

# Proposed 33 Lot Residential Subdivision on Lots 118 & 119 DP 751258 Jamieson Road North Nowra

## Resolution of Issues Raised

The proposal has been modified and now involves the creation of 33 (Torrens Title) residential lots plus 1 lots (Lot 34), which will be dedicated to Council as road reserve (proposed North Nowra Link Road) and 1 Public Reserve lot (Riparian Zone, Lot 35) to be dedicated to Council. Our client is currently in the process of finalizing the Deed of Agreement with Shoalhaven City Council.

## NSW Rural Fire Service

1. The construction of the perimeter road system and road accessing Lots 33-36 and 38-39 in accordance with section 4.3.1 of the *Planning for Bushfire Protection 2001*.

### Comments

As a result of the amendments made to the lot layout (**Attachment 3**) Lots 33 – 36 and Lots 38-39 no longer exist in the same format. The amended layout plan has reduced the number of lots on the western side of the proposed road from 12 to 7, with the most western lot (Lot 34) being dedicated to Shoalhaven City Council for public road reserve. Therefore Lot 34 will provide a perimeter road system to the rear of proposed Lots 29 – 33.

2. The provision of Asset Protection Zones in accordance with Table A2.2 of *Planning for Bushfire Protection 2001*. It is suggested that a survey plan be provided with any future development application that clearly demonstrates the predominant slope (out to 100 metres) that will most affect fire behaviour.

### Comments

In the original plan of subdivision the majority of the APZ's were contained within Lot 41, with only a small strip of APZ's running along the eastern and southern boundary of proposed lots 11-12, 22-28 and 37-39.

As a result of the amendments made to the lot layout (**Attachment 3**), the APZ zone shown as Lot 41 in the original plan has been amalgamated with Lots 40 and 43 to encompass Lot 35, which will be dedicated to Council as riparian corridor

and ecologically sensitive land. Consequently as part of the deed of agreement Council will be responsible for the management of the APZ's on that lot.

The remaining APZ's along the southern boundaries of proposed lots 11-12 and 22-28 remains the same, with the APZ's on proposed lots 37-38 now being contained within the new Lot 33, which was created by the amalgamation of lots 35 – 38.

3. Processes for the management of any APZ located outside of individual property boundaries – a detailed Plan indicating who will be responsible for the management of the proposed Association Property under the proposed Community Title Scheme.

### Comments

With the amended lot layout, dedication of land to Council, and utilization of Torrens Title, there will be no issues associated with ownership of the APZ management.

## Department of Environment and Conservation

- **Flora & Fauna**

*1. DEC has reviewed the Draft masterplan and accompanying Fauna and Flora report by Bushfire & Environmental Services. The report has identified the presence of Yellow-bellied Glider (YBG - *Petaurus Australia*), Powerful Owl (PO - *Ninox strenua*), Grey-headed Flying fox (GFF - *Pteropus poliocephalus*) and Sooty Owl (SO - *Tyto tenebricosa*) on site, and the likely occurrence of Masked Owl (MO - *Tyto novaehollandiae*) Glossy Black-cockatoo (GBC - *Calyptorhynchus lathami*) and Giant Burrowing Frog (GBF - *Heleioporus australiacus*) in the 1.25ha proposal area. In addition, the proposal advocates the clearance of vegetation and habitat for both construction and bushfire protection purposes.*

### Comments

Whilst BES acknowledges that their report identified the presence of Yellow-bellied Glider (YBG - *Petaurus Australia*), Powerful Owl (PO - *Ninox strenua*), Grey-headed Flying fox (GFF - *Pteropus poliocephalus*) and Sooty Owl (SO - *Tyto tenebricosa*) in the study area, it should be noted that only the Grey-headed Flying-fox was recorded within the areas to be directly affected by the proposal. The

species was recorded within the north of the study area. Whilst there was evidence that the yellow-bellied Glider has previously foraged in the areas to be directly affected by the proposal, the incisions on these trees had completely grown over, indicating that the species had ceased foraging for sap from trees some time ago. No Yellow-bellied Gliders were recorded in the part of the study area despite six targeted nocturnal survey over two months.

