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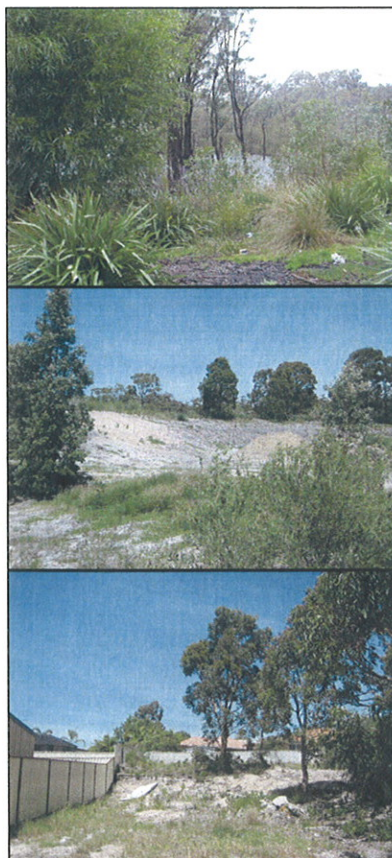


Planning

**MAJOR PROJECTS ASSESSMENT:
34 LOT RESIDENTIAL SUBDIVISION
LOT 4 DP 1117732
3 TARRANT ROAD, SALAMANDER BAY
Proposed by HILLPDA**

Director-General's
Environmental Assessment Report
Section 75I of the
Environmental Planning and Assessment Act 1979

March 2010



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EXECUTIVE SUMMARY

This is a report on a project application by HillPDA to carry out a subdivision consisting of 33 residential lots and 1 environmental conservation lot at 3 Tarrant Road, Salamander Bay (Lot 4 DP 1117732) ("the proposal").

On 5 January 2006 the Minister for Planning formed the opinion that the above proposal was a major project and that Part 3A of the *Environmental Planning and Assessment Act 1979* applied having met the criteria of the State Environmental Planning Policy (Major Development). Subsequently Director General's Requirements for Environmental Assessment (DGR's) were issued on 6 July 2006 for concept plan and stage 1 project approval of the development. On the 10 January 2008 amended DGR's were issued for Stage 1 project application only.

The estimated project cost of the development is \$1,648,921. The proposal will create 2 full time equivalent construction jobs for a one year period (this is calculated based on an estimated construction time of 16 weeks, with 8 workers per day).

During the exhibition period, the Department received a total of 4 submissions from public authorities and 4 submissions from the public. Key issues considered in the Department's assessment included:

- Flora and Fauna
- Traffic and Access
- Bushfire protection
- Drainage

The Department has assessed the merits of the project and is satisfied that the impacts of the proposed development have been addressed via the Proponent's Statement of Commitments and the Department's recommended conditions of approval, and can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance. On these grounds, the Department is satisfied that the site is suitable for the proposed development and that the project will provide environmental, social and economic benefits to the region. All statutory requirements have been met.

The Department recommends that the project be **approved**, subject to conditions.

1 BACKGROUND

1.1 THE SITE

1.1.1 Site Context and Location

The site, at 3 Tarrant Road, Salamander Bay (Lot 4 DP 1117732), is located within the local government area of Port Stephens and is owned by Port Stephens Council. Soldiers Point and Salamander Bay are located on the southern edge of Port Stephens Local Government Area. Soldiers Point Road is the major thoroughfare in the locality. The subject site measures 4.5ha. See Figures 1 and 2 below.

