



Planning Assessment Report

Development Application No. 147-6-2005

1. SUMMARY

This report is an assessment of the Development Application 147-6-2005. The development application was lodged with the Department on 14 June 2005 in accordance with the *Environmental Planning and Assessment Act 1979* (the Act).

The application seeks consent for a subdivision of land on which a dwelling is already erected into 3 residential lots with construction of an access road.

The Minister for Planning is the consent authority under clause 10 (2) of State Environmental Planning Policy No. 71 – Coastal Protection.

It is recommended that the development application be **refused consent**.

2. BACKGROUND

2.1 Locality

The subject site is located on the eastern side of Cove Boulevard in the village of North Arm Cove, and adjoins North Arm Cove which is part of Port Stephens. See location plan at **Tag "D"**.

2.21 Site Context

The property is described as Lot 479 in DP 9939, No. 52 Cove Boulevard North Arm Cove, in the Great Lakes Council area. The site has an area of about 2504m², with an 18.29 metre frontage to Cove Boulevard with an average depth of 150 metres.

The site is bounded by single and two storey detached dwellings to the north and south on similar sized allotments as illustrated in the existing subdivision layout shown in the proposed subdivision plan at **Tag "B"**. Cove Boulevard is a two-way bitumen road which does not have kerb and gutter and there is no footpath located within the road reserve. An unformed lane adjoins the site to the south allowing access to the foreshore.

The site slopes from the western (road) frontage to the eastern (water) frontage with an approximate fall of 14 metres. A two storey brick and fibre cement dwelling is currently located on the site towards the eastern part of the site adjoining the bay (within the 35m Foreshore Building Line) and is to be retained under the current proposal. A concrete boat ramp and seawall are also located along the western frontage of the site which will form part of proposed Lot 3. The dwelling has a tank water supply, and effluent from the dwelling is disposed by a septic tank and on-site disposal.

The vegetation on the property consists mainly of managed understorey with mature trees scattered throughout the site.

3. THE PROPOSED DEVELOPMENT

3.1 Master plan

Under the provisions of clause 18 of SEPP 71, a Master Plan is required for the site. The applicant submits that a master plan is not necessary in this instance due to:

- the nature of the development concerned and
- the adequacy of planning controls.

A separate application (MP 34-10-2005) was lodged with the Department of Planning on 14 June 2005 requesting that the requirement for a Masterplan be waived. The proposed subdivision is of a fairly minor nature and it is considered that the preparation of a master plan for the site would not add value or achieve a better outcome than the DA process. Adequate assessment can be made of the application under the relevant development controls.

3.2 Proposed subdivision

The application seeks consent for the subdivision of Lot 479 in DP 9939, known as No 52 Cove Boulevard North Arm Cove, into 3 residential lots. The proposed lots include:

- Lot 1: 900m² located on the Cove Boulevard frontage to the west of the site (with a proposed building envelope and on-site effluent disposal),
- Lot 2: 604m² located in the centre of the site (with proposed building envelope and on-site effluent disposal); and
- Lot 3: 1000m² located on the water frontage (including the existing dwelling and existing on-site effluent disposal system) to the east of the site.

An access road is also proposed to be developed as part of this development adjacent to the southern boundary of the site in the unformed lane in order to provide access to proposed Lots 2 and 3.

Plans of the proposed development are shown at **Tag B**.

4. STATUTORY FRAMEWORK

4.1 Statement of permissibility

The subject land is zoned 2 (Village Zone) under the Great Lakes Local Environmental Plan, 1996. The proposed development is permissible in the zone subject to development consent.

4.2 Instrument of consent and other relevant planning instruments

State Environmental Planning Policy No.71 – Coastal Protection (SEPP 71) applies. The development is State Significant Development as the land is within the coastal zone and a sensitive coastal location and the proposal involves subdivision of land which will require effluent to be disposed of by means of a non-reticulated system. The Minister is the consent authority for the development.

The other environmental planning instruments applicable to the site are as follows:

- *NSW Coastal Policy 1997*
- *Hunter Regional Environmental Plan 1989*
- *Great Lakes Local Environmental Plan 1996*
- *Great Lakes DCP No. 31: Subdivision*

Assessment of the proposal against the provisions of these environmental planning instruments is outlined in **Attachment 1**.

4.3 Legislative context – Integrated Development

The proposal involves subdivision of bush fire prone land that could lawfully be used for residential purposes and accordingly is “Integrated Development” under Section 91 of the Act.

A Bushfire Safety Authority is required pursuant to Section 100B of the Rural Fires Act 1997 from the New South Wales Rural Fire Service. A Bushfire Safety Authority has been issued.