*2. The proposal will cause the loss of 10% of available high quality Yellow-bellied Glider habitat in the Bomaderry Creek bushland. In Part (a) of the 8-part test (pg 31) the report argues that the local population of YBG may not be viable already, yet the conclusions advocate the removal of more habitat, including a significant area of known habitat containing key resources (feed trees and hollow-bearing trees), as insignificant. This is highly inconsistent. In addition, the loss of known feed trees in the western section of portion 118 is justified partly by the conclusion that they did not have fresh feeding scars. It must be noted that these trees are very close to existing development, which is likely to have compromised their suitability. Following on from this, it is naïve to suggest that retention of other identified feed trees and hollow-bearing trees in the proposed development area, particularly those in the north east of portion 118 and in portion 119, will mitigate the impact of the development on the population of this species in the area. The expansion of development in the north-east of the study area will also place additional pressure on the area to the north-east of the two lots, suggested as being the “core” area for YBG in the Bomaderry bushland area.*

### Comments

BES rejects the comments of the DEC regarding inconsistencies in their analysis of the viability of the local Yellow-bellied Glider population. BES report suggested that the local population inhabiting the Bomaderry Creek Bushland may not be viable in the long-term as the population appears to only have very tenuous habitat linkages to larger areas of Bushland nearby that support Yellow-bellied Glider populations. BES view that the proposed loss of sap trees no longer used for sap by the species and hollows unoccupied by the species during the two month survey period would not be significant is not consistent with their suggestions regarding the viability of the local population, as the vegetation to be affected would have negligible impacts on the habitat connectivity since it adjoins the North Nowra urban area.

DEC asserts that the suitability of previously used feed trees is likely to have been compromised by their proximity to existing development. BES rejects this assertion, as the Yellow-bellied Glider is known to persist in urbanized areas. BES staff members have undertaken extensive surveys for Yellow-bellied Glider in the Shoalhaven and there are numerous locations where the species continues to use sat

treess and nectar resources in very close proximity to existing development including the backyards of dwellings. Furthermore, BES has also recorded numerous sap trees with incisions that have grown over in isolated locations many kilometers from existing development. BES suggest that the abandonment of sap trees may be in response to a range of factors including changes to Yellow-bellied Gilder population dynamics and possibly changes to the physiology of individual trees that affect sap quality and/or quantity. In this context, it hardly naïve to consider that the retention of key areas of Yellow-bellied Glider habitat to the east and north, as identified by field work, would enable the species to continue to persist despite the establishment of the proposal.

*3. There appears to be no discussion of minimising disturbance to the area where the PO was observed at roost. This area is likely to also provide roosting habitat for the SO that was heard calling. This is of concern due to the fact that the bushfire APZ for lots 38 & 39 appears to extend into the identified roosting patch and comes within 30 m of the actual PO roost location. While the requirements of the APZ allow for the retention of canopy trees, the removal of the mid and under storey from this area is likely to have an impact on the suitability of the area for the PO & SO. The proposal also results in the loss of a small amount of foraging habitat for both species. Additionally, surveys for the owls were conducted outside of the breeding season.*

### **Recommendation**

- 1. In order to reduce this level of impact, modification of the development is required. At a minimum this would include the removal of lots 38 and 39 and the re-configuration of 34-37 (amalgamation into 1-2 larger lots with definite building envelopes) such that maximum tree retention is achieved and the required APZ does not extend into the ecotonal gully forest community.*

### **Comments**

DEC raises concerns regarding the proximity of the asset protection zone (APZ) to the identified Powerful Owl roost and roosting patch. The proposal has been amended as per recommendation 1 of DEC to exclude the APZ from the majority of the ecotonal gully forest vegetation in the study area. The APZ is entirely located above the escarpment. BES acknowledges that field work was not programmed during the breeding season of the Powerful Owl, but this was a conscious decision, as none of the trees with hollows in the study area were suitable for large owl breeding activities. The hollows were too small.