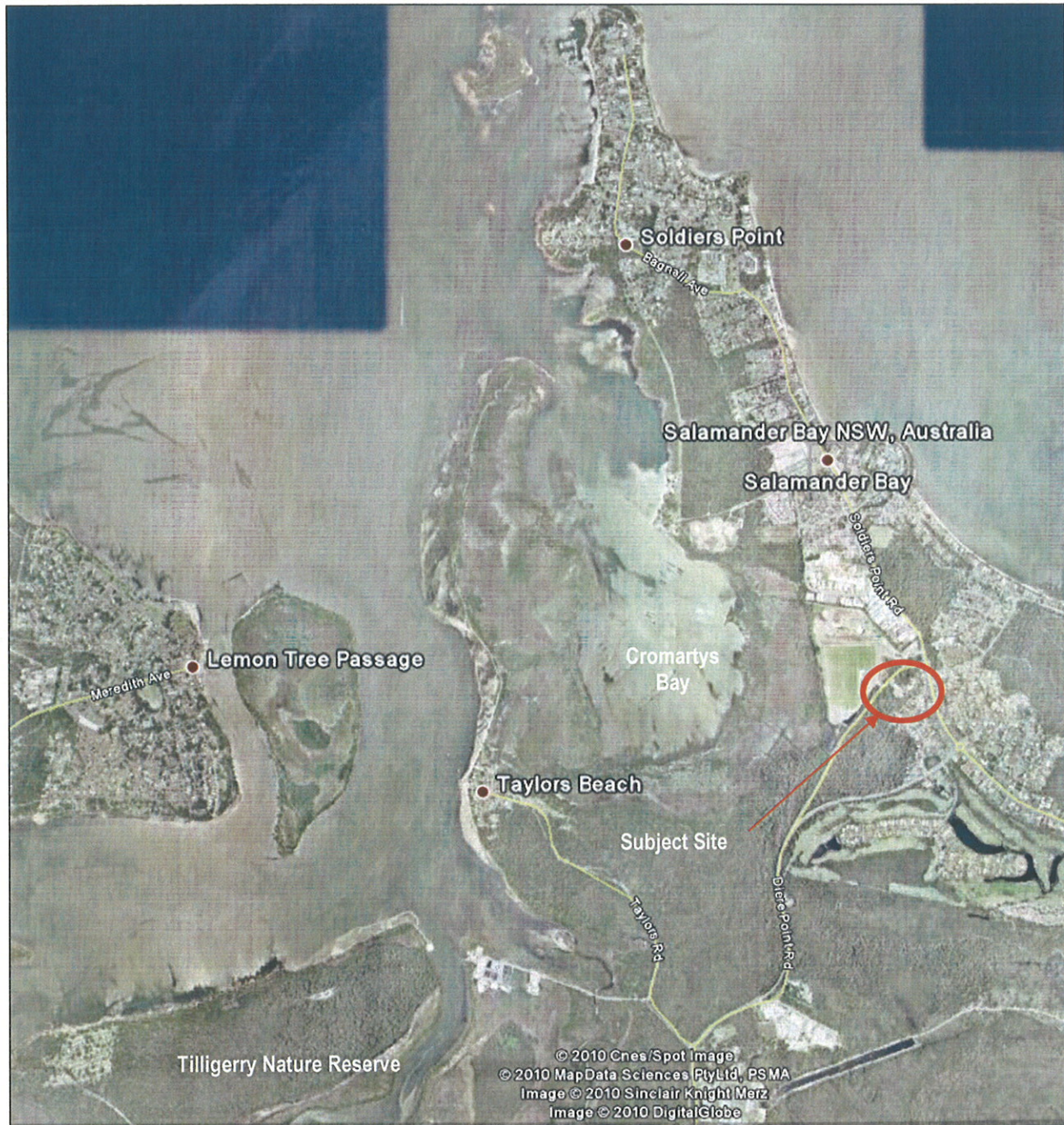


Figure 1: Site location

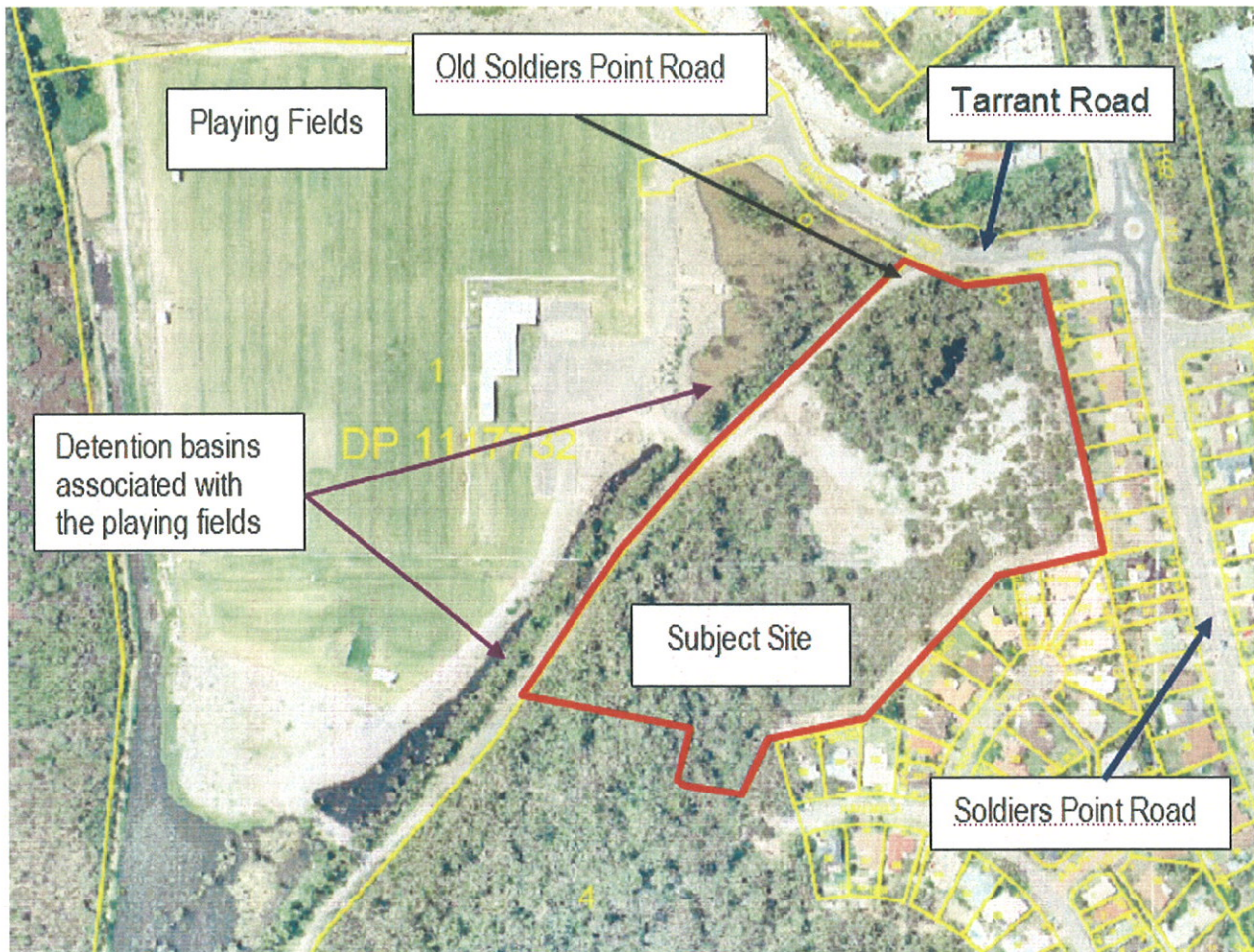


Figure 2: Aerial photo of the site

1.1.2 Existing site features

The site is a mixture of established native vegetation, including large swamp mahogany trees (*Eucalyptus robusta*), regenerating native coastal vegetation, a small *Lepironia* swamp and in the central portion of the site, a large area has been excavated by former sand mining activities leaving behind steep embankments. Fill has also been dumped on the site and left in large piles.

The swamp vegetation is representative of the Endangered Ecological Community (EEC) "Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions" as listed in Schedule 1 of the *Threatened Species Conservation Act 1995* (TSC Act).

Vegetation adjacent to the north western boundary and within the south western portion of the site has been identified as preferred Koala Habitat and is representative of the EEC "Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions" as listed in Schedule 1 of the TSC Act.

Plates 1 – 4 below show the existing site features.



Plate 1: Endangered Ecological Community: Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions



Plate 2: Northern edge of vegetation and the entrance to Old Soldiers Point Road (Part of subject site)



Plate 3: Evidence of past sandmining activity



Plate 4: Looking North East up Old Soldiers Point Road, playing field Detention Basin in middle ground, and existing 11Kv electricity power lines to be removed.

1.1.3 Surrounding development

To the north and east of the site lies the existing residential area of Salamander Bay, with Soldiers Point Road being the main link from Soldiers Point to Nelson Bay Road. To the west of the site lies Old Soldiers Point Road and council playing fields and sporting complex. To the south lies dense bushland which links up to the extensive bushland and wetlands of the Tilligerry Nature Reserve less than 500m from the site. South of Port Stephens Drive is Horizons Golf Resort and other recreational facilities and shops are located at Soldiers Point less than 1km from the site.

1.2 SITE HISTORY

A draft master plan was lodged with the Department pursuant to SEPP 71 – Coastal Protection on 26 August 2005. However Part 3A of the EP & A Act came into effect on the 1 August 2005. The information submitted with the master plan application was used to form a Clause 6 opinion. The proposal was declared a Major Project on 5 January 2006.

The Minister authorised the preparation of a concept plan on 30 June 2006. The Director General's Environmental Assessment Requirements (DGR's) were issued on 6 July 2006, for a concept plan over stage 1 and stage 2, and for project application for stage 1.

On 10 January 2008, the proponent formally advised the Department that they did not wish to proceed with a concept plan for Stages 1 and 2, that they only wish to seek project approval for Stage 1. As a result amended DGR's were issued on 10 January, 2008 for a project application over Stage 1 only. As a result of this request, the Concept Authorisation is required to be revoked. This is supported and forms part of the recommendation.

2 THE PROPOSED DEVELOPMENT

2.1 Project Description

This is an application for approval to carry out a project. It is proposed to develop the site into a total 34 allotments - 33 residential lots and 1 environmental conservation lot to be retained/ dedicated to Council, measuring 18300m². Figure 3 below identifies the layout as exhibited, this was subsequently modified to minimise environmental impact. Figure 4 identifies the modified subdivision layout, recommended for approval; see further discussion below in Section 2.2.

The proposed subdivision comprises the following:

- Subdivision into 33 residential allotments, ranging in size from 515m² to 890m² (approximate density of 7.3 dwellings per hectare), and 1 environmental conservation lot;
- Remove 11Kv power lines along Old Soldiers Point Road (within the subject site) and revegetate this area to create additional Koala habitat, strengthen the habitat corridor, and to offset any loss of vegetation as a result of clearing for residential allotments and bushfire protection;
- Asset protection zones for bushfire protection;
- Associated earthworks, roads, vegetation clearing and pedestrian access throughout the site;
- Stormwater disposal system including swales and a detention basin, and underground electricity services; and
- Retention of the *Lepironia* swamp to act as a buffer between the Koala corridor and the urban interface, minimising Koala/people contact.



Figure 3: Exhibited Subdivision Plan

2.2 Project Amendments

A final preferred project report (PPR) was submitted to the Department, on 23 February 2010 incorporating the following amendments:

- Increase in vegetation retention totalling approximately 2712m² – through amendment to lot layout in vicinity of lots 9- 12 (as per Figure 3), and changes to the road design;
- Addition of two pedestrian connections through vegetated area, one doubling as emergency access; and
- Changes to the stormwater infrastructure.

