



Planning Assessment Report

Development Application DA 64-3-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 64-3-2005.

The application seeks consent for subdivision of the existing lots into 4 lots for residential purposes.

The Minister for Infrastructure and Planning is consent authority under Clause 10 of State Environmental Planning Policy No.71 – Coastal Protection.

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

2 BACKGROUND

2.1 Site Context

The site is located at 1B Waterfront Road, Swan Bay in the Port Stephens local government area.

The development application was lodged with the Department on 29 March 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The village of Swan Bay comprises a line of dwellings fronting Waterfront Road, with the subject site being at the southernmost end of the road near its junction with Swan Bay Road. A site plan is at **Tag B**. The site has an area of 6.858 hectares and is flat and grassed with lot 223 having 2 Forest Redgums and lot 222 having clusters of Woollybutt Forest and Redgum open woodland. An existing brick dwelling and garage occupies the site fronting Waterfront Road and this will form part of proposed Lot 1.

A site visit was conducted by Urban Assessments on 14 July 2005. Photographs of the site are at **Tag C**.

2.2 Related Applications

The applicant has submitted 2 previous applications for the subject site, being DA 44-2-2004 and DA 19-2-2005. The first application submitted, DA 44-2-2004 related to Lot 223 only and failed to demonstrate the sites ability to manage on-site effluent treatment and disposal. This application is considered to be withdrawn. DA 19-2-2005 related to both lots 222 and 223, however provided inadequate information and failed to address the previously raised concerns of the Department. This application was returned to the applicant.

The applicant has included the adjoining site, being lot 222 in order to address Council concerns regarding inadequate site area to manage on-site effluent treatment and disposal. Each of the proposed lots now has a minimum area of 4000m² which satisfies Council's On-Site Sewage Management Strategy. See Council comments in Section 5.2.2 of this report.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

Subdivision of the existing lot in 2 stages, to create 4 residential lots with the following descriptions and areas:-

Stage 1:

- Lot 1 – 4000m² (containing the existing dwelling); and,
- Lot 2 – 4000m².

Stage 2:

- Lot 3 – 4000m², and,
- Lot 4 – 5.658 hectares (residue lot).

The proposed plan of subdivision is at **Tag D**.

3.1 *Additional Information*

The applicant has also submitted a request to waive the requirement for a Master Plan pursuant to clause 18(2) of State Environmental Planning Policy No.71 – Coastal Protection. This request is dealt with separately at the report at **Tag A1**. In short, the request to waive the requirement for a Master Plan is supported.

4 STATUTORY FRAMEWORK

4.1 *Statement of permissibility*

The site is zoned Residential 2 (a) and Rural 1 (a) under the provisions of Port Stephens Local Environmental Plan 2000 (LEP). The proposed lots 1, 2 and 3 are on land zoned 2 (a) and subdivision for a residential purpose is permissible with consent. The residual lot, being lot 4 is zoned Rural 1 (a). Clause 17 of the LEP specifies that consent for subdivision of land in zone 2 (a) with an area of least than 500m² can only be granted at the same time as consent for the associated dwelling house. The proposal satisfies this provision, with lots 1, 2 and 3 having an area in excess of 500m².

4.2 *Instrument of consent and other relevant planning instruments*

State Environmental Planning Policy No.71 – Coastal Protection applies to the application and the development is State Significant Development. The Minister is the consent authority for the development. The proposal has been considered and assessed against the aims and matters for consideration contained in the policy and the proposal generally complies with the policy.

4.3 *Legislative context*

The development is also Integrated Development under the Rural Fires Act 1997. The development is State Significant Development by virtue of State Environmental Planning Policy No.71 – Coastal Protection.

4.4 Other statutory provisions

The Hunter Regional Environmental Plan 1989 applies to the site. The plan provisions have been considered and the proposal generally complies with the plan.

Port Stephens Council Development Control Plan PS3 – Subdivision Guidelines (DCP) applies to the site, and where relevant, the proposal complies with the provisions of the DCP.

