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Planning

**MAJOR PROJECTS ASSESSMENT:
RESIDENTIAL SUBDIVISION
LOT 124 DP 1097510
BELLE O'CONNOR STREET, SOUTH
WEST ROCKS
Proposed by WALDEL PARK PTY LTD**

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

February 2010



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EXECUTIVE SUMMARY

This is a report on a project application by King and Campbell Pty Ltd on behalf of Waldel Park Pty Ltd (the proponent) to carry out a 56 lot residential subdivision on land comprising part Lot 124 DP 1097510, Belle O'Connor Street, South West Rocks (the "proposal").

The capital investment value of the development is estimated at \$3.5 million. The proposal is expected to create five equivalent full time jobs during construction.

This proposal is the third stage of a three stage subdivision of a larger site. The first stage (1A), being a 23 lot residential subdivision was approved by Kempsey Shire Council in 2004 and implemented Kempsey Shire Council's Integrated Water Cycle Management Strategy (including a dual reticulation scheme incorporating potable and recycled water mains), stage 1A works are complete. On 20 March 2006, a Master Plan was adopted for the subject site (MP 38-09-2004). The Master Plan related to Stages 1(B and C), 1C being the stage subject of this major project application. The Master Plan set out that future land subdivision, infrastructure provision and residential development be subject to separate approval. Following the master plan approval, the second stage (1B), being a 108 lot residential subdivision was approved by the Minister on 20 June 2007 (05_0018). Management of traffic, heritage, geotechnical and stormwater issues for both stages 1B and 1C was approved under stage 1B.

The third stage (1C), the subject of this application, includes 54 Torrens title residential allotments, one scenic protection allotment, civil works and servicing of one allotment in anticipation of a future integrated housing subdivision, an extension of Burrawong Drive to service the subdivision, construction of infrastructure, services and landscaping. The current proposal is consistent with the Master Plan.

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

- strategic planning
- subdivision layout
- visual impact
- infrastructure
- traffic and access
- contamination and acid sulfate soils
- bushfire
- geotechnical
- flooding
- water cycle management
- heritage
- flora and fauna.

The Department has assessed the merits of the project and is satisfied that the impacts of the proposed development have been addressed via the EA, 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 and is therefore in the public interest. The Department recommends that the project be **approved** subject to conditions.

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1 BACKGROUND

1.1 THE SITE

1.1.1 Site Context and Location

The site is located within South West Rocks, approximately 430 kilometres north of Sydney on the New South Wales coast in the Kempsey local government area. South West Rocks is physically constrained by the Pacific Ocean to the north, Hat Head National Park to the east, Spencers Creek and wetlands to the south and the Macleay River to the west.

The site is situated south-east of the township of South West Rocks and is accessed from Belle O'Connor Street via Gregory Street, which provides direct access to the town centre (refer **Figure 1**). Belle O'Connor Street has been partly constructed to service an existing subdivision containing 23 lots that was approved by Council in 2004 (Stage 1A).

South West Rocks golf course is located to the north west of the site, with rural and rural residential properties to the north-west, east and south-east. The land directly to the north of the site was rezoned in August 2009 from 1(c) Rural (Small Holdings), to 2(a) Residential "A" and an application for residential development over this land has been submitted to the Department.

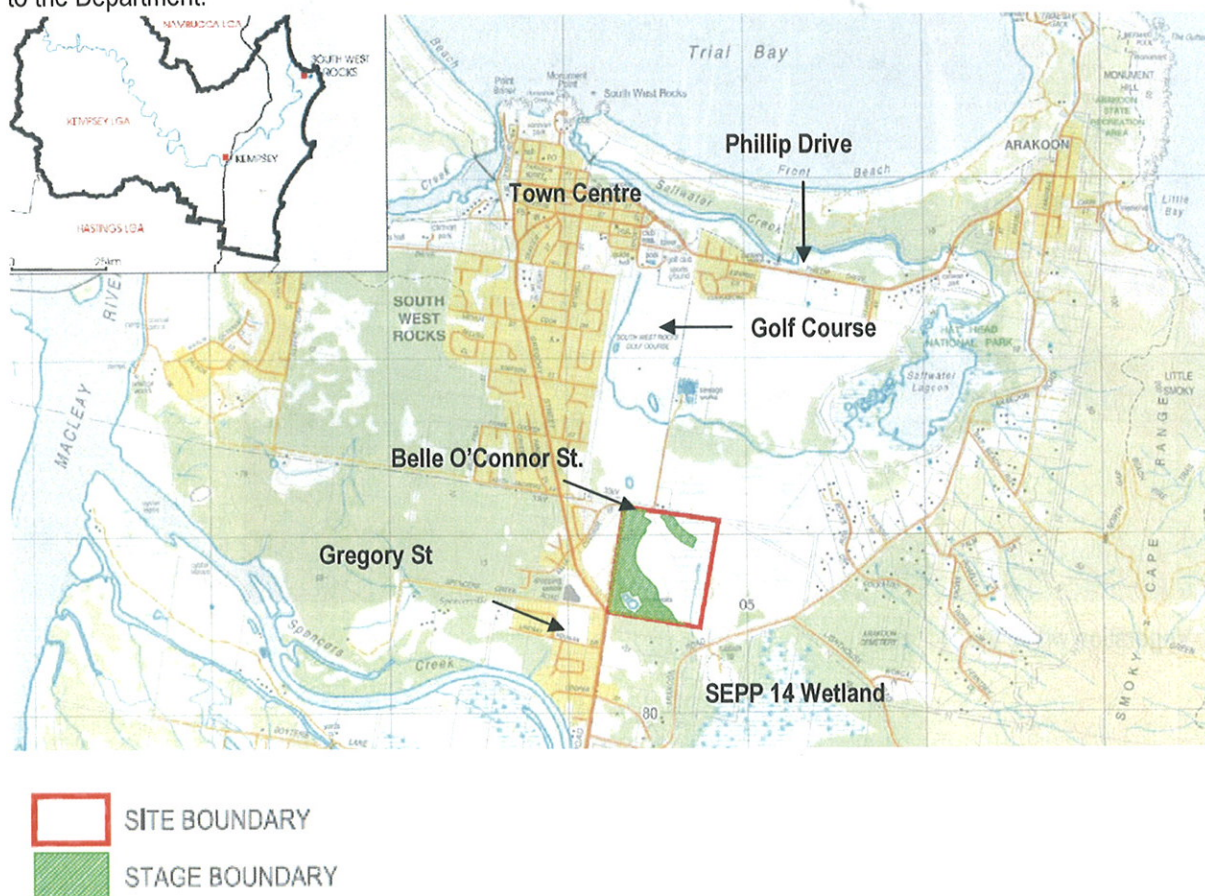


Figure 1: Site location (Source: Environmental Assessment)

1.1.2 Existing Site Features

The site is characterised by dry sclerophyll forest covered slopes in the south west – zoned 7(d) Scenic Protection (refer **Figure 2**)– and low-lying areas in the north-east – predominately zoned 2(a) Residential "A" (refer **Figure 3**) which link to Salt Water Lagoon in the north. Although the vegetated area in the south-western corner is fairly steep, the remainder of the site is reasonably flat, the land falls from over 50m AHD in the southwest to 4.5m AHD in the northeast.

The site contains two catchments. The first encompasses the majority of the site and drains to the north-east, to Saltwater Lagoon (listed under *State Environmental Planning Policy No. 14 - Coastal Wetlands*) via Saltwater Creek. The second catchment comprises the western portion of the site (over proposed lots 623, 636, 644-650, 604 and 605 and part lot 800) and drains to the west.



Figure 2: Vegetation within the 7(d) zone



Figure 3: Looking north towards approved Stage 1B

Two disused Council owned water reservoirs are located on separate allotments on the upper slopes (Lot 1 DP 560726 and Lot 1 DP 645213). These reservoirs will be used to store and distribute recycled water from the South West Rocks Sewage Treatment Plant.

One occupied dwelling is located in the north-eastern corner of the site, the remainder of the site has previously been used for grazing, the north-eastern half (land associated with previous stages) being predominantly cleared of native vegetation (refer **Figure 4**). Some scattered mature eucalypts exist on the remainder of the 2(a) zoned land, including 5 hollow bearing trees, a number of Koala feed trees listed on Schedule 2 of *State Environmental Planning Policy No 44 – Koala Habitat Protection* and two large stands of trees in the southern-central and western part of the site.

The aerial photo below (**Figure 5**), below, shows the main site features.



Figure 4: Looking north-east toward approved Stage 1A



Figure 5: Aerial photo of site (Source: Department of Lands Spatial Information Exchange. Accessed 21 July 2009)

1.1.3 Zoning

The site is zoned predominantly Residential 2(a) and part 7(d) Scenic Protection.

1.1.4 Surrounding Development

The surrounding land uses include:

- rural land to the east (zoned 1(c) Rural Small Holdings)
- residential land to the north and north-east (zoned 2(a) Residential "A") adjacent Saltwater Lagoon
- the South West Rocks Golf Course (6(a) Open Space) to the north-west
- vegetated land (zoned 7(d) Environment Protection and 2(a) Residential) to the south, linking to Hat Head National Park and a SEPP 14 wetland
- a 20 metre wide Crown road reserve (unformed extension of South West Rocks Road) adjacent the site's western boundary, beyond which is a residential subdivision known as 'Oceanside Estate' which also has access to Belle O'Connor Street
- a 20 metre wide road reserve along the northern boundary.