The Final lot layout can be seen below, Figure 4.



Figure 4: Final Layout (as amended in the Preferred Project Report)

3 STATUTORY CONTEXT

3.1 Part 3A Declaration

The project is a Major Project under *State Environmental Planning Policy (Major Projects) 2005* (as in force at the time of the Ministers decision), being subdivision of residential zoned land in the coastal zone into more than 25 lots. The opinion was formed by the Director-General as delegate on 5 January 2006.

3.2 Strategic Planning

The proposed development is consistent with the Lower Hunter Regional Strategy, and also addresses the NSW State Plan, where relevant. See further discussion below in Section 3.5.2.

3.3 Permissibility

Under the *Port Stephens Local Environmental Plan 2000* (LEP), the majority of the site is zoned 2(a) Residential, permitting residential subdivision. The Proposal is consistent with the objectives of Zone No. 2(a), and is a permissible use. See Figure 5 below.

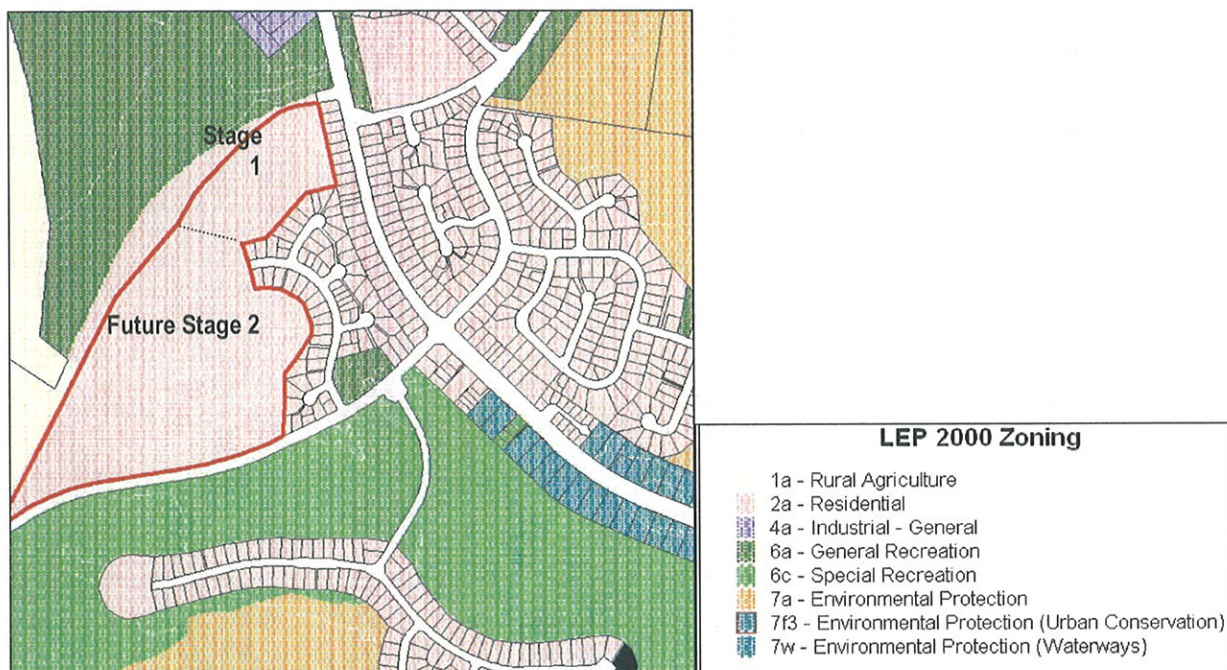


Figure 5: Zoning plan showing both Stage 1 and possible future Stage 2 (not part of this application)

3.3 Exhibition and Notification

The Department exhibited the EA in accordance with section 75H(3) of the Act. The EA was placed on public exhibition for 36 days and submissions were invited in accordance with section 75(H) of the Act.

3.4 Minister's Power to Approve

The purpose of this submission is for the Director-General to provide a report on the project to the Minister for the purposes of deciding whether or not to grant approval to the project pursuant to Section 75J of the Act. Section 75I(2) and Clause 8B of the Regulation set out the scope of the Director-General's report to the Minister. Each of the criteria set out therein has been addressed below, as follows:

Table 1 – Compliance with Section 75I(2) and Clause 8B Criteria

Section 75I(2) Criteria	Response
A copy of the proponent's environmental assessment and any preferred project report.	The proponent's EA is included at Appendix F whilst the preferred project report is set out for the Ministers consideration at Appendix G .
Any advice provided by public authorities on the project.	All advice provided by public authorities on the project for the Minister's consideration is discussed in detail in Section 4 below.
A copy of any report of the Planning Assessment Commission in respect of the project.	The Planning Assessment Commission was not involved in the assessment of this project.
A copy of or reference to the provisions of any State Environmental Planning Policy (SEPP) that substantially govern the carrying out of the project.	An assessment of each relevant State Environmental Planning Policy that substantially govern the carrying out of the project is discussed in Section 3.5
A copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division.	An assessment of the development relative to the prevailing EPI's is discussed in Section 3.5
Any environmental assessment undertaken by the Director General or other matters the Director General considers appropriate.	The environmental assessment of the project is this report in its entirety.
A statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.	The environmental assessment requirements under this Division, issued on 6 July 2006 and amended on the 10 January 2008 are in Appendix C . The Department is satisfied that the EA and PPR submitted in support of the project application comply with these requirements. A detailed assessment of how the proponent has addressed these issues is provided in Section 5 of this report.
Clause 8B Criteria	Response
An assessment of the environmental impact of the project.	All environmental impacts associated with the development are discussed in Section 5 of this Report. ESD is discussed in Section 3.7 of this Report.
Any aspect of the public interest that the Director-General considers relevant to the project.	The public interest is discussed in Section 5 of this Report.
The suitability of the site for the project.	The site is considered suitable for the project based on minimal environmental impact, by providing an environmental conservation lot as habitat and offset, the development is considered to be infill development and consistent with surrounding residential development
Copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.	All submissions provided by agencies are summarised in Section 4 and a summary of public submissions is attached at Appendix D .

The Department has met its legal obligations and the Minister has the power to determine this project.

3.5 Environmental Planning Instruments (EPIs)

3.5.1 Application of EPIs to Part 3A of the Act

To satisfy the requirements of section 75(2)(d) and (e) of the Act, this report includes references to the provisions of the environmental planning instruments that substantially govern the carrying out of the project and have been taken into consideration in the environmental assessment of the project.

The provisions, including development standards of local environmental plans, and development control plans are not required to be strictly applied in the assessment and determination of major projects under Part 3A of the Act. Notwithstanding, these standards and provisions are relevant considerations as the DGR's require the proponent to address such standards and provisions. Consideration of the relevant policies is as follows:

- *State Environmental Planning Policy (Major Projects) 2005*

The MP SEPP applies to the project and is discussed in **Section 3.1** above

- *Port Stephens Local Environmental Plan 2000*

The proposed works are permissible with consent. See **Section 3.2** above.