*4. Notwithstanding the conclusions of the consultants in the Flora and Fauna Report, the proposal as it stands may indeed have a significant impact on the local*

*population of the YBG, and the likely impact on the roosting habitat of the PO could also be assessed more thoroughly in a SIS.*

*The above discussion identifies the proposed lots in the north east of the proposed layout in particular lots 38 & 39 as those that are likely to have the greatest impact, either directly through loss of habitat, or by degradation of habitat through development and management of APZ.*

## **Comments**

DEC states that ‘ *The proposal may indeed have a significant impact on the yellow-bellied Gilder and that the likely impact on Powerful Owl roosting habitat could also be assessed more thoroughly in a Species Impact Statement*’, but 5A of the Environmental Planning and Assessment Act 1979 only requires a Species Impact Statement if the a proposal is likely to have a significant effect on threatened species or their habitats. The modified proposal (Drawing O5/125 of Watkinson Apperley) has further reduced the impacts originally assessed by BES, and further confirms the previous conclusions stated in our flora and fauna assessment report that the proposal is unlikely to have significant effect on threatened species or their habitats and that a Species Impact Statement is not required.

## ***5. Recommendation***

- 2. The removal of lots 22-28 from the subdivision layout would achieve the retention of all YBG feed trees with hollows, as well as the majority of the identified ROTAP flora species.*

BES does not believe that there is a need to amalgamate Lots 22 – 28 to reduce the impacts of the modified proposal on the Yellow-bellied Gilder and ROTAP flora species. The retention of all Yellow-bellied Gilder feed trees and other trees with hollows in the study area is not necessary for a conclusion of non-significance to be reached for the modified proposal pursuant to Section 5A of the Environmental Planning and Assessment Act 1979. The Key resources used by the local population occur to the east and north of the areas to be affected by the proposal. The impact mitigation measures included in the modified proposal, as recommended in our flora species within the asset protection zones and on the remainder of the property beyond the development footprint.

- **Aboriginal Heritage**

*The draft masterplan does not adequately consider potential impacts to Aboriginal cultural heritage values of the site. Page 23 of the plan states that there are “no issues associated with cultural heritage”, however, this statement is not substantiated with any information based on a DEC Aboriginal heritage Information System (AHIMS) database research, an archaeological assessment or contact with local Aboriginal community members.*

*DEC AHIMS records 19 known sites within a 2km radius of the proposal. In the Nth Nowra/Bomaderry area, there is a high probability for Aboriginal artefact scatters to occur on the flat country, above the gorges. There is no reason to suggest the Aboriginal objects would not be present at the site.*

### ***Recommendation***

*An Aboriginal cultural heritage survey be undertaken by a qualified archaeologist according to the DEC’s Aboriginal Cultural Heritage Standards and Guidelines kit (1997). Within these guidelines is the requirement for archaeologists to work with appropriate Aboriginal groups and for three copies of reports they prepare to be forwarded direct to the DEC’s Aboriginal Heritage Unit (Southern) PO Box 733, Queanbeyan NSW 2620.*

### **Comments**

Navin Officer Heritage Consultants Pty Ltd was engaged to conduct an Aboriginal Heritage Assessment of the subject site. The assessment of the site was conducted during December 2005. In accordance with DEC’s Aboriginal Cultural Heritage Standards and Guidelines kit (1997) the Nowra Aboriginal Land Council was represented during the field survey by their senior sites officer Mr. Sonny Simms.

Five Aboriginal sites were recorded in the Jamieson Road study area during the course of the Aboriginal Heritage Assessment. These comprise: a rock shelter with remnant Aboriginal art and potential archaeological deposit; a rock shelter with an artefact shelter scatter, Aboriginal art, and potential archaeological deposit; a previously recorded group of grinding grooves; and two isolated artifacts.

However, when comparing the location of the Aboriginal sites found during the survey with the proposed subdivision layout it was determined that only one of the Aboriginal sites (isolated artefact – 27 x 21 x 6 mm dark brown chalcedony

broken flake) is located within the boundaries of the subdivision. Navin Officer recommended that an application be made to the Director-general of DEC for a combined section 87 and section 90 permit to destroy either destroy the artifact or re-position the surface artefact away from the development area, if requested by the Aboriginal Community.