1.2 SITE HISTORY

1.2.1 Master Plan

On 20 March 2006, a Master Plan was adopted by the Acting Deputy Director-General (as delegate for the Minister for Planning) for the subject site (MP 38-09-2004). The Master Plan approved drawing "Residential Master Plan, Walde Park, South West Rocks" (refer **Figure 6**) relating to Stage 1(B and C), C being the stage subject of this major project application. The Master Plan set out that future land subdivision, infrastructure provision and residential development be subject to separate approval.



Figure 6: Approved Master Plan (Source: SEPP71 Master Plan documentation)

The Master Plan required the following matters to be addressed in all future applications:

- (a) a **Water Management Plan** to demonstrate the ability of the proposed stormwater measures to achieve the identified objectives and requirements for water quality and stormwater runoff in relation to Saltwater Creek and Lagoon
- (b) the provision of **asset protection zones** wholly within the proposed residential allotments, as well as a **Bush Fire Safety Authority**
- (c) the provision of **road infrastructure** in accordance with the requirements of the Regional Advisory Committee of the RTA;
- (d) a **visual impact assessment** in the form of photomontages; specific limits on roof colour;
- (e) **pedestrian and cycleway** infrastructure
- (f) details of the **proposed integrated housing precincts** to demonstrate the appropriateness of the design in regard to residential amenity, urban design, parking and traffic management, private open space provision and privacy
- (g) details of the **staging** of the development

- (h) details regarding the gazettal of the **draft LEP** covering the strips of 6(a) Open Space and 1(d) Rural within the site
- (i) details regarding the **heritage value** of any building either being retained or removed, and measures to be implemented to address any issues regarding heritage significance or value.

Points (a), (e), (f) and (h) have not been considered in the current project application for the following reasons:

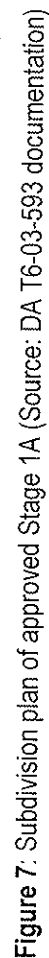
- In relation to the requirements of points (a) and (e), these components have been assessed and approved for the whole site, as part of Stage 1B (05_0018).
- In relation to the requirements of point (f), the detailed design and lot boundaries of the integrated housing precinct (Lot 700) is not part of the subject application and will be subject to separate future approval. However, filling requirements and provision of services to Lot 700 have been addressed as part of this application.
- In relation to the requirements of point (h), these strips of land were considered by the previous application (Stage 1B) and are not included in the current project application (Stage 1C) site boundary.

All other requirements of the Master Plan have been addressed in the subject application.

1.2.2 Stage 1A – 23 lot residential subdivision

On 15 February 2004 Kempsey Shire Council approved a 23 lot residential subdivision (Stage 1A – Council reference DA T6-03-593) directly to the north of the approved Stage 1B subdivision. The construction of Belle O'Connor Street was approved to the extent of that subdivision. Council's consent also incorporated a dual reticulation scheme including potable and recycled water mains.

Council modified the application pursuant to Section 96 of the Act on 4 August 2004 permitting an extension of Belle O'Connor Street, minor amendments to lot layouts and the implementation of a bushfire asset protection zone (refer **Figure 7**).



1.2.3 Stage 1B – 108 lot residential subdivision

On 20 June 2007 the Department approved a 108 lot residential subdivision (Stage 1B, 05_0018) directly to the east of the proposed subdivision (Stage 1C) (refer **Figure 8**).

Project approval was granted to the carrying out of:

1. subdivision of Lot 124 DP 1097510 into 108 residential lots, one additional lot for drainage purposes and one residue lot
2. construction of physical infrastructure and services
3. a stormwater management strategy for stages 1B and 1C including water sensitive urban design measures and a stormwater quality system including a detention basin in the north of the site
4. a public road network with access to Belle O'Connor Street
5. landscaping of public spaces
6. removal of trees, other than those identified for retention and protection from Lot 124 DP 1097510 and Lot 22 in DP 1071657 and vegetation works within part of the site zoned 7(d) Scenic Protection on Lot 124
7. ancillary works on Lot 22 DP 1071657 including the following:
 - (a) a bushfire access perimeter road immediately east of the residential lots and contained within a right-of-way on Lot 22 DP 1071657
 - (b) a grassed swale as part of the stormwater quality system in an easement on Lot 22, along the periphery of the subdivision
 - (c) a secondary unsealed access road to Arakoon Road for use during construction and to provide emergency bushfire access to the site.
8. an integrated water management strategy which will accommodate re-use distribution mains thereby allowing the flow of recycled water from the South West Rocks Sewage Treatment Plant into the existing disused Council reservoir located on the site.



Figure 8: Plan of approved Stage 1B (Source: 05_0018 documentation)

2 THE PROPOSED DEVELOPMENT

2.1 PROJECT DESCRIPTION

The application seeks approval for the following:

- subdivision into 54 residential lots (including one larger lot, Lot 900, containing the existing dwelling), one scenic protection lot (Lot 800) and one lot for future integrated development (Lot 700), with a minimum lot size of 622m² and average of 778m² (not including Lots 700 with a size of 1.3ha and 800 with a size of 5.74ha) to be constructed in five stages
- an extension of the internal public road to service proposed lots 603-608, 629-636 and 644-650 with access to Burrawong Drive
- construction of physical infrastructure and services
- removal of trees from the site
- landscaping
- landfill of Lot 700 to a maximum of 1.7 metres
- revegetation of Lot 800
- removal of the existing dwelling.

Proposed Lot 700 is anticipated to accommodate integrated housing, the layout and built form will be the subject of a future application. Proposed Lot 800 is anticipated to accommodate one dwelling subject to constraints identified by the Vegetation Management Plan and a future environmental assessment. Proposed Lot 900 will separate the existing dwelling from the rest of the subdivision in the first stage; it is intended that this lot will be further subdivided in stage five.

2.1.1 Filling

The north eastern corner of the site (proposed Lot 700) is generally below about RL 5.0 and flood prone. Approximately 16,700m³ (equivalent to 417 truck loads) of fill will be imported to raise this area to 5.3m AHD. That is, above both the planning flood level and the 1 in 100 year flood level. The fill will also provide a level building platform that is above the influence of the approved adjoining water detention basin.

The clayey sands identified by geotechnical analysis, will be removed prior to filling, to improve drainage properties of the low lying areas. The bulk of the area will then be filled by 0.5 to 1.5m, and in some areas, up to 1.7m (refer Figure 9).

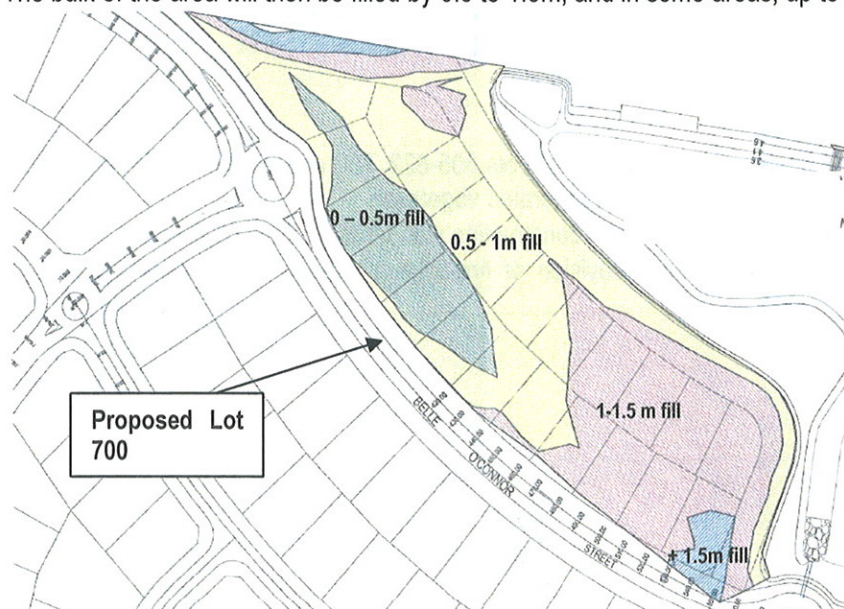


Figure 9: Filling Plan (Source: Environmental Assessment)

The parcel of land between proposed Lots 617 and 618 is within the sites natural drainage flow and will form the commencement of the (approved) drainage system (refer Figure 10). It will collect stormwater runoff from the upper reaches of the catchment to the South, via an inlet (above the residential lots) and pipe which would be sized to cater for 1:100 year flows. The area between Lot 617 and 618 forms part of Lot 800 and shall be restricted by an easement and maintained by an 88E covenant burdening Lot 800.