- *State Environmental Planning Policy No. 44 – Koala Habitat Protection*

The removal and rehabilitation of vegetation and Koala habitat will be done in accordance with an approved vegetation management plan and the Port Stephens Comprehensive Koala Plan of Management. It is considered that the proposal satisfies SEPP 44, by minimising impacts upon the local Koala population, through vegetation retention and rehabilitation. See further discussion in **Section 5.2.1**

- *State Environmental Planning Policy No. 55 – Remediation of Land*

SEPP 55 requires a consent authority to consider the potential for a development site to be contaminated and therefore whether it is suitable for the use for which development is proposed. As the proposal involves a change in land use and requires bulk earthwork activities to be undertaken, the requirements of SEPP 55 have been considered in the assessment of the proposal. The preliminary assessment indicates that the site is not contaminated. However, given the sites past use for sand mining purposes, and previous filling of the site, there is potential for contamination of the site, and also potential for future impacts upon water quality. As a precautionary measure, the recommended conditions of approval require the proponent to conduct further investigations across the development site. It is considered the proposal is satisfactory with regards to the provisions of SEPP 55.

- *State Environmental Planning Policy No. 71 – Coastal Protection*

The proposal is generally consistent with SEPP 71 in particular Clauses 2 and 8. The proposed works will not impact upon coastal processes, or have significant impact upon the visual amenity of the coast, and given the location of the site, it will not impinge on public foreshore access.

3.5.2 Plans and Policies

The proposal has been considered against the following non-statutory documents:

- *Port Stephens Development Control Plan 2007*

The proposal is generally consistent with this DCP. The proposed allotments and future dwellings will have good solar access, with some allotments facing an environmental conservation lot. The subdivision will be permeable to pedestrians with two pathways allowing access to sport fields and through the environmental conservation lot. The subdivision responds to the environmental constraints of the land by conserving two Endangered Ecological Communities and preferred Koala habitat.

- *Lower Hunter Regional Strategy*

The proposal is consistent with the Regional Strategy, by contributing to housing supply, being in the vicinity of existing infrastructure such as transport and schools, and by providing environmental benefits such as the maintenance and strengthening of habitat corridors.

- *NSW State Plan*

By providing housing lots and conserving native vegetation, the proposal will improve housing affordability and protect the environment, which are key priorities under the *NSW Government State Plan (2010)*.

NSW Coastal Policy 1997

The proposal is consistent with the Coastal Policy. The subject site is not visible from the coastline and is unlikely to have impacts upon coastal processes.

- *NSW Coastal Design Guidelines*

The proposal is consistent with these guidelines. The subdivision layout addresses orientation and existing environmental constraints.

3.6 Ecologically Sustainable Development (ESD) Principles

There are five accepted ESD principles:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations (the integration principle);
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the precautionary principle);
- (c) the principle of inter-generational equity - that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations (the inter-generational principle);
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making (the biodiversity principle); and
- (e) improved valuation, pricing and incentive mechanisms should be promoted (the valuation principle).

With respect to ESD, the Act adopts the definition in the *Protection of the Environment Administration Act 1991* including the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms. The Department has considered the proposed development in relation to the ESD principles and has made the following conclusions:

- *Precautionary Principle*

The EA and the PPR submitted have identified and assessed the range of environmental impacts of the proposed subdivision. The evaluation of the impacts is generally confirmed by studies, surveys and calculations from a range of qualified professions. These reports have in turn been distributed to relevant agencies and persons qualified to review and comment on the adequacy of the conclusions.

The proponent has demonstrated that the subdivision design and appropriate mitigation measures will be implemented to prevent any detrimental environmental impacts. Mitigation measures are outlined in the proponent's Statement of Commitments and/or the recommended conditions of approval.

- *Inter-Generational Principle*

Intergenerational Equity is described as '*the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for benefit of future generations.*'

The proposed development has achieved the above through retaining significant vegetation on site including protection and retention of two EEC's, and also providing public access to and through these areas.

- *Biodiversity Principle*

Ecological surveys and studies were undertaken by Andrews Neil and ERM. Two EECs are known to exist on site, as well as a natural wetland. The proposed number of lots has been reduced to a total of 34, which includes one allotment measuring 18300m² for environmental conservation purposes.

As a result of reducing the size of residential allotments, increasing the area of the vegetated allotment and providing additional Koala habitat on site as a further offset for clearing, it is considered that the proponent has satisfied this aspect of ESD.

- *Valuation Principle*

The subdivision has been designed to promote an environmentally sustainable outcome through management of the stormwater runoff, groundwater, potable water vegetation retention. These measures will help future development applications for the site to comply with BASIX.

Contributions are also to be paid to assist Council in providing long term services to the community. Consequently, the Department is satisfied that the proponent satisfied this aspect of ESD.

3.7 Objects of the Environmental Planning and Assessment Act 1979

The objects of any statute provide an overarching framework that informs the purpose and intent of the legislation and gives guidance to its operation. The Minister's consideration and determination of a project application under Part 3A must be informed by the relevant provisions of the Act, consistent with the backdrops of the objects of the Act.

The objects of the Act in section 5 are as follows:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land;
 - (iii) the protection, provision and co-ordination of communication and utility services;
 - (iv) the provision of land for public purposes;
 - (v) the provision and co-ordination of community services and facilities;
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats;
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing;
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State; and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Of particular relevance to the assessment of the subject application is consideration of the Objects under section 5(a), particularly section 5(a) (i), (ii), (vi), (vii), (viii) are significant factors informing the determination of the application. The project does not raise significant issues with regards to (iii), (iv) and (v).

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the project application. The balancing of the project in relation to the Objects is provided in Section 5.

4 CONSULTATION AND ISSUES RAISED

4.1 Public Exhibition Details

The EA was exhibited from 28 March 2008 to 2 May 2008. Notification of the exhibition was given in the Port Stephens Examiner on 27 March 2008.

Exhibition locations were:

- Department of Planning Head Office, Bridge Street, Sydney;
- Department of Planning, Hunter Regional Office;
- Nature Conservation Council, Kent Street, Sydney;
- Port Stephens Council;
- Raymond Terrace Library; and
- Tomaree Library and Community Centre.

The EA was also available on the Department's website.

Letters were sent to adjoining landowners and relevant government agencies, including Council, notifying of the exhibition and inviting a submission. A total of 8 submissions were received, comprising 4 submissions from the public and 4 submissions from public authorities being:

- NSW Office of Water (Former Department of Water and Energy (DWE))
- Department of Environment, Climate Change and Water (DECCW) (Former Department of Environment and Climate Change)
- Rural Fire Service (RFS)
- Department of Education (DoE)

The 4 submissions from the public were all letters of objection. Of the public authority submissions, no objections were raised although comments or recommended conditions were provided by the RFS, DWE and DECCW.

A PPR was lodged on 27 October 2009. However, as a number of issues were not adequately addressed the Department requested the PPR be amended. The final PPR was accepted on 23 February 2010. As the changes to the nature of the project were not significant, it was not re-exhibited but was placed on the Department's website.

4.2 Submissions from the Public

The following issues were raised in the public submissions:

- Flora and Fauna
- Loss of trees
- Loss of amenity
- Access to rear of property
- Stormwater
- Local infrastructure

An assessment of the key issues from the above list can be found in **Section 5** of this report.

A summary of all public submissions received can be found in **Appendix D**. The proponent responded to these submissions in the PPR submitted on 27 October, 2009 and the proponent's Response to Submissions is in **Appendix E**.

4.3 Submissions from Public Authorities

The following submissions were received from public authorities:

4.3.1 Rural Fire Service (RFS)

The RFS reviewed the PPR and advised that the proposal is considered to satisfy Planning for Bushfire Protection 2006. They have provided conditions of approval relating to Asset Protection Zones and fire trails.

