



Planning Assessment Report

Development Application DA 78-4-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 78-4-2004.

The application seeks consent for a fourteen (14) lot rural residential subdivision plus one (1) residue allotment.

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

It is recommended that the development application be **approved** subject to conditions of consent.

2 BACKGROUND

2.1 Site Context

The site is located at Lot 4 DP 816482 and Lot 141 DP 755539 Gumma Road Macksville in the Nambucca Shire local government area (Location Plan **Tag 'B'**).

The development application was lodged with the Department on 1 April 2004 in accordance with the *Environmental Planning and Assessment Act, 1979*.

The subject site is located about 7.8km from the established centre of Macksville. That part proposed for rural residential subdivision is generally cleared of vegetation (refer to tag 'aerial photo'). The remainder of the site is generally heavily vegetated and comprises SEPP 14 Wetland No. 389. The area adjoins Warrell Creek which flows into the Nambucca River to the North.

The subdivision of Lot 4 DP 816482 and Lot 141 DP 755539 has an area of approximately 78.4 hectares. The subject land slopes in a south westerly direction and rises to about 15m AHD.

A site visit was conducted 10 June 2004.

2.2 Masterplan Waiver

On 1st April 2004, the Department of Planning received a request to waive the need for a masterplan pursuant to SEPP 71 – Coastal Protection. The application related to the proposed 14 Lot rural residential subdivision. In addition to Nambucca Shire Council, Natural Resources, Department of Environment and Conservation and NSW Rural Fire Service were notified of the application and invited to comment. All agencies advised that they have no objections to waive the need for a masterplan, or concerns raised have been suitably addressed. Under delegation of the Minister, a waiver from the requirement to prepare a masterplan for the subject land has been granted 8 August 2005.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent to subdivide the subject land into fourteen (14) rural residential allotments, one (1) residue allotment and construct an access road to service the proposed allotments. Fourteen (14) of the proposed allotments will have an area between 1

hectare and 6 hectares while the residue allotment (proposed lot 24) will have an area of 53 ha (Subdivision Plan **Tag 'B'**). It is proposed that the new allotments will be serviced by aerated wastewater treatment systems.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The subject land is zoned 1(a1) Rural Residential, 1(a2) Rural (Prime/Flooding) and 7(a) Environmental Protection Wetlands under the provisions of Nambucca Shire Council's Local Environment Plan (NLEP) 1995. The proposed development is permissible with development consent. The Minister for Planning is the consent authority under Clause 10 of State Environmental Planning Policy No 71 – Coastal Protection.

4.2 Instrument of consent and other relevant planning instruments

The proposed subdivision is located within the coastal zone, as defined in Part 1(3) of SEPP 71. Schedule 2 of SEPP 71 identifies State Significant Development. Development comprising subdivision of land within any zone into any number of lots if the future development of any lot created by the subdivision will require effluent to be disposed of by means of a non-reticulated system as identified in Schedule 2 and is therefore State Significant Development.

Pursuant to clause 10(2) of SEPP 71, the Minister for Planning is the consent authority for all development listed in Schedule 2. Accordingly, the Minister is the consent authority for this application.

The environmental planning instruments, draft environmental planning instruments, development control plans, and regulations applicable to the land to which the development application relates are as follows:

- *State Environmental Planning Policy No.71 – Coastal Protection;*
- *North Coast Regional Environmental Plan;*
- *Nambucca Local Environmental Plan 1995;*
- *Development Control Plan No 4 - Rural Subdivision Code.*

Application of these planning instruments is discussed in the Compliance Certificate (**Attachment 2**).

4.3 Legislative context

The development application was lodged with the Department on 1 April 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act). Section 79C has been considered during the assessment of the application and is discussed in Section 6 of this planning report.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations including:

Notifications landowners/occupiers	– 10 adjacent land owners were notified.
Newspaper advertisements	The application was not advertised.
Exhibition dates	Start: 21 February 2005. End: 4 March 2005.

Exhibition venues	▪ Planning Information Centre - 20 Lee Street Sydney ▪ North Coast Regional Department of Planning – Grafton Office ▪ Nambucca Shire Council
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One (1) public submission was received regarding the Application. Concerns have been raised in regards to Nambucca Shire Council exceeding their rural residential subdivision quota, the present condition of Gumma Road and the movement of heavy vehicles through the proposed development to access the quarry. These issues are discussed below in Section 6.2 of this report.

5.2 Referrals

5.2.1 NSW Rural Fire Service

The application was made for integrated development under section 100B of the *Rural Fires Act 1993*. The Rural Fire Service has granted a Bush Fire Safety Authority dated 29 June 2005 subject to general terms of approval (GTAs) for the development.

5.2.2 Nambucca Council

The application was referred to the Nambucca Shire Council on 24 June 2005. Council responded on 26 July 2005. Issues raised by Council are discussed in detail in Section 6.2 of this report.

5.2.3 Department of Planning – Grafton Office

The Department has concerns about approving a 14 rural residential subdivision plus residue lot on Gumma Road. The concerns raised by the Department dated 11 July 2005 have been addressed by the applicant matters are discussed in detail in Section 6.2 of this report.