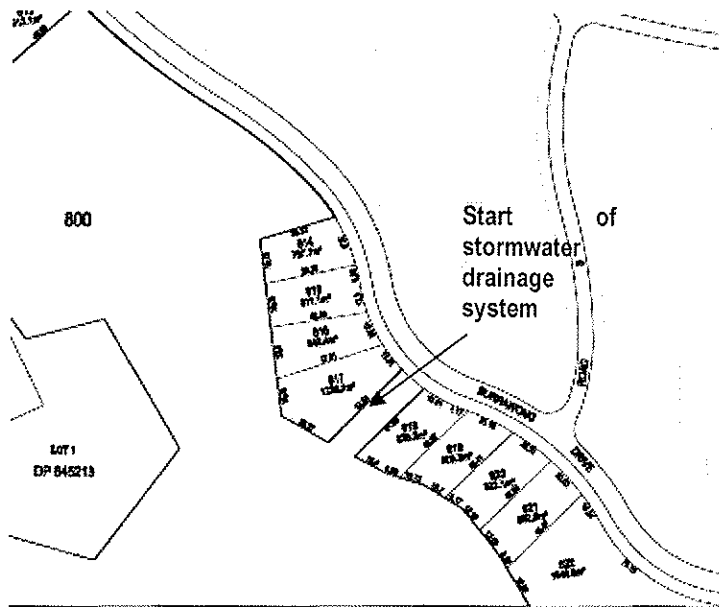


Figure 10: proposed stormwater easement between lot 617 and 617 (Source: PPR)

2.1.2 Road Works

The proposed subdivision includes provision of one local road within the sites north-western corner as shown on **Figure 11**. This road includes two access points off Burrawong Drive. The first access point is at the Burrawong and Rosedale Drive round-a-bout, the second is some 95 metres south. The loop road is to be dedicated to Council.

2.1.3 Bushfire Protection

The site is surrounded by unmanaged heath land to the north, forested land on the ridgeline to the south, and managed grassland vegetation, beneath a remnant tree canopy, and open grasslands to the east. The subdivision design incorporates asset protection zones (APZs) to manage potential bushfire hazards. Measures proposed include:

- a 15 metre inner protection zone to the north and north-east of proposed Lot 700
- a 12 metre APZ on the south-western boundary of proposed Lots 605-617
- an 8 metre APZ on the south-western boundary of proposed Lots 618-622
- a 12 metre APZ to the south of proposed Lot 622.

Other proposed measures include:

- creation of an 88B Covenant over the title of Lots 605-622, 700 and 800 to ensure the ongoing maintenance of the landscaped gardens, residual and regenerated vegetation
- compliance with recommended minimum construction standards for future dwellings
- construction of access roads and provision of fire-fighting water supply points to comply with *Planning for Bushfire Protection 2006*.

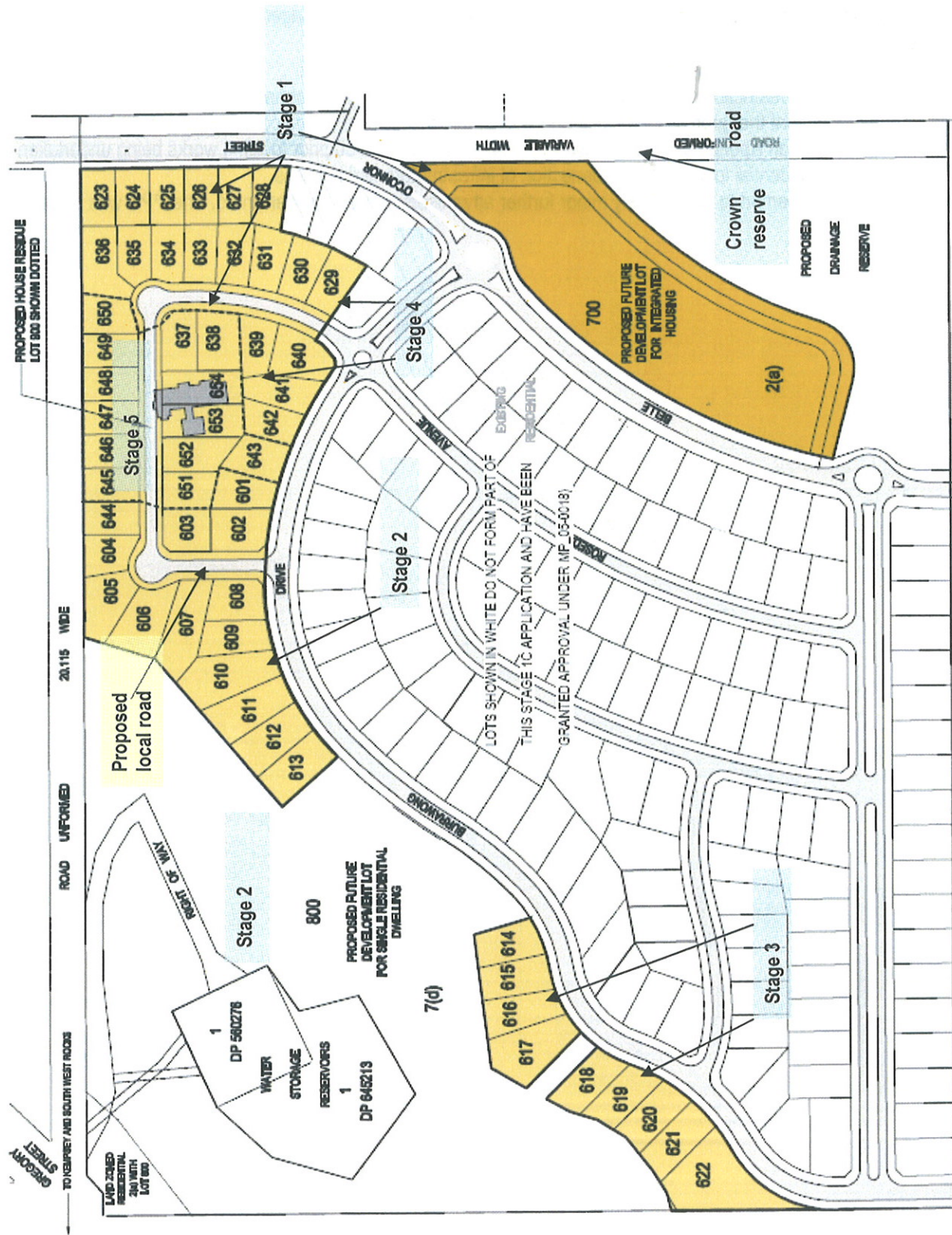


Figure 11: Layout and staging of subdivision (Source: PPR)

2.2 PROJECT AMENDMENTS

An amended PPR and plans were submitted to the Department on 20 January 2010. The amended PPR incorporated the following amendments:

- adjustment to widths of the APZs
- boundary adjustments to lots 605-613 and 614-617 to enable the inclusion of the APZs within lot boundaries as well as retention of vegetation around the dam
- minor re-configuration of Lots 639-641
- addition of Lot 900, which includes the existing residential dwelling, that would be created in stage one and further subdivided in stage 5
- an offset plan, that includes a commitment to prepare a vegetation management plan, for vegetation within Lot 800
- a revised Statement of Commitments which incorporated commitments to:
 - prepare a restriction to user over all lots with frontage to the unformed Crown Road to the west of the development that prohibits vehicular and pedestrian access across that common boundary
 - undertake an Aboriginal Heritage Survey of the proposed Lot 700 prior to filling works being undertaken
 - create residential lots only after connection of infrastructure and services.

As the changes were deemed to be relatively minor further advertisement was not warranted. The PPR was placed on the Department's website.

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) being the subdivision of land in a residential zone into more than 25 lots, in the coastal zone (Schedule 2, Clause 1(1)(i)). The opinion was formed by the Director-General (as delegate for the Minister) on 8 November 2005.

3.2 PERMISSIBILITY

Under the *Kempsey Local Environment Plan 1987* (KLEP), the majority of the site is zoned 2(a) Residential "A", permitting subdivision, and part 7(d) Scenic Protection, permitting dwellings (refer **Figure 12**). The objective of the 2(a) zone is to 'provide areas for low density residential development'. The proposal is consistent with this objective. Subdivision is permissible with development consent within this zone. Clause 16 of the KLEP identifies a minimum lot size of 0.05 hectares (500m²) for land within the 2(a) zone. All proposed lots are larger than 500m².

Proposed residential lots 605-622 contain a portion of land to the rear of the blocks that is located within the 7(d) zone. Under clause 16 of the KLEP the minimum lot size allowed in the 7(d) zone is 40ha. Under clause 32 of the KLEP development within the 7(d) zone is to minimise disturbance to the natural areas and not detract from the scenic quality of the land. The land zoned 7(d) within Lot 124 DP 1097510 is approximately 5 ha and, as a result, non compliant with the 40ha standard. The proposal is permissible in the 7(d) zone and meets the zone objectives to 'conserve the environmental and scenic quality of visually significant land by controlling development so that it will accord with the appearance of the landscape' as no development will occur on this land.



Figure 12: Zoning plan

In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. Under the *Environmental Planning and Assessment Regulation 2000* a project is not prohibited for the purposes of subclause (1)(b) (clause 8N) if it is not permitted because of the application of a development standard under the environmental planning instrument.

The proposal is consistent with the zone objectives under the Kempsey LEP. The proposal is permissible subject to the Minister's approval.

3.3 EXHIBITION AND NOTIFICATION

The Department has exhibited the EA in accordance with section 75H (3) of the Act. The EA was placed on public exhibition for 31 days, from 29 April to 29 May 2009 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) sets out the scope of the Director-General's report to the Minister. Each of the criteria set out therein have 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 E whilst the preferred project report is set out for the Ministers consideration at Appendix D .
Any advice provided by public authorities on the project; and	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, and	
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 Policies 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 matter 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 12 June 2008 are in Appendix B . The Department is satisfied that the EA submitted in support of the project application complies 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 4 of this Report.
The suitability of the site for the project.	The site is identified in the Kempsey LEP 1987 as being primarily within the residential zone (2(a)) which permits subdivision for residential purposes.
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 at Section 4.3 and a summary of public submissions is attached at Appendix C .