4.3.2 Department of Environment, Climate Change and Water (DECCW) (Former Department of Environment and Climate Change)

DECCW made the following comments in relation to the original scheme (See Figure 3 above):

- That further compensatory habitat (offset) be required due to loss of vegetation;
- Impacts upon threatened species, in particular through clearing for residential allotments, resulting in habitat loss. Significant impacts include loss of nests, loss of foraging habitat, and fragmentation of a habitat/ vegetation corridor;
- Additional fauna assessment for the Giant Dragon Fly is required;
- Lack of detail on type/ location/ density of nest boxes;
- Revegetation should use local seed banks and in accordance with nationally accepted standards/guidelines; and
- Lack of Community Consultation for Aboriginal Cultural Heritage (ACH) and no Statement of Commitments regarding ACH.

See section 5 for further discussion on DECCW requirements.

4.3.3 NSW Office of Water (NOW) (Former Department of Water and Energy)

NOW recommended that prior to the issue of the construction certificate a Groundwater Monitoring Plan be prepared to the satisfaction of the Department of Planning. They also advised that if groundwater were to be intercepted during construction that further approval may be required.

4.3.4 Department of Education and Training (DET)

DET advised that the proposal would place further demands on Soldiers Point Public School and Tomaree High School and that both schools are presently managing demand through supplementary demountable classrooms. Any further significant growth would necessitate further additional facilities needs at these schools, however the schools have adequate land to meet these needs.

5 ASSESSMENT OF ENVIRONMENTAL IMPACTS

5.1 Key Issues

Key issues considered in the Department's assessment of the Environmental Assessment and the Preferred Project Report and consideration of the proponent's draft Statement of Commitments include the following:

- Flora and Fauna
- Water management
- Bushfire
- Traffic/ Access
- Cultural Heritage
- Geotechnical aspects including acid sulphate soils
- Subdivision design, Construction, Visual Amenity

Some of these issues were resolved following consultation with the Proponent, or were directly addressed via the proponent's Statement of Commitments or the Department's recommended conditions of approval. Therefore no further consideration of these matters is required. Significant issues are discussed in detail below.

5.2 Flora and Fauna

5.2.1 Flora

The site contains a mixture of established native vegetation, including large swamp mahogany trees (*Eucalyptus robusta*), regenerating native coastal vegetation, a small area of *Lepironia* swamp. Two of the vegetation communities constitute EEC's, these being (See Figure 6 below for an illustration of the vegetation communities):

- 1) The *Lepironia* swamp vegetation is representative of "Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions" EEC (FWW) as listed in Schedule 1 of the *Threatened Species Conservation Act 1995* (TSC Act).
- 2) The swamp vegetation is representative of the EEC "Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions" EEC (SSF) as listed in Schedule 1 of the TSC Act.

The FWW has an area of approximately 0.31 hectares, which will be contained within the environmental conservation allotment, being Lot 34, (see Figure 4 above for location of Lot 34).

The SSF, measures approximately 0.2ha, will also be retained on site within Lot 34. This EEC is classified as Preferred Koala habitat. Some area of SSF will require clearing for bushfire protection purposes; however the majority will remain in its current condition.

The site also contains other vegetation communities that are not EEC's, including the Coastal- Sand Apple/ Blackbutt Forest (CSABF), and some disturbed regrowth. The CSABF is known to have a high density of hollow bearing trees, and is supplementary Koala habitat. Approximately 0.2ha of vegetation will be required to be removed for road and walking path construction, and bushfire protection purposes. A condition of approval will require that the proponent identify all hollow bearing trees on site and which of those will be removed. The proponent will be required to erect various types of nest boxes at a ratio of 2:1 to compensate for those hollows lost.

The disturbed regrowth vegetation community is approximately 2.65ha in area. The area has been disturbed from previous sandmining activity. The majority of allotments and infrastructure required for the subdivision will be contained within this disturbed area.

It is considered that the design of the development and offsets for any vegetation lost, as described below are acceptable and the Department is satisfied that impacts are minimised due to these measures.

To compensate for the loss of habitat/ vegetation on site, particularly SSF and CSABF it is proposed to:

- Create an environmental conservation allotment measuring 18300m² in area being Lot 34, to be owned and managed by Council in perpetuity, (see Figure 4 above). The two EEC's and the CSABF will be the vegetation communities to make up this area. This allotment will require some rehabilitation with respect to weeds, and will also be revegetated with appropriate flora species. A condition of approval will require the preparation of a vegetation management plan for Lot 34.
- Rehabilitate an area of Preferred Koala Habitat, being part of Old Soldiers Point Road, on Lot 34 (see Figure 7 below) measuring approximately 750m². As this area to be rehabilitated forms part of Lot 34, Council will be responsible for its rehabilitation and maintenance in perpetuity.

This area currently contains above ground powerlines and an unused sealed road. As part of the rehabilitation both the powerlines and the road will be removed, and the area planted with appropriate species. A condition of approval will require the preparation of a rehabilitation and vegetation management plan for this area. It is considered that the rehabilitation of this part of Lot 34 provides adequate offset for any loss of vegetation due to clearing for bushfire protection purposes and any other infrastructure.

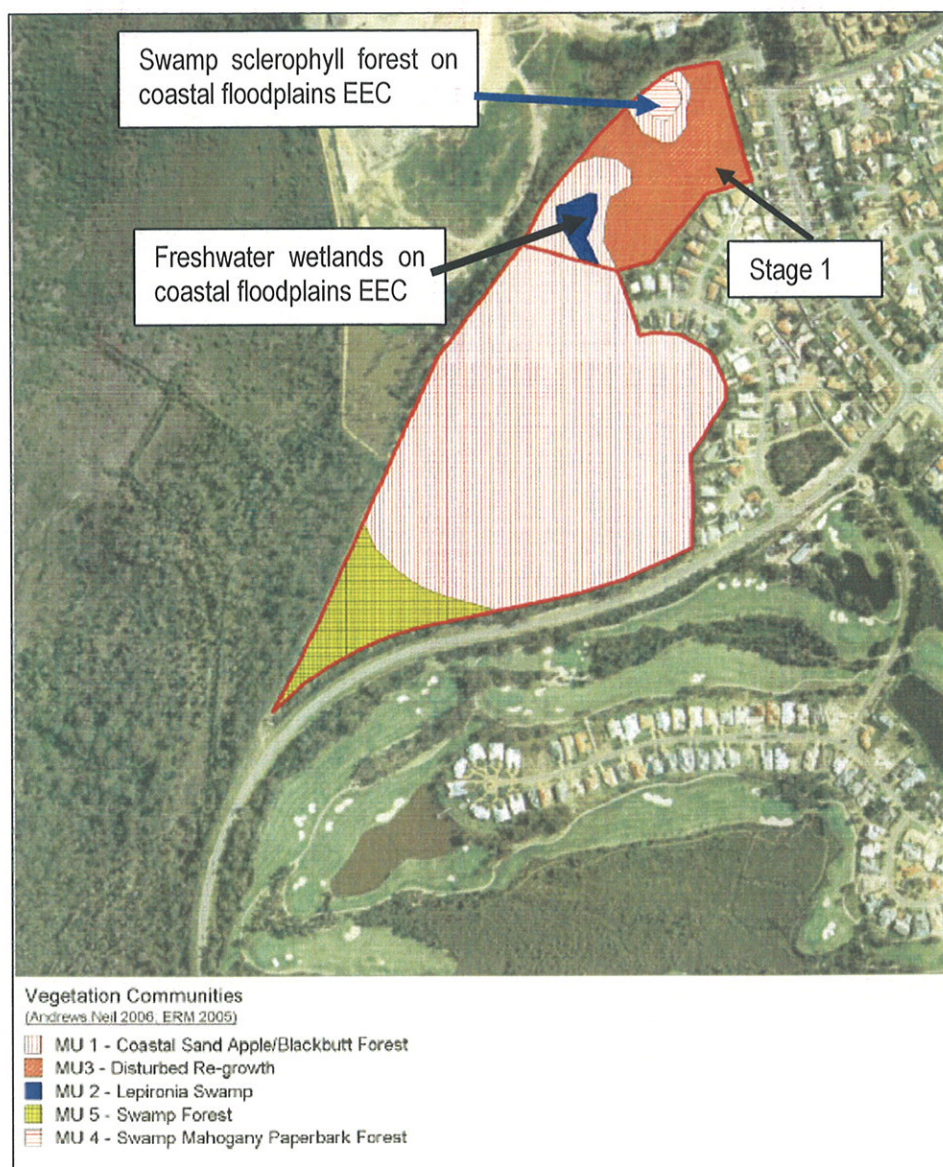


Figure 6: Vegetation Communities and Location of Endangered Ecological Communities