- ***Conservation Reserve***

*The proposal directly neighbours Bomaderry Creek Regional Park, managed by DEC. Bomaderry Creek Regional Park was gazetted to protect a number of threatened plant species (including the endangered Bomaderry Zieria (Zieria baeuerlenii) and to provide recreational opportunities in an urban setting.*

***Recommendation***

*To reduce impacts on the Regional Park, DEC recommends the following issues be incorporated in any management, landscape, construction and/or operational plans for the proposal:*

- 1. Adequate storm water management*
- 2. Adequate weed control*
- 3. Prohibition of illegal dumping of rubbish into, and the collection of bush rock and firewood from the Regional Park*
- 4. Prohibition of additional access points, trails or tracks into the adjoining Regional Park.*

**Comments**

1. The issue of stormwater management has already been addressed in the stormwater management plan undertaken by Storm Consulting to accompany the master plan application. The stormwater management plan recommended the use of a water sensitive road design in conjunction with rainwater tanks on all dwellings to reduce the runoff volumes. The water sensitive road design is proposed to comprise a one-way crossfall road, draining to a bioretention system running alongside the road. The system will both treat and convey stormwater flows removing sediment, phosphorus and nitrogen from runoff.
2. Due to Lot 35 (block directly adjoining the Regional Park) being dedicated to council as a riparian corridor and undeveloped ecologically sensitive land. Council will be responsible for maintaining adequate weed control within this area. As the remainder of the subject site will be developed during the construction of the subdivision, weed control should not be an issue in this area.

3. The protection of the Regional Park from illegal dumping of rubbish and the collection of bush rock and firewood is the responsibility of the Department of Environment and Conservation and Shoalhaven City Council and their rangers.

### ***Other issues***

*The recreational opportunities afforded by the cliffs on portion 119 are significant and they have been recognised at a national and international level for their outstanding rock climbing values. The draft master plan states pg23 that should dedication of some land to council as part of this proposal not eventuate, access to the cliff face would have to cease. This action has the potential to impact negatively on eco-tourism in the Shoalhaven Region.*

### **Comments**

The cliffs on portion 119 will be dedicated to Shoalhaven City Council as part of proposed Lot 35. Therefore, the accessibility of the cliffs for rock-climbing purpose will be determined and managed by Council.

## **Department of Planning and Natural Resources**

- **Riparian Zone (Proposed lot 40)**

*The Draft Masterplan indicates that a riparian zone has been identified along the southern portion of lot 118 (along Mahogany Creek) in consultation with David Zerafa, DIPNR Nowra. This zone is identified as proposed lot 40 and will be dedicated to Shoalhaven Council for inclusion with adjacent public reserves.*

*At the time of the onsite consultation with DIPNR, the riparian zone was only identified to the cliff line (approximate boundary of portion 118), as it was understood that little, if any development would occur on portion 119. In order to achieve holistic riparian zone objectives however, the riparian zone should continue for the full length of Mahogany Creek to the eastern boundary of portion 119 and its confluence with Bomaderry Creek. Thus the lot layout should be amended to incorporate the full length of the riparian zone along the full length of Mahogany Creek.*

### ***Bomaderry Creek Reserve and Riparian Zone***

*The Draft Masterplan indicates that proposed lot 43 will remain as a residue lot to be retained by the current landowners pending further investigations regarding potential public dedication and use. It is noted that the land to the east of lot 43 and which separates lot 43 from Bomaderry Creek is a Shoalhaven City Council Public Reserve. The land to the north of lots 38 and 43 is the Bomaderry Creek Regional Park owned and managed by the Department of Environment and Conservation (DEC).*

*DIPNR supports the recommendations in the Draft Masterplan, that proposed lot 43 be best dedicated as public land, to be administered by Shoalhaven City Council or alternatively by DEC. This approach would serve to consolidate the adjoining reserves into a more contiguous parcel of land allowing for holistic management of sensitive lands and landuse activities.*