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

The **Director-General's Environmental Assessment Requirements** (DGRs) issued on 12 June 2008 required the following issues to be addressed:

- strategic planning
- subdivision layout
- visual impact
- infrastructure
- traffic and access
- contamination and acid sulfate soils
- bushfire
- geotechnical
- flooding
- water cycle management
- heritage
- flora and fauna.

The EA lodged by the proponent on 12 March 2009 was accepted as adequate.

An assessment of compliance with the environmental assessment requirements with respect to the project is included at **Section 5**.

3.5 ENVIRONMENTAL PLANNING INSTRUMENTS

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 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 DGRs require the proponent to address such standards and provisions. Accordingly the objectives of a number of EPIs and the development standards within and other plans and policies that substantially govern the carrying out of the project are appropriate for consideration in this assessment as follows.

- *Kempsey Local Environmental Plan 1987*

See **Section 3.2**.

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

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

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

The aims of SEPP 44 are to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline by requiring the preparation of plans of management, identification of areas of core koala habitat and the inclusion of areas of core koala habitat in environment protection zones. The proposal would remove some 23 koala feed trees listed on Schedule 2 of the SEPP, however, koala presence was not detected during the site survey, the site is not considered core habitat and the assessment of significance determined that the proposal would not have a significant impact on Koalas. The preservation and rehabilitation of similar habitat under a vegetation management plan will ensure proper conservation and management, in perpetuity, of the majority of the vegetation within the development's footprint.

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

SEPP 71 applies to the land and development within the coastal zone (clause 4) as defined by the *Coastal Protection Act 1979*. The subject site is located within the coastal zone. SEPP 71 provides aims of the Policy (clause 2) and matters for consideration (clause 8) when assessing development proposals. The Policy has been made to ensure that development in the NSW coastal zone is appropriate and suitably located, there is a consistent and strategic approach to coastal planning and management and there is a clear development assessment framework for the coastal zone. The major

themes of SEPP 71 include retention of visual amenity, protection of the coastal foreshore in relation to amenity, public access, wildlife corridors, water quality, views, items of heritage and suitability of development within the area. The proposal is considered to be generally consistent with the provisions of SEPP 71 subject to the recommended conditions of approval to provide conservation of the vegetation, including hollow-bearing trees, within proposed Lot 800.

- *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 some bulk earthwork activities to be undertaken, the requirements of SEPP 55 have been considered in the assessment of the proposal. Information supplied by Council and the proponent indicates that there is no contamination on site. However, as a precautionary measure, the recommended conditions of approval require the proponent to conduct a full phase one investigation across the whole development site. It is considered the provisions of SEPP 55 have been adhered to.

- *NSW State Plan*

In the provision of serviced lots for future housing the proposal will assist in achieving the relevant key priorities in the *NSW Government State Plan* (2006), specifically addressing **Priority E6 – Housing Affordability**.

- *North Coast Regional Environmental Plan*

The North Coast Regional Environmental Plan (North Coast REP) provides a framework for policy preparation for the North Coast region. The proposal is generally consistent with the North Coast REP.

3.6 OTHER PLANS AND POLICIES

- *Kempsey Shire Council Development Control Plan 22 – Local Housing Strategy (Urban Areas other than Crescent Head) 2003*
- *NSW Coastal Policy 1997 and NSW Coastal Design Guidelines; and*
- *Far North Coast Regional Strategy.*

The proposed is generally in compliance with the provisions of these documents.

3.7 ECOLOGICALLY SUSTAINABLE DEVELOPMENT (ESD) PRINCIPLES

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.

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).
- (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:

3.7.1 Integration Principle

The Integration Principle has been considered with the design providing appropriate (for both the short and long term) protection of sensitive environments, allowing for appropriate connections with the existing residential community and ensuring equity of access throughout the subdivision.

3.7.2 Precautionary Principle

The EA has identified and assessed the range of environmental impacts of the proposal. The proposal includes the following:

- integrated native landscaping to retain the existing character, protect soils and reduce erosion
- a stormwater management system is proposed using pollutant and sediment traps, and a detention basin to help protect water quality (approved as part of Stage 1B)
- retention and protection of the majority of the key habitat components, to be retained within Lot 800
- the provision of an offset package to reduce the impact of removing any hollow-bearing trees and habitat
- appropriate asset protection zones and access to the site as recommended in the Bushfire Threat Assessment and subsequent amendments included with the PPR.

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

3.7.3 Inter-Generational Principle

The development provides additional residential development opportunities now and into the future in South West Rocks. The project will seek to minimize its ecological footprint, and provide a relative degree of local and regional self-reliance and capacity for future adaptability, through:

- appropriate planning and design approaches
- maximising the protection and rehabilitation of the majority of the vegetation on the site
- provision of additional housing within South West Rocks in close proximity to community and recreational facilities such as the shopping centre, medical centre and golf course.

3.7.4 Biodiversity Principle

The proponent undertook an assessment of the development's compliance with the following environmental planning instruments:

- *Environment Planning and Assessment Act 1979*
- *Environment Protection and Biodiversity Conservation Act (1999)*
- *Threatened Species Conservation Act (1995) (NSW)*
- *State Environmental Planning Policies (44 and 71).*

Appropriate mitigation measures and management strategies will be implemented to prevent any potential environmental impacts, such as:

- implementation of a clearing strategy
- erection of nest boxes to replace lost hollow bearing trees
- inclusion of potential forage species in street planting
- management of the habitat on Lot 800 through a Section 88E covenant and Vegetation Management Plan (VMP).

3.7.5 Valuation Principle

The subdivision has been designed in accordance with the principles of Water Sensitive Urban Design and includes a water recycling scheme. The scheme will provide dual reticulation throughout the development; re-use distribution mains will convey recycled water from the sewage treatment plant into a Council reservoir located on site which will allow for the extension of recycled water into other parts of South West Rocks. The system is designed to promote an environmentally sustainable outcome through management of the stormwater runoff, groundwater, potable water and sewerage. These measures will help future development applications for the site to comply with BASIX.

The proponent is committed to ESD principles and has reinforced this through the Statement of Commitments and the Environmental Assessment which explores key ESD opportunities, including mechanical, electrical and hydraulic systems as well as architectural designs to ensure high environmental performance is delivered.

Consequently, the Department is satisfied that the proposal is consistent with the principles of ESD.

3.8 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 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, and
- (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, and
- (vii) ecologically sustainable development, and
- (viii) the provision and maintenance of affordable housing, and

(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 application is consideration of the objects under section 5(a). Relevantly, the objects stipulated under section 5(a) (i), (ii), (vi) and (vii) are significant factors informing the determination of the application. The project does not raise significant issues with regards to 5(a), (iii), (iv), (v) and (viii).

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the project application.

4 CONSULTATION AND ISSUES RAISED

4.1 PUBLIC EXHIBITION DETAILS

The EA was exhibited for 31 days from 29 April to 29 May 2009. Notification of the exhibition was given in the following local papers:

- Mid Coast Observer
- Macleay Argus.

Exhibition locations were at:

- Department of Planning Head Office, Bridge Street Sydney
- Kempsey Shire Council, Administration building West Kempsey
- Nature Conservation Council of NSW, Kent Street, Sydney.

The EA was also provided for download 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 ten submissions were received, comprising four submissions from the public and six submissions from public authorities being:

- NSW Roads and Traffic Authority
- NSW Land and Property Management Authority (former Department of Lands)
- NSW Department of Environment and Climate Change and Water (former Department of Environment and Climate Change)
- NSW Department of Industry and Investment (former Department of Primary Industry)
- NSW Rural Fire Service
- Kempsey Shire Council.

The submissions from the public were all letters of objection. Of the public authority submissions, DECCW and Kempsey Shire Council raised concerns.

A PPR was lodged on 15 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 20 January 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.

Of the public authority submissions, concerns raised in initial submissions were addressed in the Preferred Project Report or by the recommended conditions.

4.2 SUBMISSIONS FROM THE PUBLIC

The following issues were raised in the public submissions:

- Traffic and access – provision of access along Belle O'Connor Street, impacts on residential and tourist amenity and safety concerns due to poor planning of intersection
- Flora and fauna – reduction in biodiversity and clearing of vegetation, introduction of feral animals and weeds
- Land use – the encroachment of the subdivision on the Scenic Protection zone
- Stormwater – inappropriate drainage
- Visual – damage to views and visual amenity
- North Coast Regional Environmental Plan (NCREP) – the proposal is not consistent with Clause 34 and Clause 43 of the NCREP
- Bushfire – inadequate Asset Protection Zones.

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 at **Appendix C**. The proponent responded to these submissions on 20 January 2010 and the proponent's Response to Submissions is in **Appendix D**.

4.3 SUBMISSIONS FROM PUBLIC AUTHORITIES

Submissions were received from Kempsey Shire Council and five State government agencies, these are summarised below.

4.3.1 Kempsey Shire Council

- Dual occupancy – concern over how dual occupancy development will be controlled on the greater part of Stage 1C without compromising the proposed integrated housing precinct.
- Stormwater management – concerned that the EA has not addressed Section 16, Stormwater, of SEPP 71. Identified that a Section of the proposed development was not included in the Water Management Plan's modelling.
- Flooding – assessment required to consider whether Stage 1C lots are at an unacceptable risk from localised flooding during a 1 in 20 year storm. Concern over adequacy of the storm water corridor between lots 617 and 618.
- Groundwater – hydrogeological assessment hasn't been undertaken nor have groundwater issues been addressed by the Geotechnical Report.
- Contamination – no contamination assessment has been undertaken as indicated.
- Ecology – concern over the lack of vegetation management and regeneration. Consideration should be given to consider using the 7(d) land for native flora regeneration.
- Traffic and Access – concern over access to Lots 604, 605, 636 and 644-650, off the Crown Road.
- Bushfire – concern over the provision of the asset protection zones in 7(d) Scenic Protection zone.
- Design and subdivision layout – Lot 622 is overly large; the suitability of Lot 618 is questionable due to site constraints; the subdivision plan shows a small area of land not labelled as a lot (west of Lot 614).

