations remain primarily open sided awnings/verandahs, and extend the kitchen to create a pantry and service room, increasing the floor area by 50.82m<sup>2</sup>.

The applicant has provided additional information contained within detailing their justification for the amended proposal, and why Condition (c) is not relevant in their opinion, given this proposal now only entails alterations, rather than intensification of use.

### **Community / Stakeholder Consultation**

The revised proposal was not advertised to surrounding landowners as the proposal does not include any new elements that were not previously advertised.

### **Statutory Environment:**

- *Planning and Development (Local Planning Schemes) Regulations 2015*
- Metropolitan Region Scheme
- Shire of Serpentine Jarrahdale Town Planning Scheme No.2
- Local Planning Strategy
- Draft Local Planning Scheme No.3
- State Planning Policy 3.7 – Planning in Bushfire Prone Areas
- Local Planning Policy 1.4 – Public Consultation for Planning Matters Policy

### **Planning Assessment:**

#### Land Use:

The subject site is zoned 'Rural' under TPS2 and the existing development onsite has a current approval issued in 1986. That approval was for a 'Rural Use (Holistic Centre)', under Town Planning Scheme No. 1 (TPS1). The use would best fits the definition of Educational Establishment under TPS2, which is a use discretionary use in the 'Rural' zone. The application seeks to alter and extend physical works associated with the approved use. The use will continue as previously approved.

#### Draft Local Planning Scheme No.3:

Under LPS3, the proposed development would best fit within the definition of a 'Community Purpose' land use. This use relates to the provision or educational, social or recreation facilities by organisations involved in providing community benefit. The Centre for Attitudinal Healing is a not-for-profit seeking to improve mental wellbeing and provide opportunity for personal and professional growth and development. Officers consider the proposed development fits within this category, which is a discretionary use under LPS3 within the 'Rural' zone.

LPS3 also establishes some basic development standards for works within the Rural zone. The proposed works require a setback of 20m from the street and 10m from lot boundaries. The proposed development complies with these setbacks.

LPS3 also establishes new standards for vegetation protection; however, one of the exemptions relates to the implementation of a Fire Management Plan approved by the Shire. In this instance, the proposed vegetation removal is dictated by the BMP and would fit under the exempt category in LPS3.

The parking requirements under LPS3 for a Community Purpose use requires 1 bay per 4 persons accommodated at max occupancy and 1 space per employee. The application indicates the maximum occupancy of the site would not increase. As such, the existing parking is considered to be acceptable.

Officers consider the proposed development complies with the requirements of and would be consistent with Draft LPS3.

Built Form:

The proposed development seeks extensions to the existing kitchen/dining hall. The proposed development is located away from and screened from the street and neighbouring lot boundaries. Some clearing may be required, making the development more visible from the south; however, the design of the development is very low scale. The design also features a veranda around the building, providing a strong sense of rural character.

State Planning Policy 3.7 - Planning in Bushfire Prone Areas:

As previously referred, Condition (c) states as follows:-

Condition C

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*“c. Prior to issue of a Building Permit, a revised Bushfire Management Plan (including a verified independent peer review) must be submitted to and approved by the Council of the Shire of Serpentine Jarrahdale, addressing the following requirements:*

- i. The emergency access way being designed and upgraded at the full cost of the applicant, so that it meets a safe and trafficable standard for two way private vehicles, that can be utilised for emergency escape in the case of a fire;*
- ii. Asset protection zones being established and maintained around all structures on the subject land;*
- iii. Upgraded fire fighting water supply suitable for managing risk for the development being provided.*

*Once approved, the BMP must be fully implemented prior to the issue of a Building Permit, and thereafter maintained to the satisfaction of the Shire.”*

The applicant considers that the measures included in the condition are no longer relevant to this application, as SPP3.7 is not intended to be applied retrospectively. Consideration under the SPP also takes into account situations where there is no intensification of land use.

The former proposal was assessed against State Planning Policy 3.7 - Planning in Bushfire Prone Areas as the site is located within a bushfire prone area, and included an addition of intensification component, in the form of the meditation hall. This has been removed.

The new proposal remains classified as a ‘Vulnerable’ use under SPP3.7. Officers note that no intensification of the use is proposed. In giving due regard to SPP3.7 and the Guidelines, in particular Clause 2.6 of the Guidelines, this states:

*“Decision-makers can apply exemptions from the requirements of SPP 3.7 and these Guidelines where there is no intensification of land-use, and/or the proposal is not increasing the bushfire threat.”*

This section of the Guidelines further provides examples of when exemptions may be considered by a decision maker, which include:

*A development application for minor renovations, alterations, improvements or repair of a building, and incidental uses, including, but not limited to outbuildings, unenclosed swimming pools, fences, unenclosed carports and patios, and storage sheds*

It is considered that, as amended, the proposed development is minor in nature and provides a small extension to an existing building, retaining the function of the building. The proposal will not result in additional visitors to the site or intensify the development to a scale that was previously considered. Given the establishment is existing and the nature of the amended proposal, it is considered that the proposal would not adversely impact the level of bushfire safety currently afforded to the occupants/visitors of the site. Based on this, it is considered that all requirements initially imposed through Condition (c), are no longer able to be imposed.

It should be noted, however, that consistent with the Shire's Fire Hazard Reduction Notice there will be a requirement for compliance for all properties in the Shire with the Notice. This includes, inter alia, maintaining a fuel reduced zone around all buildings and assets which extends 20 metres from the outermost point of all buildings and assets.

**Conclusion:**

The application originally sought approval for alterations and additions to the existing Educational Establishment development on the subject land. As amended, the revised application now only seeks alterations to the existing kitchen/dining hall building, with no proposed increase in the intensity of the current approved development. These alterations are considered minor, and therefore the associated SPP 3.7 is not able to be applied.

Notwithstanding, in addition to the planning framework, the Shire's Fire Hazard Reduction Notice continues to impose controls specific to, inter alia, maintaining asset protection zones around all buildings.

## Deemed Provisions – CI 67 Matters to be considered by Local Government

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"/>
<b>Comment:</b>			
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 or approving	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
<b>Comment:</b>			
c) any approved State planning policy	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
<b>Comment: SPP3.7</b>			
d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d) – <i>None Applicable to this area from what I can determine</i>	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<b>Comment:</b>			
e) any policy of the Commission	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<b>Comment:</b>			
f) any policy of the State	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<b>Comment:</b>			
g) any local planning policy for the Scheme area	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<b>Comment: LPP1.4</b>			
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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			

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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			
o) the likely effect of the development on the natural environment 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"/>
<b>Comment:</b>			
p) whether adequate provision has been made for the landscaping the land to which the application relates and whether any trees or other vegetation on the land should be preserved	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			
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 checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
<b>Comment:</b>			
t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of 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"/>
<b>Comment:</b>			
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"/>
<b>Comment:</b>			

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	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			
w) the history of the site where the development is to be located	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment:</b>			
x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			
y) any submissions received on the application	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			
Za) the comments or submissions received from any authority consulted under clause 66	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: DFES submission</b>			
Zb) any other planning consideration the local government considers appropriate	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			