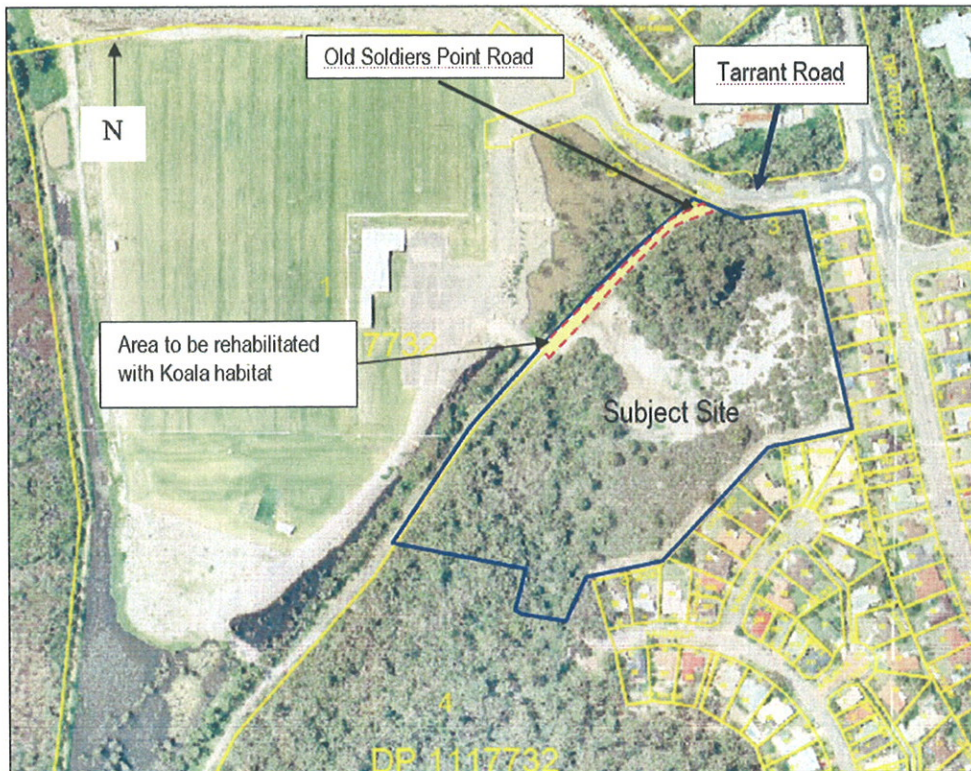


Figure 7: Area to be rehabilitated with Koala habitat

5.2.2 Fauna

5.2.2.1 Koalas

The subject site does not contain Core Koala habitat as per Port Stephens Council's Comprehensive Koala Plan of Management (CKPoM) which operates under the provision of SEPP 44. However it does contain preferred Koala habitat being the SSF, and supplementary Koala habitat, which is the CSABF.

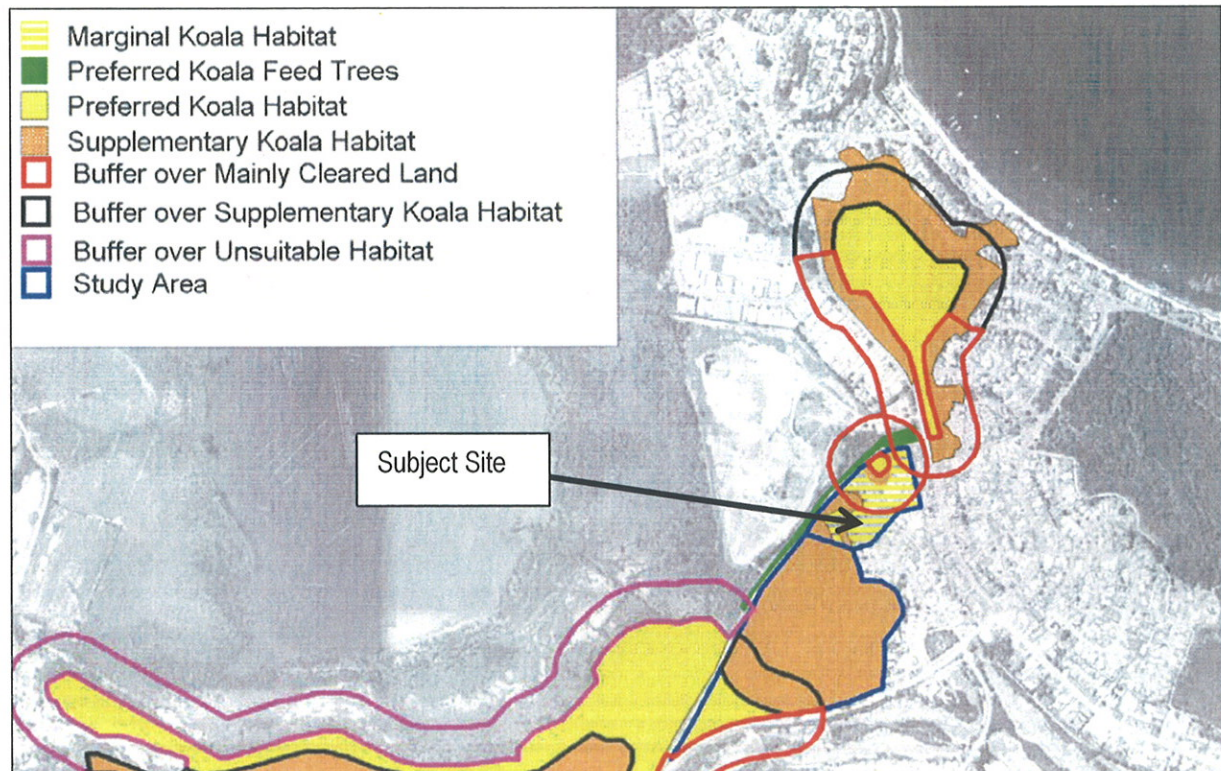


Figure 8: Koala Habitat

An area of Preferred Koala habitat is identified for rehabilitation (see figure 7 above), as an offset for loss of any Koala habitat on the subject site for provision of infrastructure. This rehabilitated area is proposed to conserve Koala habitat and strengthen linkages to other Koala habitat areas located along and to the north/ north- west of Soldiers Point Road.

There are performance criteria objectives set out in the CKPoM relating to Koala habitat protection and management. The proposal is generally consistent with the criteria of the CKPoM, such as:

- providing no net loss of Koala habitat by rehabilitating the area adjacent to the subject site
- ensuring that the development will not further fragment Koala habitat, by minimising the amount of clearing of Koala habitat and feed trees, and rehabilitating the adjacent area, which will reinforce the Koala links to the north and north east, and also to areas along Comartys Bay on the south/ south west.