Kempsey Shire Council also raised concerns relating to applicable DCPs and Policies, Section 94, open space provision contributions and the Statement of Commitments.

The key issues raised by Council are discussed in detail in **Section 5** of this report.

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

- SEPP 71 requirements - measures should be undertaken to conserve species, the EA lacks assessment of the cumulative impacts of the development on the natural environment.
- Draft Mid North Coast Regional Strategy - there is conflict between the Strategy and part of the Darkheart report in regards to "high" value environment.
- Site history - concern over the removal or degradation of threatened species habitat, pre-empting development of the site.
- Biodiversity survey - effort was inadequate, lacks provision of offsets.
- Subdivision layout – should be reviewed to maximise vegetation retention, a dwelling on Lot 800 is not supported.
- Additional information required - proposed bushfire regime, predicted impacts of human visitation, management methods for the 7(d) zone and retained vegetation within the development footprint.
- Hollow bearing trees - the number and dimensions of nest boxes should reflect the number and size of hollows present, a comprehensive and consistent protocol for the removal of hollow bearing trees should be developed and endorsed, development buffer of 10m is recommended.
- Fauna - consideration should be given to faunal exclusion fences along Burrawong Drive and exclusion of cats and dogs.
- Statement of Commitments – should be reviewed with respect to ecological issues, additional commitments for Indigenous heritage are recommended.
- Indigenous heritage - the Aboriginal Cultural Heritage assessment doesn't indicate whether Lot 700 was included, provide the outcome of consultation, discuss the relevance of the Native Titles Act 1993 or the Aboriginal Lands Rights Act to the proposal.

Agencies with no concerns

No objections were raised by the Roads and Traffic Authority (RTA) (however the RTA recommend a referral to the Kempsey Shire Council Local Development Advisory Committee), the Land and Property Management Authority (DoL), the Rural Fire Service (provided a number of standard conditions were included in the approval) or the Department of Industry and Investment.

5 ASSESSMENT OF ENVIRONMENTAL IMPACTS

5.1 ENVIRONMENTAL ASSESSMENT

Assessment components relating to this proposal, which were approved as part of Stage 1B are as follows:

As part of the Stage 1B project approval, the Minister assessed and approved a range of issues that relate to both Stage 1C and 1B of the subdivision. As such, these aspects were generally not considered as part of this assessment. The issues assessed previously are as follows:

- traffic
- Indigenous heritage (however the proponent was required to undertake consultation for Stage 1C)
- geotechnical (including acid sulphate soils)
- landscaping
- urban design principles
- water cycle management.

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

- subdivision layout, density and design
- open space
- visual impact
- bushfire
- access
- hazard management and mitigation
- flooding
- heritage and archaeology
- flora and fauna.

The remaining issues were resolved following consultation with the Proponent, or were directly addressed via the proponent's PPR, Statement of Commitments or the Department's recommended conditions of approval. Significant issues are discussed in detail, below.

5.2 SUBDIVISION STAGING, LAYOUT and DESIGN

5.2.1 Staging

The proposal, as advertised, sought to construct the project in six stages. In discussions with the proponent several changes were made to the staging to ensure construction efficiencies and better conservation outcomes. The proponent supports the recommended condition of approval amending the staging of the development to that below.

Stage 1(i), (ii) and (iii) – Precinct E1: Lots 623-628, Lot 900 and Lot 700 (8 Lots)

Stage 2 - Precinct E2: Lots 601-613 and 644 (14 Lots) and **Precinct G:** Lot 800 (1 Lot)

Stage 3 – Precinct E3: Lots 614-622 (9 Lots)

Stage 4 - Precinct F1: Lots 629-636 and 639-642 (12 Lots)

Stage 5 - Precinct F2: Subdivision of Lot 900 into Lots 637, 638, 643 and 645-654 (13 Lots) (refer **Figure 11**).

5.2.2 Layout and Design

As discussed in Section 3.2, proposed residential Lots 605-622 contain a portion of land that is located within the 7(d) zone. Under clause 16 of the KLEP the minimum lot size allowed in the 7(d) zone is 40ha. However, the objective of the 7(d) zone is to 'conserve the environmental and scenic quality of visually significant land by controlling development so that it will accord with the appearance of the landscape'. To ensure that the proposal is consistent with this objective, a recommended condition of approval requires placing a restriction as to user on lots 605-622, prohibiting dwelling construction on the 7(d) zoned portion.

The layout of the proposed subdivision and the 778m² average lot size allows for energy efficient housing designs, including adequate private open space areas and adequate car parking areas. The street pattern provided is sympathetic to the existing topography and builds on the historic structure prevalent in the surrounding locality.

The proposed development complies with the building controls for future building form on each lot across the site as set out in Kempsey Shire Council's Development Control Plan No. 22. However, Council raised a number of minor concerns over the subdivision layout, all of which the proponent has satisfactorily addressed. Concerns included:

- how the proponent intends to control dual occupancy development on the greater part of Stage 1C without compromising the proposed integrated housing precinct
- the size of lot 622
- the suitability of Lot 618 due to site slopes.

The proponent's response stated:

- Seascope Grove provides Restrictions on Use limiting the construction of more than one building on the lots.
- Lot 622 includes the provision of a 12m fire access trail and is consequently larger. In addition the lot design preserves existing trees.
- The layout of lots 617 and 618 has been redesigned to widen the access handle and incorporate large areas of the gully.

Though the Department does not support the proposed restriction as to user prohibiting construction of more than one dwelling per lot, it is not considered a matter of determining weight. It is recognised that this covenant has been imposed on previous stages; furthermore, the restriction does not override zoning permissibility.

In general, the Department considers that the indicative layout for the future subdivision of the site is acceptable as it provides for low density residential development that is mostly compliant with Council's DCP, while preserving and enhancing the elevated area of the site which also links to the vegetated land to the south.

5.3 OPEN SPACE

Council raised concerns over the lack of land for public open space in the current proposal. The proponent stated in their Environmental Assessment that advice received from Kempsey Shire Council during the design of the Master Plan and Stage 1B noted that the provision of land for public open space was not required to be provided as a part of this development. The EA went on to say that Kempsey Shire Council's open space provisions do not include any designated open space areas within the Seascope Grove locality and therefore the development is restricted to paying the applicable Section 94 developer contributions in relation to Open Space as per the Council's current Section 94 plans.

Council's DCP 10 identifies the proposal site as an area within which play grounds/small parks should be centrally located. However, Council has shown reluctance to accept dedication of open space in a previous stage (Stage 1B), even though the approved Master Plan made provisions for parks within that stage. The Department deems contributions for open space under Council's current Section 94 Plan to be adequate. Upon discussion, Council agreed with this position. A recommended condition imposes levies in accordance with Council's Section 94 Plan.

5.4 TRAFFIC AND ACCESS

The only access to the site from the existing local road network is via Belle O'Connor Street. The redirection of Belle O'Connor St into the subject site was approved by Council as part of Stage 1 (23 lots). An unformed 20.115m (refer **Figure 11**) wide Crown road is located between Lot 124 and land to the north of the site. Concern was raised in public submissions that the proposal does not allow for provision of access to land to the north of the site. Council, in response to the draft PPR, also raised concerns, stating that a preliminary draft DCP has been prepared for the locality to the north following its rezoning to residential 2(a) in late 2009. The preliminary draft DCP shows an arrangement where the primary access roads converge into the existing roundabout at the intersection of Burrawong Crescent and Belle O'Connor Street. Council believes that this is the preferred traffic arrangement for this locality as it is the only practical location for such an intersection as determined recently by Traffic Engineers reports associated with preparation of the preliminary draft DCP.

The 2006 ERM Traffic Impact Assessment prepared for this development identified a potential future road link servicing existing land to the north of Seascope Grove, in its Internal Traffic Distribution Proposed Road Hierarchy Plan (refer **Figure 13**) but did not specify a location for that intersection.