The proposal also involves the carrying out of 'works' as defined by the Roads Act 1993 and is therefore "Integrated development" under the Roads Act 1993. Accordingly, a Section 138 permit is required to be issued by Great Lakes Council pursuant to the Roads Act 1993. Council has commented on this aspect of the application. **Tag C.**

5. CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations and draft Urban Assessments Notification Policy, including:

Notifications – landowners/occupiers	37 notification letters were sent to adjoining and nearby landowners.
Newspaper advertisements	Advertised in the Forster Great Lakes Advocate on 9 November 2005.
Site notice	Erected in November 2005
Exhibition dates	Start: 10 November 2005 End: 24 November 2005
Exhibition venues	<ul style="list-style-type: none">▪ DIPNR - Sydney Office (Information Centre)▪ DIPNR – Hunter Regional Office▪ Great Lakes Shire Council▪ Tea Gardens District Office

A total of 6 submissions were received. A summary of submissions is at Attachment 2. The concerns raised in these submissions are discussed in Section 6.2 of this report.

5.2 External Referrals

5.2.1 New South Wales Rural Fire Service

The application is 'Integrated Development' under the *Rural Fires Act, 1997* and the New South Wales Rural Fire Service (RFS) has considered the application. The RFS is prepared to issue a Bush Fire Safety Authority for the proposed development subject to access complying with section 4.3.2 Planning for Bushfire Protection 2001.

The pertinent criteria in that section is for a minimum trafficable lane width of 4m with an additional 1m wide strip on each side of the road kept clear of bushes and long grass; and a passing bay about every 200m where possible.

5.2.2 Great Lakes Council

The application was referred to Great Lakes Shire Council on 1 November 2005. Council responded on 20 December 2005, objecting to the proposal. Reasons include:

- Access - any consent would be invalid before the lane is dedicated as a public road; its width is also inadequate.
- Bushfire hazard - required Asset Protection Zones encroach onto adjoining properties.
- Effluent disposal – site cannot sustain intensification of on-site effluent disposal; cumulative effect on waterway is not acceptable.

- Inadequate information – concerning flood planning levels and ecological assessment.

5.2.3 Department of Environment and Conservation

The application was referred to the Department of Environment and Conservation (DEC) for comment. DEC responded on 25 November 2005. They had no comment or issues regarding this matter.

5.3 Internal Referrals

The Hunter Region has been consulted regarding the application and made the following comments: North Arm Cove has not been identified as a development or investigation precinct. Approval of the proposal has the potential to set a precedent which may lead to unplanned expansion contrary to Council's strategic directions for the area.

6. CONSIDERATION

6.1 The Environmental Planning & Assessment Act, 1979

Section 79C – Matters for consideration

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. The matters for consideration are assessed in full at Attachment 1.

Significant issues are discussed below in Section 6.2. Submissions have been considered and issues raised are also discussed in Section 6.2.

The subject site is considered unsuitable for the proposed development. On balance, the proposed development is not considered to be in the public interest.

6.2. Issues

6.2.1 Effluent and Stormwater Disposal

Issue: Potential water quality impacts from the proposed effluent disposal system and from stormwater.

Raised by: DoP, Great Lakes Council; Objectors.

Consideration: Table 2 of the Effluent Disposal Investigation Report submitted with the application recommends a 100m buffer distance for the chosen irrigation method from permanent waters. This recommendation is consistent with that of the NSW Environmental & Health Protection Guidelines (On-site Sewage Management for Single Households – January 1998). This buffer distance cannot be accommodated on site in the proposed lot layout. Consequently, the application has not shown that there would not be adverse impact on water quality in Port Stephens waters.

An increase in pumpout on-site sewerage management systems is not supported on the site and in the surrounding area due to the high probability of effluent reaching the waterways. The proposal would be contrary to the aims of clause 15 of SEPP 71. Further subdivision and the resulting increased density of on-site disposal systems will likely result in the degradation of the surrounding environment and increase in health risks.

The proposed Ecomax mound system is approximately 10.35m x 12.8m (135sqm). This appears to utilise a large proportion of each lot. The area available for building, driveways etc is limited, particularly considering the size of dwellings currently being constructed in the area.

The proposed development of the laneway includes a v-drain and a tail out drain at the eastern end of the lane area between the end of the proposed road and North Arm Cove. There is a potential that effluent disposal from the development will contaminate surface water run-off which will reach the waters of North Arm Cove. No methods are proposed within the site to dispose of stormwater.

The proposed development is likely therefore to have a negative impact on the water quality of Port Stephens waters.

Resolution: The proposal does not satisfy the requirements of clause 15 of SEPP 71 that there should not be a negative effect on the water quality of a coastal creek or similar body of water. The proposed disposal of effluent is unsatisfactory and warrants refusal of the application.

6.2.2 Precedent and cumulative impacts

Issue: The development will set an undesirable, unplanned precedent for future development in the area. Infrastructure is limited. The cumulative impacts of similar future subdivisions could result in degradation of the environment.

Raised by: DoP, Great Lakes Council; Objectors.

Consideration: The lots adjacent to the site and situated along the eastern side of Cove Boulevard (adjoining North Arm Cove) are typically larger lots. If the proposal was approved it could set the precedent for further subdivision in the area.

Similar subdivision will also require on-site effluent as the area is not connected to a reticulated sewerage system, nor will be in the anticipated future. The cumulative negative impact on water quality in Port Stephens is considered unacceptable.