Further in accordance with the CKPoM there are certain types of fencing requirements to ensure that if Koalas do wish to traverse the site they may do so freely. A condition of consent will require that future development of dwellings will be required to be consistent with the CKPoM. Council has provided comment indicating that fencing should be built to allow Koala movement through the site.

5.2.2.2 Other Fauna

Squirrel Gliders

Hollow bearing trees comprise the most important fauna habitat on the site, in particular for the threatened squirrel glider. Given the amount of vegetation being retained on site it is unlikely that the squirrel glider will experience a loss of habitat and foraging area. Further any hollows lost will be required to be replaced at a ratio of 2:1, as required by a condition of approval.

Giant Dragonfly

In response to DECCW's concerns the proponent carried out further assessment for the Giant Dragonfly and submitted the assessment with the PPR. The assessment found that there was no evidence that the Giant Dragonfly uses the site. The SSF is considered to be marginal habitat for the Giant Dragonfly meaning that there is no open water, poor foraging habitat, and not an optimal breeding habitat. Given the retention of the FWW, it is considered that the development will not negatively impact upon this species or its lifecycle.

Bats

Several bats were found to utilise the site:

Eastern Freetail-Bat

This species was positively identified on the subject site, and found to be very active, indicating that it would be likely to be roosting within the site.

Little Bent-wing Bat

No roosting habitat was found within the survey area however the species was recorded foraging within the subject site and lands to the south of the site.

It is unlikely that with the amount of vegetation being retained on site and the rehabilitation of an area of Koala habitat that there will be a significant impact upon these bat species. Further, nest boxes will be required to replace any existing hollows to be removed at a ratio of 2:1. Various types of boxes will be required to be erected, details of which shall be provided in a vegetation management plan as required by a condition of approval.

In conclusion it is considered that with the retention of significant vegetation on site, rehabilitation of /retention of Koala habitat, and the provision of nest boxes that the design is sympathetic to fauna using the site by retaining and providing off sets to their habitat.

5.2.3 Maintenance of vegetation on site

The proposal includes as an environmental conservation lot (Lot 34), part of which will be rehabilitated with Preferred Koala habitat. A condition of approval will require the preparation of a vegetation management plan for this allotment. The plan will include identification of trees to be removed, replanting, erection of fencing to prevent trial bikes or the

like from entering the allotment, erection of educational signage, weed removal programs and other environmental management related items.

5.2.4 Impacts on Wetlands

The Ecological Assessment ERM in 2005 (attached at **Appendix 3**) indicates that although the larger of the wetlands on the site appears to be natural, the smaller ponds on the site are likely to have been created from sandmining activities. There is no State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP14) on the subject site.

The stormwater system proposed will not be directed to the wetlands. It will be directed through a series of vegetated swales to the existing stormwater system and also to existing detention basins associated with the adjacent playing fields. It is considered that the stormwater management system will not impact upon the wetlands in Lot 34.

5.2.5 Conclusion

The Department considers the following components of the proposal relating to flora and fauna management have satisfied issues raised by DECCW, the Department and the Community:

- The commitment to rehabilitating the adjacent Koala habitat area, and associated removal of existing powerlines, as offset for loss of any vegetation on site;
- The creation of a large environmental conservation lot containing several vegetation communities including two EEC's to be owned and managed by Council;
- The protection and retention of the FWW within allotment 34;
- The removal of allotments from the SSF area, providing additional habitat for Koalas and other species;
- The retention of areas of Coastal – Sand Apple/ Blackbutt within allotment 34 as habitat;
- Protection and management of vegetation for other threatened species; and
- Relevant consent conditions requiring further details regarding issues such as: tree removal, replanting, weed management, details of type and number of nest boxes.

5.3 Water Management

The two EECs present on site are sensitive to hydrological change. There is one pipe proposed to be placed underground, draining the site to the adjacent detention basins that service the playing fields, see Figure 2 above for location of detention ponds. A condition of consent will be imposed requiring the method of laying the pipe through Lot 34. The pipe will be required to be laid via under boring techniques. The intention of this is to minimise impacts upon the existing vegetation on Lot 34.

Water quality treatment systems have been designed to minimise pollutant loads leaving the site to below estimated pre-development levels. The proposed water quality elements include infiltration basins with extended detention and vegetated swales.

A condition of approval will require the preparation of a Water Quality Management Strategy, to ensure that appropriate pollutant levels, etc are being achieved, and that systems are working effectively. The Department is satisfied with the effectiveness of the water management features proposed.

5.4 Climate Change

Council's Flood Planning Level for the site, which consists of the 1% AEP flood level (1997) plus freeboard, is 2.5mAHD. This figure does not include an allowance for sea level rise. On the 19 May 2009, Council adopted a planning benchmark for sea level rise of 0.91m for the year 2100.

Having regard to the above and the *Draft NSW Coastal Planning Guideline Adapting to Sea Level Rise*, it is considered that an appropriate minimum habitable floor area would be 3.4mAHD.

The majority of the area to be used for residential purposes is higher than 3.4AHD. The proponent will need to undertake cut and fill to ready the site for residential development. Condition B8, which relates to cut and fill, specifies that the minimum ground levels associated with residential development shall be 3.4AHD.

5.5 Ground water

Generally ground water from the subject site flows in a south-westerly direction away from the site, towards a waste disposal centre. A ground water monitoring bore on the site does not indicate evidence of contaminated water.

The EA states that there is, however some potential for leachate-contaminated groundwater to reverse flow direction and enter the site, due to processes such as groundwater extraction and changes in soil or climatic conditions. It is not proposed to extract groundwater as part of this development. However given that other processes may reverse the flow direction, it is recommended that further detailed assessment of more recent monitoring data be undertaken to assess the potential for landfill leachate to enter the site. It is considered that given there is no groundwater extraction proposed as part of this development there will be no constraints to the proposed development, and the site is suitable to the works proposed.

However, given the sensitive hydrological regime of the EECs it is considered important that a groundwater strategy is prepared to protect the ongoing viability of the EECs. A condition of consent will reflect this.

5.6 Bushfire

The subject site is mapped as bushfire prone land on Port Stephens Bushfire Prone Land Map. A bushfire protection assessment has been undertaken by Australian Bushfire Protection Planners, in accordance with the provisions of Planning for Bushfire Protection, 2006 (A report is contained within the Environmental Assessment and an updated report indicating the new layout is contained within the PPR).

The NSW Rural Fire Service has reviewed the current bushfire protection measures proposed for the amended subdivision layout and is satisfied with proposed asset protection zones and levels of construction. The RFS has provided conditions of approval, which have been incorporated into Schedule 2 of the consent.

5.7 Traffic and Access

Public transport is available to the site. Port Stephens Coaches provide a local bus service along Port Stephens Drive and Salamander Way linking to Nelson Bay and Newcastle. The proposal for 34 residential lots is not expected to substantially impact on public transport services.

The extra traffic generated by this proposal is not expected to substantially impact on peak hour flows on Soldiers Point Road. There is already a roundabout installed at the intersection of the Soldiers Point Road and Old Soldiers Point Road which will help mitigate traffic impacts. There will be adequate on and off street parking for this proposal.

The traffic report in the EA has stated that 'that there are limited footpaths in the general vicinity of the site with pedestrians able to use verges or the roads given, the low traffic volumes and low pedestrian demands.'