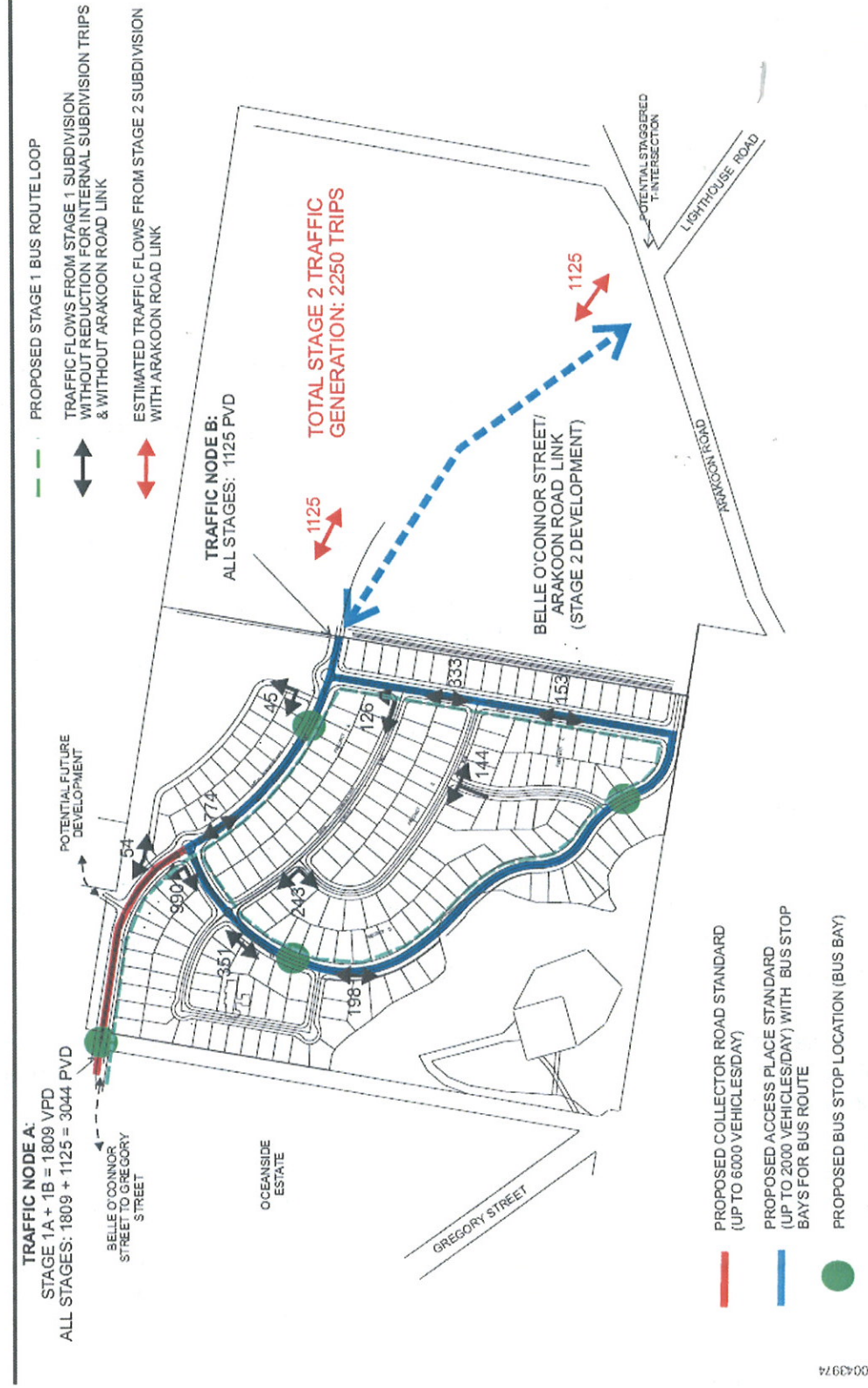


Figure 13: Internal Traffic Distribution with Proposed Road Hierarchy (Source: Traffic Impact Assessment within Environmental Assessment)

Council suggests that development approval incorporate a condition to allow for the dedication of land within the Seascapes Grove Estate as depicted in the draft DCP allowing for the future road link with the "Saltwater" land to the north in accordance with the 2006 ERM Traffic Impact Assessment.

While the northern part of the subject site is included in the proposal for subdivision and filling, the potential for Belle O'Connor Street to link to the north is not part of the subject subdivision, and though this matter needs to be resolved it does not directly relate to this proposal. The Department is currently discussing alternative solutions with the adjacent "Saltwater" proponent. If none are forthcoming, the Seascapes Grove proponent has stated that they are willing to enter into negotiations with Council and the owner of the "Saltwater" lands to reach an equitable solution.

Council also raised concerns over the possibility of the crown road reserve, running along the western boundary of the site, providing a secondary access to Lots 604, 605, 636 and 644-650. Council requested that the proponent provide a physical barrier, preferably earth mounding, at subdivision stage. The Department feels that this request is reasonable as use of this unformed road reserve would place an unnecessary maintenance burden on Council considering suitable access is already provided.

The Department feels that this concern has, for the most part, has been sufficiently addressed by the proponents amended Statement of Commitments provided with the PPR, which commit to the implementation of a restriction of use over appropriate lots prohibiting vehicular and pedestrian access to the crown road reserve. However, the Department has included in the recommended conditions, a condition requiring the proponent to provide a fence within the boundaries of Lots 604, 605, 636 and 644-650 and a barrier at either end of the Crown Road Reserve (to Council's specifications). The Department considered that earth mounding may impact on the design of stormwater mitigation, have other unintended construction issues and impact on the usable space within the lots.

A public submission expressed concern over the restriction of access to properties along Belle O'Connor Street during construction of previous stages. A recommended condition of approval requires access to be maintained to all properties along Belle O'Connor Street at all times during construction, as well as restricting parking for construction vehicles along Belle O'Connor Street.

5.5 HAZARD MANAGEMENT AND MITIGATION

The site is located adjacent to Council's Waste Transfer Station and has historically been used for agricultural purposes. The Department's submission identified that the proponent's Environmental Assessment lacked information regarding contamination. To address this concern, the proponent provided additional information concluding that the site was not contaminated; Council also advised that the site was not identified as being contaminated. However, as a precautionary measure, given that the land use would be changing to a more sensitive use, from agriculture to residential, a recommended condition of approval requires the proponent to undertake a phase one contamination assessment in accordance with the DUAP 1997 *Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land*.

5.6 BUSHFIRE

5.6.1 Asset Protection Zones

The site is identified as being bushfire prone land. Variation B2(2) of the approved 2006 Master Plan required the provision of APZs to be made wholly within the proposed residential allotments, to ensure the maintenance of these areas is solely the responsibility of the future land holder. The EA for Stage 1C provided the APZs within Lot 800. Although the RFS raised no concerns over this matter, both the Department and Council raised concerns over the burden placed on the future owner of Lot 800 rather than the individual property owners, as well as the additional burden on the Scenic Protection zone.

The Department requested the proponent move the APZs so that individual lots encompass their own APZ thereby meeting the requirements of *Planning for Bushfire Protection 2006*. The Department recommended that extending lot boundaries by 5-10 metres was acceptable.

The modified subdivision layout proposed as part of the PPR includes the APZs within the boundaries of the relevant lots. The lot boundaries were extended by some 5-10 metres; however, the boundaries of lots 605 and 606 were extended by 17m due to the changes in location and orientation of these lot boundaries. The PPR also included APZs that had been reduced in size from the ones proposed in the advertised Environmental Assessment. The APZ requirements had been recalculated by the proponent's Bushfire consultant, based on the future dwellings being constructed to comply with Level 3 standards (level 3 standards have specific construction requirements for protection of dwellings from embers and radiant heat from bushfires) as defined by A.S. 3959 – 1999 – *'Construction of Buildings in Bushfire Prone Areas'*. The Department is satisfied that the amended APZ widths, combined with level 3 standards for future dwellings, complies with the requirements of *Planning for Bushfire Protection 2006*.

5.6.2 Other Concerns

A public submission raised concerns that the APZs were not sufficient and recommended that the whole of Lot 800 should be set aside as a buffer. However as the provided APZ widths comply with NSW Rural Fire Service's requirements in *Planning for Bushfire Protection 2006*, the APZ widths are considered satisfactory.

The proponent's Statement of includes a commitment to install fire hydrants in accordance with Australian Standard S2419.1-1994 (a Condition amends this commitment to incorporate the relevant standard S2419.1-2005). Hydrants will be made accessible and located so that a tanker can park within a distance serviceable by a 20 metre hose and so that all houses are within 70 metres of a hydrant.

The Department is satisfied that satisfactory bushfire management measures can be implemented for the project including APZs for future dwellings. The recommended conditions of approval include requirements for APZs to be imposed through appropriate instruments over each lot, under section 88B of the Conveyancing Act. The conditions recommended by the RFS are included in the Department's recommended conditions of approval.

5.7 FLOODING and WATER CYCLE MANAGEMENT

5.7.1 Modelling

Stormwater management measures for the subdivision were approved as part of Stage 1B. However, Council identified that a small strip of land on the western boundary hadn't been included in the water quality modelling (refer **Figure 14**). The area includes proposed lots 604, 605, 623, 636, 644 and 645-650 and part of Lot 800. This area would drain into the neighbouring catchment to the west rather than through the approved drainage basin. The Department agreed with Council's concerns and, following exhibition asked the proponent to discuss proposed treatment for runoff from these lots.

In response, the proponent amended their Statement of Commitments to include a commitment to direct all flows from these lots towards the wet detention basin in the eastern catchment. However, this solution may not be the most feasible in terms of engineering. Therefore, a recommended condition of approval requires the proponent to provide appropriate stormwater quality treatment for runoff from lots 604, 605, 623, 636, 644 and 645-650, in consultation with and to the satisfaction of Council. The Department is satisfied that, with the recommended condition, the stormwater pollution from these lots will be managed satisfactorily.