*Irrespective of the land title/ownership of proposed lot 43, a riparian zone should also be identified and established along/adjacent to Bomaderry Creek and the eastern boundary of portion 119.*

*In accordance with DIPNR's "Classification of waterbodies based on objectives for Riparian Land" as outlined in Section 5.2 Managing Urban Stormwater – Soils and Construction Landcom 2004 commonly referred to as the "Blue Book", DIPNR considers that category 1 riparian objectives apply to Bomaderry Creek.*

*A riparian objective provides for the protection and/or restoration of individual watercourses and their vegetated buffer zones, according to their relative importance and future function within a catchment.*

### ***Recommendations***

*In summary, a riparian zone in accordance with the above criteria, should be identified and established along/adjacent to Bomaderry Creek and the eastern boundary of portion 119. This area should be added to proposed lot 40.*

### **Comments**

As a result of the amendments made to the lot layout (**Attachment 3**), the riparian zone (Lot 40) in the original plan has been amalgamated with lots 41 and 43 to be contained in Lot 35, which will be dedicated to Council as riparian corridor and ecologically sensitive land. Consequently as part of the Deed of Agreement, Council will be responsible for managing the riparian zone in accordance with the requirements of a Category 1 – *Environmental corridor* including: (i) the core riparian zone; (ii) the vegetated buffer; and (iii) the asset protection zone.

- **Asset Protection Zone (proposed lot 41)**

*The majority of the proposed APZ/lot 41 is above the cliff line and/or corresponding elevation. A section of the proposed APZ near proposed lots 36 and 39 however, encroaches beyond the cliff face to the lower slopes adjoining Bomaderry Creek. The APZ requirements will require vegetation removal within the Ecotonal Gully Forest Vegetation Community described in the Flora and Fauna Report submitted with the draft Masterplan. DIPNR considers that this is inappropriate given the landscape and diversity of this vegetation community.*

*DIPNR has also identified that the majority of portion 119 is classified as Category (A) State Protected Lands (land that is generally in excess of 18 degrees slope) under the Native Vegetation Conservation Act 1997 (NVC Act) which places restrictions on the clearing of native vegetation. As State Protected Land, minimal clearing (two hectares or less if < 25% total area of State Protected Land) for a purpose other than the construction of a vehicular track or road may be carried out under exemption. The equivalent minimal clearing exemption for non State Protected Lands i.e. the clearing of up to 2 hectares per annum for any contiguous landholding in the same ownership, was repealed by Regulation from the Coastal Zone on 26th March 2004 and no longer applies. Depending on the nature of works required for the APZ on State Protected lands, formal consent from DIPNR under the NVC Act may/may not required. As State Protected Lands, DIPNR would prefer that this area be excluded from the APZ.*

*Please note the Native Vegetation Conservation Act 1997 will be repealed and replaced by the Native Vegetation Act 2003 in the near future. At this stage it is unknown what, if any difference this would make to assessment of applications, or what the transitional provisions from one Act to the next will be.*

*Also, in accordance with the previous riparian zone criteria, the proposed APZ/Lot 41 should not conflict with the riparian zone objectives for Bomaderry Creek.*

### ***Recommendation***

*The subdivision layout should be amended to ensure the APZ's are restricted to the property above the cliff line or corresponding elevation and not extend over the steeper State Protected Lands down to the lower Bomaderry Creek flats and Ecotonal Gully Vegetation Community as outlined near proposed lots 36 and 39.*

### **Comments**

As a result of the amendments made to the lot layout (**Attachment 3**), the APZ zone shown as Lot 41 in the original plan has been amalgamated with Lots 40 and 43 & now contained in Lot 35, which will be dedicated to Council as riparian

corridor, APZ, and ecologically sensitive land. Consequently as part of the Deed of Agreement Council will be responsible for the management of the APZ's on that lot.

Furthermore, proposed lots 36 and 39 in the original plan have been deleted. The APZ for Lot 33 is contained fully within Lot 33, which is above the cliff line.

Therefore, as a result of the amendments made to the lot layout, there will be no vegetation removal required within the Ecotonal Gully Forest Vegetation Community for the construction of APZ's.