North Arm Cove has not been identified as a development or investigation precinct. There is a potential for approval of the proposal to set a precedent which may lead to unplanned expansion contrary to Council's strategic directions for the area. Objectors point to inadequate infrastructure generally, including road widths.

A previous application for a two lot subdivision of similar sized lots at No. 34 Cove Boulevard (DA 3-1-2005) was refused on 30 June 2005 as it was considered inconsistent with SEPP 71. The site could not accommodate an intensification in use with on-site disposal of effluent and the development proposal was not considered to be in the public interest.

Resolution: The proposed subdivision should be refused as the locality is not capable of accommodating an increased load of on-site effluent disposal systems and an increased density is not planned for the area. Furthermore, the proposed subdivision is out of character with the predominant subdivision pattern in this part of north Arm Cove and will set an undesirable precedent.

6.2.3 Access

Issue: No consent or rights to use the unformed laneway for access, inadequate width of the lane.

Raised by: DoP, Great Lakes Council

Consideration: The proposal depends on the development of the unformed laneway to provide access to all three proposed lots. No owner's consent has been submitted and Council considers any development consent would be invalid before the lane was dedicated as a public road. Similar situations have arisen where development applications have been refused in the Pindimar area where access has been proposed from unformed lanes that are still in private ownership. Council is currently in the process of determining ownership of this land and having many of the roads and lanes within the area of North Arm Cove dedicated as public roads however this process may take some time to formalise. The lane is also of insufficient width according to Council's subdivision standards and Planning for Bushfire Prevention 2001. If approved, it would effectively sterilise any future subdivision potential of No.54 Cove Boulevard.

Resolution: Alternative access to the lots could not be provided within the site itself. Based on the inability of the proposal to provide satisfactory access, refusal of the application is recommended.

6.2.4 Visual impacts

Issue: Views and the attraction of the area would be poorly affected.

Raised by: Objectors

Consideration: A potential loss of views from the road should be considered as the increased density of houses on the site is likely to block views currently available between the existing houses to the water. Objectors have raised the issue of a change to ambience of houses set in large vegetated lots. Views from the waterway would also be altered by an increased density of dwellings where previously it was typically low density housing with a backdrop of vegetation. Some vegetation is proposed to be removed.

Resolution: The proposal would result in the intensification of development on the site and result would result in an unacceptable impact on visual amenity when viewed from North Arm Cove Bay and also from Cove Boulevard.

6.2.5 Bushfire

Issue: Inadequate provision for bushfire hazard management on site

Raised by: Council; RFS

Consideration: Required Asset Protection Zones encroach onto adjoining properties. Any approval of the application would require a Section 88B Restriction as to user being placed on the title of the adjoining lots to ensure the APZ are maintained. APZ's should be provided on site. The RFS criterion for 4m trafficable width in the lane with the provision of a passing bay has not been met.

Resolution: The proposal would not satisfy bushfire hazard management needs for the site. APZ's should be provided on site.

6.2.6 Insufficient information

Issue: Assessment of flora and fauna and flood affectation should be more detailed.

Raised by: Great Lakes Council; Objectors

Consideration: The site is within the 1% flood prone area and within 50m of Mean High Water Mark and therefore falls within Category A of the Port Stephens Foreshore Management Plan which requires the submission of a Flood Planning Level

study. This study was not submitted with the application.

A number of trees will be removed as a result of the proposed development. A more detailed flora and fauna study is required which describes and maps the critical root zone and primary root zone of each tree and the actual drip line. This should also be accompanied by an arborist report that provides an individual tree assessment and SULE rating for each tree on the land. In this manner, a tree removal / tree retention plan / report should be prepared to explicitly define and describe the loss of habitat that would occur from the land for the subdivision and the development that it facilitates (access, services, future buildings, bushfire protection, on site effluent management etc).

Resolution: In view of the recommendation for refusal of the application on other grounds, request for additional information has not been pursued.

6.2.7 Master Plan

Issue: Master plan is required for this site

Raised by: DoP, Objectors

Consideration: Under SEPP 71 a master plan is a pre-requisite for the proposed development. The applicant has requested that the requirement be waived on the grounds of the nature of the proposed development and the adequacy of other planning controls. The proposed subdivision is of a fairly minor nature and it is considered that the preparation of a master plan for the site would not add value or achieve a better outcome than the DA process. Adequate assessment can be made of the application under the relevant development controls.

Resolution: Having regard for the circumstances of the proposal, it is recommended that the request to waive the requirement for a masterplan be approved. Refer to file 9040962 (MP 34-10-2005).

8. CONCLUSION

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act. The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is not acceptable and not in the public interest and should be determined by refusing consent.

9. RECOMMENDATION

It is recommended that the Minister for Planning pursuant to section 80(1) and 80A of the *Environmental Planning and Assessment Act 1979* (as amended) and clause 10 and clause 22 of the *State Environmental Planning Policy No.71—Coastal Protection* (as in force at the time of lodgement):

- (A) **refuse consent** to the application for the reasons set out at **Attachment A**;
- (B) authorise the Department to carry out post-determination notification.

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