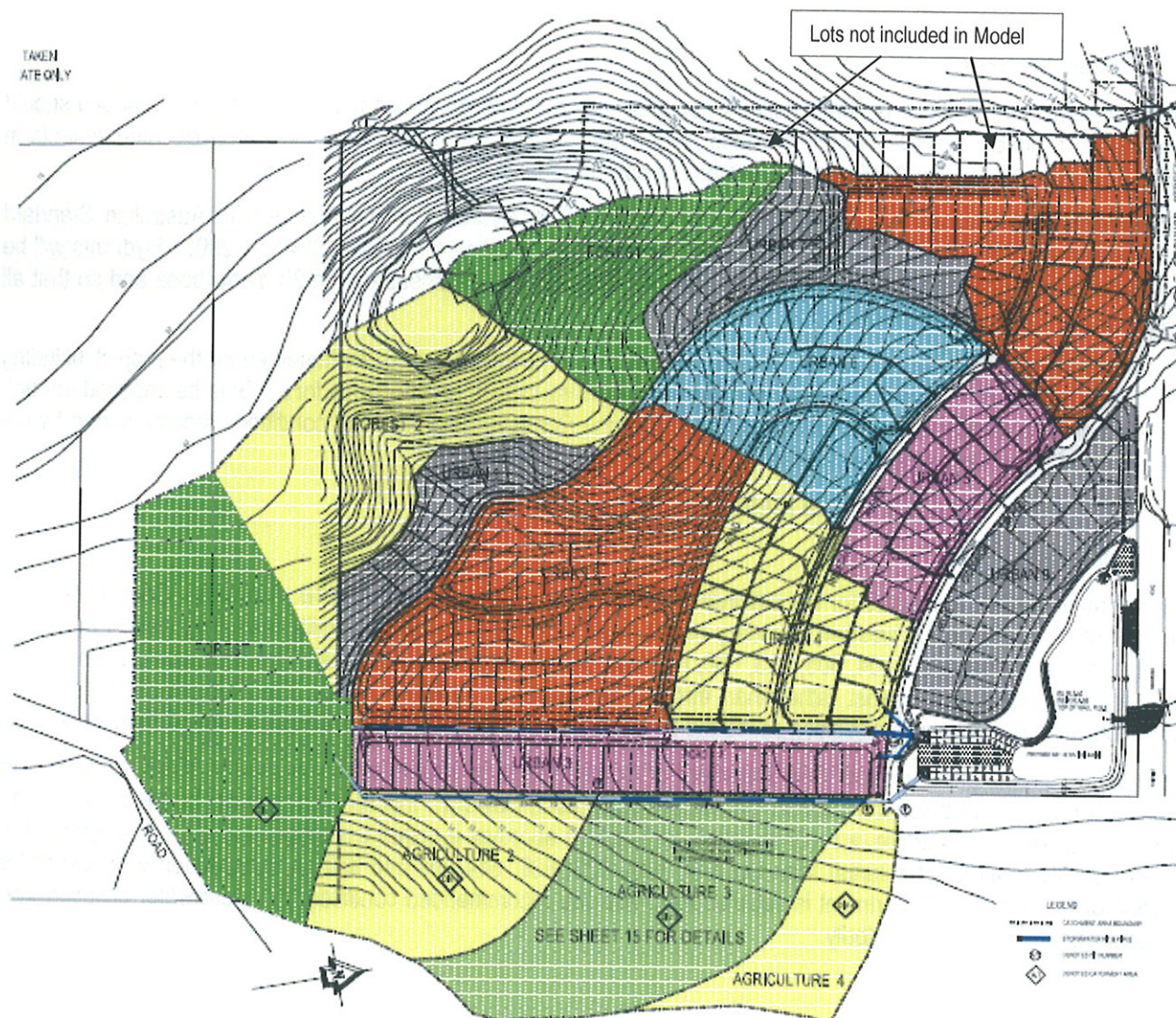


Figure 14: Stormwater management plan (source Environmental Assessment)

5.7.2 Drainage system and localised flooding

Initially Council raised concerns over the capability of the corridor of land between Lot 617 and Lot 618 (which will form the commencement of the drainage system) to accommodate the 1 in 20 year storm event overland flows. The proponent responded by explaining that the proposal will provide for a piped system through the corridor to cater for 1:100 year flows with the localised stormwater runoff diverted to the pipe, prior to reaching the lots. The proponent included an additional statement of commitment stating that a stormwater pipeline shall extend upstream of the handle between Lots 617 and 618. The pipeline will collect all stormwater runoff to ensure that no localised flooding impacts on Lots 617 and 618.

The Department accepts that these measures should ensure that the subdivision is not at risk from the 1 in 20 year storm event.

5.7.3 Other concerns

A submission expressed concern over the detention basin outlet being directed over the crown road easement making it impassable. The detention basin formed a part of the previous application and was assessed at that stage. The final design and location of the overflow weir will be prepared in accordance with the requirements of Kempsey Shire Council as well as the Stage 1B Environmental Assessment and specialist reports. However, an advisory note has been added to the recommended conditions to re-iterate the necessity to consult with Council prior to issue of a construction certificate for the wet detention basin. Another submission expressed concern that the Water Management Plan does not address impacts associated with nitrogen and phosphorous runoff on Saltwater Creek and Lagoon. The impacts of the proposed water management strategy were also assessed as part of Stage 1B.

5.8 HERITAGE AND ARCHAEOLOGY

An Aboriginal Heritage Assessment was undertaken for the entire site as part of Stage 1B; however, assessment requirements for Stage 1C were to address the draft *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation*. The proponent undertook consultation through an advertisement placed in the Macleay Valley Argus on 18 November 2008 and letters to DECCW, Kempsey Local Aboriginal Council, Kempsey Shire Council, the NSW Department of Aboriginal Affairs and the Native Title Services Corporation. The proponent's initial Environmental Assessment didn't contain any details regarding parties who registered interest following the advertisement. The PPR identified that no responses were received from the letters or the advertisement.

The Aboriginal Heritage Assessment undertaken as part of Stage 1B lacked information regarding the survey locations. DECCW were not confident that the survey had adequately covered proposed Lot 700 as it is the only lot where significant amounts of fill will be deposited. DECCW were concerned that spoil removal and filling within Lot 700 would destroy any potential heritage. The proponent's amended Statement of Commitments, provided with the PPR, contains a commitment to undertake an Aboriginal Heritage Survey of the proposed Lot 700 prior to filling works being undertaken. A condition of approval has been included to this end, specifying that an appropriately qualified person should undertake the survey.

To reflect the Minister's conditions for Stage 1B and DECCW's recommended conditions; a condition of approval has been recommended requiring Kempsey Local Aboriginal Land Council representatives to be notified of the commencement of works in each stage to provide them with an opportunity to view those works. DECCW's other suggested conditions have also been included in the recommended conditions of approval.

Subject to the conditions of approval, the proposal will have an acceptable level of impact upon the Aboriginal archaeology of the site.

5.9 FLORA AND FAUNA

The proposal will involve the clearance of 38 individual trees and an area of some 1,400m² including five hollow-bearing trees. Flora and Fauna surveys undertaken by Darkheart (Appendix B of the EA), Umwelt (2004) and ERM (2006/7) identified five threatened fauna species, the Squirrel Glider, Little Bent-wing Bat, the Eastern Freetail Bat, the Common Bent-wing Bat and the Grey Headed Flying Fox (as well as ten potentially occurring threatened species). All of these species are listed as vulnerable under Schedule 2 of the *NSW Threatened Species Conservation Act 1995* while the Grey Headed Flying Fox is listed as vulnerable under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*. The impacts are discussed in more detail in the following sections.

5.9.1 Landscaping

The proponents Landscaping Principles Plan (Appendix K of the EA) recommends primarily native species for landscaping however, two non-native species (*Magnolia graphdillora* and *Gazinia* sp.) are also included, one of which (*Gazinia*) is considered to be an environmental weed. The proponents PPR rejected a request that they amend the Statement of Commitments to include a commitment that only endemic species are used in the landscaping.

A suggested condition of approval is that all plants to be used in landscaping are endemic and that Council approve the Final Landscape Plan prior to issue of the construction certificate.

5.9.2 Construction and operational impacts

DECCW and the Department raised a number of concerns regarding the methodology, or lack thereof, for the protection of retained vegetation and threatened fauna, as well as the lack of consistent methods for hollow bearing tree removal.

The proponents PPR included an amended ecology report which made recommendations including the preparation of a Tree Management Plan to include strategies for clearing, protection of trees during construction, pre-clearing surveys and hollow bearing tree removal. The amended Statement of Commitments also included these recommendations.

It is recommended that the preparation of a Tree Management Plan is also included as a condition of approval. The condition specifies that the Tree Management Plan is to be included in the Construction Environmental Management Plan and submitted to the Council and approved by the Department prior to the issue of the Stage 2 construction certificate. The Tree Management Plan is to include:

- recommendations included in Darkheart's *Statutory Ecological Impact Assessment Report* of October 2009
- provision for education of personnel and contractors about the environmental protection measures that apply
- methods for protecting retained trees during construction
- a protocol consistent with the protocol within Darkheart's *Statutory Ecological Impact Assessment Report* (October 09) for the removal of hollow bearing trees and the tree hollow replacement program (using nest boxes to replace hollows on a 1:1 basis)

- safeguards for the protection of fauna both prior to, during and following the works, including the presence of a suitably qualified person during the entire felling operation to ensure that proper management of any nocturnal animals or otherwise can be effectively managed
- the design of fauna exclusion fencing on the boundary between Burrawong Road and the 7(d) zone.

5.9.3 Habitat loss

DECCW requested amendments to the lot layout or number of allotments to reduce the biodiversity impacts on site, particularly in the area around the dam (refer **Figure 15**). The proponent responded in their PPR by reducing the adjacent lot widths and increasing their length, allowing for the inclusion of the APZ within individual lots as well as retention of the vegetation around the dam.