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 (**Attachment 1**). Significant issues are discussed below in Section 6.2 of this report.

The subject site is considered to be suitable for the proposed development.

6.2 Issues

6.2.1 Asset Protection Zones, Buffers & Effluent Disposal Areas

Issue: Proposed lots 19-24 pose an issue with regard to their close proximity to the nearby SEPP 14 Wetland No. 389.

The environmental buffer zone and the APZ are shown as overlapping on proposed lots 22-24. This is not considered acceptable as the environmental zone should be separate to the APZ.

The Department considers that the effluent disposal areas should be located above the 1:100 flood level and not just the 1:20 year flood level.

Raised by: Regional Department of Planning

Consideration: The abovementioned issues are important issues relating to the proposal. The concerns were raised with the applicant and amended plans have been submitted showing a 50m wide SEPP 14 wetland buffer, no overlapping of the wetland buffer and APZ, as well as restrictions placed on the land title restricting any effluent disposal areas to be located above the 1:100 year flood line.

Resolution: These issues have been satisfactorily resolved by way of an amended Buffer and Constraints Plan dated 14 April 2005. .

6.2.2 Acid Sulphate Soils

Issue: A large portion of Lot 141 is classified as Class 2 Acid Sulphate Soils, and the portion of Lot 4 where most of the subdivision is proposed is Class 3 Acid Sulphate Soils. Given the site's proximity to the SEPP 14 Wetlands, it is considered that every care needs to be taken with any works on the occurring site.

Raised by: Nambucca Shire Council

Consideration: It is considered that care should be taken in placing restrictions on works in areas which may contain Acid Sulphate Soil to ensure no exposure of the soils to oxygen or lowering of the water table occurs as a result of any works on the subject land. Prior to any works on the site the applicant must comply with Nambucca Shire Council's DCP for Acid Sulphate Soils.

Resolution: A restrictive covenant is to be placed on the land (condition E9) to ensure that no development is permitted below the 3m AHD contour. A Acid Sulphate Soil Management Plan is to be submitted to Council prior to any works occurring on the site (condition B1).

6.2.3 Protection of SEPP 14 Wetland

Issue: The proposed subdivision appears to extend into the heavily vegetated SEPP 14 Wetlands.

Raised by: Regional Dept. of Planning

Consideration: The proponents will require a licence to clear any vegetation under the Native Vegetation Conservation Act 1997.

Resolution: A restrictive covenant is to be placed on the land (condition E4) to ensure that no development or physical activity is permitted including stormwater controls or APZ's within 50m of the SEPP 14 Wetland buffer identified on the Buffer and Constraints plan dated 14 April 2005 .

6.2.4 Gumma Road

Issue: A local objector (resident) is concerned that the present state of Gumma Road is narrow and unsafe to handle the increase in car movement as a result of the proposed 14 lot subdivision. Gumma Road should be updated and made safer before any future development is considered.

Raised by: Objector

Consideration: The proposal is for subdivision stage only.

Resolution: The current state of Gumma Road is considered to adequately manage current traffic. The Council will need to look into the state of Gumma Road at residential development application stage. The applicant will be paying S94 fees to Nambucca Council.

6.2.5 Rural Residential Subdivision Quota Exceeded

- Issue:* In Nambucca Shire Council a 5 year quota of 250 rural residential lots was imposed. Nambucca Council has now reached the limit of the quota.
- Raised by:* Department of Planning (Bridge St & Regional), Nambucca Shire Council, Objector
- Consideration:* Under the provisions of the North Coast REP and Nambucca LEP cl 16(6), Council must not approve rural residential subdivisions not in accordance with any approved strategy or, where no such strategy exists, a quota is agreed to by the Department. Council has asked for additional rural residential lots to be added to the quota until such time as Council's new Rural Residential Strategy is in place.
- Resolution:* As a compromise between the Department and Nambucca Council until such time as Council's new Rural Residential Strategy is in place a total of 50 lots has been granted to Nambucca Shire Council. This is to assist in the determination of subdivision proposals that have been affected by the exceeding of the quota lodged prior to 31 December 2004 and the rural residential subdivision lodged with the Department April 2004. (Letter attached to file dated 13 January 2006)

6.2.6 On-Site Effluent

- Issue:* The physical soil constraints means that only specific types of effluent disposal systems are acceptable and it is important that these are regularly serviced to prevent contamination on the adjoining wetlands.
- Raised by:* Department of Planning (Regional)
- Consideration:* The applicant's consultants have designed an aerated wastewater treatment system for the site which takes into consideration the soil type constraints.
- Resolution:* An Aerated Wastewater Treatment System (AWTS) is proposed for the site and has been considered satisfactory by Nambucca Shire Council. Condition B18 is imposed to allow for strict compliance with Council's codes.

7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 6 February 2006. The applicant responded on 7 March 2006 and finds the conditions consistent with the intent of the Development Application.

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 and the Rural Fire Service has 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 granted **approval**.

9 RECOMMENDATION

It is recommended Chris Wilson, Acting Deputy Director General, Office of Sustainable Development and Assessment Approvals, as delegate for the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005 pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

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

For Ministerial Approval
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