5 CONSULTATION

5.1 Public consultation

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

Notifications – landowners/occupiers	7 adjoining and nearby owners were notified of the application.
Newspaper advertisements	Not Advertised.
Site notices	NA
Exhibition dates	Start: 23 May 2005. End: 21 June 2005.
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney, ▪ Port Stephens Council, 116 Adelaide Street, Raymond Terrace, ▪ DIPNR Hunter Office, 251 Wharf Road, Newcastle.

One public submission was received regarding the Application. The submission raises concerns regarding the existing dam to the east of the site and the poor state of drainage on the site and concern over the ability and reliability of the proposed drainage easement to Swan Bay Road. Issues are considered in Section 6.2 of this report.

5.2 Referrals

5.2.1 NSW Rural Fire Service

The application was integrated and the Rural Fire Service by letter dated 4 July 2005 has issued general terms of approval for the development (see proposed conditions G1 and G2 of the Determination at **Tag A**). The response is also deemed to be a Bush Fire Safety Authority as required under Section 100B of the Rural Fires Act 1997.

5.2.2 Council

The application was referred to the Port Stephens Council on 20 May 2005. Council's Subdivision Engineer responded by letter dated 2 June 2005, which issued general terms of approval under the Roads Act 1993. Council's Planning Section responded by letter dated 20 June 2005 and raised no objections to the proposed subdivision. The Planning Section advised that the lot sizes are consistent with their On-Site Sewerage Management Strategy and the Broad Scale Study by Martens and Associates. Council also advised that the effluent disposal recommendations of the Barker Harle report forming part of the application are consistent with the Australian Standard covering effluent disposal (AS1547:2000) and the Environmental and Health Protection Guidelines. Council's recommended conditions of consent are included in the Determination at **Tag A**.

6 CONSIDERATION

6.1 *The Environmental Planning & Assessment Act*

6.1.1 *Section 79C*

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed below in Section 6.2, and, where relevant, a detailed assessment is provided as noted in the table below.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. On balance, the proposed development is considered to be in the public interest.

6.2 *Issues*

6.2.1 *Drainage*

<i>Issue:</i>	Drainage issues associated with the subdivision.
<i>Raised by:</i>	Submission.
<i>Consideration:</i>	The existing site and adjoining properties appear to suffer from poor drainage during periods of heavy rainfall, and ponding is not unusual. There is an existing drainage channel on the site but it does not connect to an external drainage system. The existing dam was also raised as a safety issue.
<i>Resolution:</i>	The applicant has proposed an inter-allotment drainage strategy that relies on an 8 metre wide drainage easement on existing Lot 222 which will transport water to Swan Bay Road and then to Council's existing stormwater drain. Council have raised no objection to the drainage proposal. Conditions have been included to ensure works are constructed according to design and connected to Council's system to their satisfaction and also subject to appropriate easements being created (see Conditions E1 and E2). All drainage works are to occur as part of stage 1 of the subdivision. The existing dam is heavily vegetated and forms part of the existing drainage system in that part of the site. Removal of the dam is not warranted and the impacts of this have not been assessed.

7 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and the Rural Fire Service, Waterways Authority who were consulted and provided general terms of approval under the Integrated Development Provisions within 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 acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 20 July 2005. The applicant responded on 21 July 2005 and advised that the draft conditions were satisfactory. The applicant also requested that the consent be structured to allow

for the staging of the subdivision, with lots 1 and 2 in stage 1 and the creation of lot 3 in stage 2. This does not raise any further assessment issues, however a draft condition has been amended to ensure that all proposed drainage works occur in stage 1 of the subdivision.

9 RECOMMENDATION

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy No.71 – Coastal Protection:

- (A) grant **consent** to the application subject to conditions (**Tag A**),
- (B) waive the requirement for a Master Plan (**Tag A1**), and
- (C) authorise the Department to carry out post-determination notification.

For Ministerial Approval

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Endorsed by

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Addendum to Planning Report

Recommendation has been amended to reflect the Instrument of Delegation dated 12 September 2005.

Recommendation

It is recommended that the Deputy-Director General, Office of Sustainable Development, Assessments and Approvals, as delegate for the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005, and pursuant to Sections 81 and 96(1A) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (tagged “A”), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

Robert Black
Director, Urban Assessments