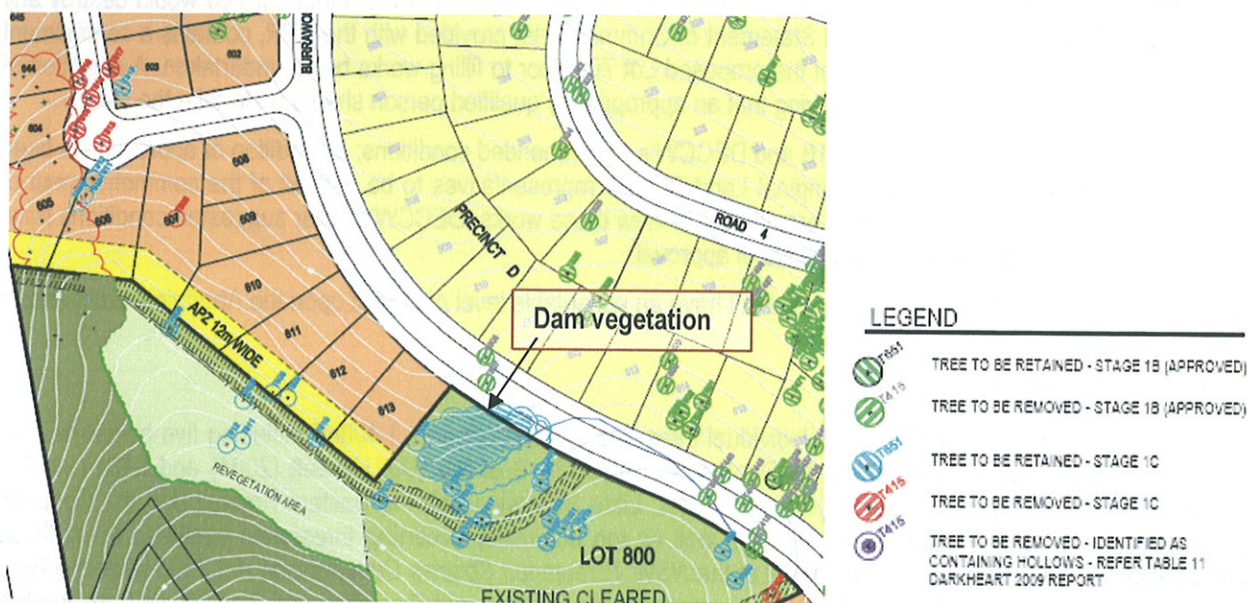


Figure 15: Tree Retention (Source: Preferred Project Report)

The Department is satisfied that, as a consequence of the lot adjustment, some 1,000m² of vegetation around the dam will be conserved.

5.9.4 Vegetation Offsets

The Department, DECCW and Council all raised concern over the lack of proposed offsets in the advertised Environmental Assessment, given the removal of habitat for threatened species and lack of certainty over the management of the vegetation on Lot 800 when, according to Darkhearts Ecology Report Lot 800 contains the 'more optimum habitat for the [identified] threatened species'. A residential entitlement on Lot 800 was proposed to form a future application. The Department asked the proponent to provide quantification of the proposed clearing of vegetation/habitat within the subdivision and to compare this to that to be retained/restored. The comparison was to demonstrate that the proposed offset within Lot 800 is adequate and that a 'maintain or improve outcome can be realised'.

The proponent responded by amending the Ecological Assessment to include an offset strategy that included a clearing strategy, protection of retained tree habitat during construction, reuse of fallen trees and hollows, regeneration of Lot 800, provision of nest boxes and long term management of Lot 800. The total area to be managed is approximately 4.74 ha (plus the area around the dam) with some 10,770m² to be revegetated.

DECCW was still concerned that the proposed offset did not meet the "maintain or improve principle" and requested that the proponent provide further information. However, the Department is satisfied that the offset provides an equitable solution; the proponent can incorporate detailed information into the Vegetation Management Plan (see below).

A recommended condition of approval will require a Vegetation Management Plan to be prepared for Lot 800. The plan is to be approved by the Department, prior to the issue of the construction certificate for Stage 2. The Plan would then be registered onto the title of Lot 800, along with an 88E covenant for the lot to be managed for conservation in accordance with the VMP, so any future landowner is aware of their responsibilities. A condition of approval also states that the developer is required to revegetate and rehabilitate the area and provide ongoing maintenance of this area for a period of 5 years. Following this initial period of maintenance, the responsibility will be transferred to the relevant landowner.

The Department is satisfied that with the proposed conditions of approval and the changes made in the PPR, the proposal's impacts on threatened species can be adequately managed.

5.9.5 Statement of Commitments

DECCW raised a number of concerns regarding the adequacy of the ecological assessment. DECCW requested the proponent to include a number of additional commitments to better manage impacts of the development. These include:

- management of cats and dogs
- a commitment for adequate controls to prevent human visitation and impacts on the 7(d) zone (adequate controls may include fencing designed to exclude vehicles)
- a fauna exclusion fence on the southern side of Burrawong Drive where it is not bound by residential allotments
- a bushfire management regime to be implemented that incorporates a mosaic burning pattern
- address impacts of *Phytophthora cinnamom* (a fungal plant pathogen).

The recommended conditions of approval require these commitments to be included in the VMP. However, the exclusion of cats and dogs has been recommended for Lot 800 only, as Lot 800 is the lot containing the habitat for threatened species.

5.10 SECTION 94 AND OTHER CONTRIBUTIONS

Prior to the endorsement of a Subdivision Certificate for each stage of the subdivision, the Proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act* (1979).

The relevant plans are:

- South West Rocks Section 94 Contributions Plan
- Section 94 Administrations Plan

Contributions will be levied on the development for amenities and services for each additional building entitlement created. These are addressed in the recommended conditions of approval being \$11,542.33 per additional allotment (total \$658,002.81). See Table 2 below for a breakdown of contributions per stage.

Table 2: Section 94 Contributions

TOTAL CONTRIBUTIONS PAYABLE	
Stage 1(i)	\$68,537.28
Stage 1(ii)	\$11,422.88
Stage 1(iii)	\$11,422.88
Stage 2	\$171,342.00
Stage 3	\$102,805.20
Stage 4	\$137,073.60
Stage 5	\$148,496.40
TOTAL	\$651,100.24

A Development Servicing Plan (DSP) enables Council, under Section 64 of the Local Government Act 1993, to levy contributions where the anticipated development will or is likely to increase the demand for water supply services. The relevant Contributions plan is Kempsey Council Macleay Water Developer Service Plan (water and sewer).

Contributions will be levied on the development for water supply and sewerage supply for each additional building entitlement created. These are addressed in the recommended conditions of approval being \$15,018 per additional allotment (total \$856,026). See Table 3 below for a breakdown of contributions per stage.

Prior to the endorsement of a Subdivision Certificate for each stage of the subdivision, the Proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to Section 64 of the *Local Government Act* 1993.

Table 3: Section 64 Contributions

STAGES	Water Supply Services	Sewerage Services	Total per stage
Stage 1(i)	\$40,730	\$34,360	\$75,090
1(ii)	\$8,146	\$6,872	\$15,018
1(iii)	\$8,146	\$6,872	\$15,018
Stage 2	\$122,190	\$103,080	\$225,270
Stage 3	\$73,314	\$61,848	\$135,162
Stage 4	\$97,752	\$82,464	\$180,216
Stage 5	\$105,898	\$89,336	\$195,234
Stage 6	\$8,146	\$6,872	\$15,018
TOTALS	\$464,322	\$391,704	\$856,026

5.11 COMPARISON WITH SEPP 71 MASTER PLAN

The Department has considered the adopted Master Plan in its assessment. It is considered that the current proposal complies with the adopted SEPP 71 Master Plan

5.12 STATEMENT OF COMMITMENTS

The PPR included an amended Statement of Commitments which addressed the majority of the issues raised. It is considered that the recommended conditions of approval will sufficiently address any outstanding issues.

5.13 PUBLIC INTEREST

The proposal serves the public interest by the orderly provision and release of serviced residential land that is well designed and provides appropriate linkages to facilities and services. The public interest is also served by the ongoing protection of threatened species and other native flora and fauna habitat on site.

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 relate to, ecology, Aboriginal Cultural Heritage, subdivision design, traffic and access, and stormwater and flooding. The Department has considered these issues and a number of conditions are recommended in conjunction with the proponent's Statement of Commitments.

The Preferred Project will provide the following public benefits:

- contribution toward housing targets for the Kempsey area as identified by the Mid North Coast Regional Strategy
- provision of a diverse housing choice within an existing urban area
- long term protection of the ecological values of the site
- improved stormwater control and management
- generation of employment in the construction phase.

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 the project be approved, subject to the recommended conditions of approval and the proponent's Statement of Commitments.

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.

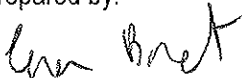
A total of four public submissions were received during exhibition of the EA. Consequently, it is considered appropriate for the Deputy Director-General to determine the project under delegation pursuant to section 75J of the Act.

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 conditions; and
- (C) sign the Instrument of Approval at **Appendix A**.

Prepared by:

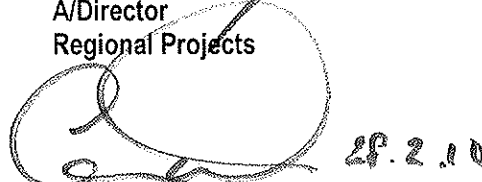


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