The EA suggests that footpaths are not required for the proposal, in line with the surrounding road network. However the Council has recently constructed footpaths in the vicinity of the site linking the adjacent playing fields to Soldiers Point Road. In the interests of encouraging pedestrians, and to link the development with the new Council footpath, it is considered appropriate that the proponent provide footpaths along at least one side of all road reserves within the site to link up with footpaths external to the site. Recommended conditions of approval will require a footpath plan be approved by Council prior to construction certificate.

5.8 Aboriginal Cultural Heritage

5.8.1 Community Consultation

DECCW completed a review of the Aboriginal Heritage Assessment report submitted in the EA, and advised that they were concerned with the level of community consultation carried out, and believed it did not address the relevant community consultation guideline.

As a result of DECCW's comments, the proponent carried out further community consultation in accordance with the guidelines. The two groups who responded were Nur – Run – Gee P/L and Mur – roo – ma Incorporated. Mur – roo – ma Incorporated requested a walkover and provided further assessment comment, discussed below. It should be noted that the Worimi Local Aboriginal Land Council were involved in the early stages of the project.

5.8.2 Findings and Recommendations

The study found that there was little or no likelihood that any Aboriginal site that may have been located on the site would have survived the previous sand extraction works. The Worimi Local Aboriginal Land Council and The Mur – Roo – Ma Incorporated did a walkover with the Heritage Consultant. Both groups advised that there was nothing of any Aboriginal Significance found on site.

The Worimi LALC advised that if any works uncover anything that could be of Aboriginal Significance, they should be contacted to ensure that further construction works are supervised by a Cultural and Heritage Officer. The Mur – Roo – Ma Incorporated advised that they agree that works can be carried out on site, in accordance with the following recommendations, which have been incorporated into the conditions of approval:

- 1) A qualified representative from Mur – roo – ma Incorporated and other local registered Aboriginal groups be present on site to monitor earthworks;
- 2) A Culture and Heritage induction be carried out by an Aboriginal Group/s before the commencement of works;
- 3) The establishment of a keeping place for any Aboriginal relics found; and
- 4) During construction work if any Aboriginal sites or relics are discovered whilst the Aboriginal monitors are not on site, all work is to stop and relevant Aboriginal Groups and DECCW are to be contacted.

5.9 Contaminated Land

Parts of the site have been mined for mineral sands, part of a wider mining operation throughout Salamander Bay in the 1970s. Elevated levels of radiation above natural or safe levels can occur as a result of mineral sand mining. Two separate radiation surveys have been undertaken on the site approximately 7 years apart and both surveys concluded that radiation levels were well below the NSW EPA action level of 0.7 μ Sv/hr for residential areas and as a result there are no constraints to residential development.

There is evidence of building waste mixed in with sandy fill in the disturbed areas of the site. The EA recommends that further sampling and testing of the fill be undertaken to assess for the presence of contamination and to determine whether it can be re-used on site or whether it needs to be removed. The Department supports this recommendation and a condition of approval requiring a Phase 2 contamination report will be imposed.

5.10 Subdivision Design, Construction and Visual Amenity

According to the EA the topography and existing vegetation on the site, the slope and views of the site are a key component to the overall design of this Torrens title subdivision proposal. This has informed the street and block layout, lot sizes and orientation.

The subdivision concept has been designed to provide an effective, legible, safe, efficient and functional development. It is designed to integrate with the adjoining residential development and address the environmental characteristics of the site. The proposed works include earthworks to level steep contours of the site and improve drainage. Lots have been located to ensure surveillance over public areas. The appearance of the residential development has been softened through the retention of native vegetation. The environmental conservation lot will provide a higher level of amenity to residents and will form part of the regional open space network. Port Stephens Council has stated that they will be responsible for the management of Lot 34.

The proposed development is consistent with the design requirements outlined in the *Port Stephens Development Control Plan 2007* and the *Coastal Design Guidelines for NSW (2003)*. There are adequate services and infrastructure available to the site. The site is located close to Council playing fields and to public transport links.

The subdivision plan exhibited in the EA was subsequently modified in the Preferred Project Report in order to address Flora and Fauna (see 5.2) and Water Management (see 5.3) issues.

The Department considers that the amended layout appropriately addresses the flora and fauna issues, bushfire protection and stormwater management of the site, and is considered satisfactory.

5.11 Public Interest

The proposed development will provide for:

- Subdivision resulting in 33 residential allotments, providing for an increase in the availability of residential land with a mix of allotment sizes; and
- One lot in public ownership providing a pedestrian path, and vegetation retention and habitat protection.

Furthermore, the project application has largely demonstrated compliance with the existing environmental planning instruments. The proposal is also generally consistent with the priorities for the NSW State Plan, in particular housing affordability, and access to public open space such as sporting fields and parks.

On these grounds, the Department considers the site to be suitable for the proposed development and that the project is in the public interest. Consequently, the Department recommends that the project be approved, subject to the conditions of approval.

5.12 Delegation

On 25 January 2010, delegation was given to the Deputy Director-General to determine an application for a project under section 75J of the Act. This delegation extends to applications where there are fewer than 25 public submissions in the nature of objections in respect of the project application and where the proposal is consistent with the relevant regional strategy.

A total of four public submissions were received during exhibition of the EA and the proposal is consistent with the Lower Hunter Regional Strategy. Consequently, it is considered appropriate for the Deputy Director-General to determine the project under delegation pursuant to section 75J of the Act.

6 CONCLUSION

The Department has assessed the EA and PPR and considered the submissions in response to the proposal. The key issues raised in submissions related to vegetation retention, impact upon habitat, bushfire and management and mitigation of construction impacts. The Department has considered these issues and a number of conditions are recommended in conjunction with the proponent's Statement of Commitments to ensure these issues are satisfactorily addressed and the proposal has minimal impacts.

The proposed development will allow for 33 residential lots, and 1 environmental conservation lot, pedestrian access throughout the subdivision, protection of Endangered Ecological Communities, and additional planting of Koala habitat. Furthermore, the proposal has largely demonstrated compliance with the existing environmental planning instruments.

On these grounds, the Department considers the site to be suitable for the proposed project and that it is in the public interest. Consequently, the Department recommends that the project be approved, subject to the conditions of approval and the proponent's Statement of Commitments.

7 RECOMMENDATION

It is recommended that the Deputy Director-General as delegate for the Minister:

- (A) consider the findings and recommendations of this Report; and
- (B) approve the carrying out of the project, under Section 75J *Environmental Planning and Assessment Act, 1979*; subject to modifications of the project and conditions and sign the Determination of the Major Project;
- (C) sign the Instrument of Approval at **Appendix A**; and
- (D) sign the Instrument of Concept Revocation at **Appendix B**.

Prepared by:



Lisa Pemberton
Environmental Planner
Regional Projects

Endorsed by:



Alan Bright
A/ Director
Regional Projects



23.3.10

Chris Wilson
Executive Director
Major Projects Assessment

APPENDIX A. INSTRUMENT OF APPROVAL

Project Approval

Section 75J of the *Environmental Planning and Assessment Act 1979*

I, the Deputy Director-General, Development Assessment and Systems Performance as delegate for the Minister for Planning under Instrument of Delegation dated 25 January 2010, approve the project referred to in Schedule 1, subject to the conditions of approval in the attached Schedule 2 and the Statement of Commitments in Schedule 3.

These conditions are required to:

- adequately mitigate the environmental impacts of the project and maintain the principles of ecologically sustainable development
- protect environmentally significant land
- encourage good subdivision design
- maintain the amenity of the local area.



Richard Pearson
Deputy Director General
Development Assessment & Systems Performance

Sydney, 1 April 2010