

and disused motor vehicles. A Remedial Action Plan has therefore been prepared by Martens Consulting Engineers which has recommended certain works in the form of excavation of identified material and disposal off site, with further sampling to validate the remediation works undertaken. These remediation works are to be undertaken in conjunction with the works to implement this subdivision. This is further discussed in Section 5.4.2 of this EA.

The specialist assessments outlined above have identified the extent of developable land and guided the proposed subdivision layout, including road pattern and public open space provision, Asset Protection Zones, sizing and location of stormwater infrastructure.

The final result being a development proposal that will not adversely affect water quality, or result in the removal of any native vegetation having any ecological significance given the developable area is sited on land having low ecological significance.

The site is considered a suitable one for the establishment of a new residential area given its identification within NBSP as an area capable of supporting new urban development.

#### **3.4.5 Public Interest**

The development is considered to be entirely in the public interest as it:

- is of a design that is considerate of the extensive environmental investigations that have been made;
- does not result in the removal of any significant vegetation, nor impose significant environmental impacts as it utilises predominantly cleared land, along with land having lower quality ecological qualities;
- provides additional housing stock to meet the demand identified by SCC in the NBSP and the Department of Planning in the SCRS;
- is consistent with provisions of the Draft Shoalhaven LEP 2013 as being currently exhibited;
- results in the provision of a greater choice in housing;
- proposes high quality urban design to create an area having a distinct character.

### **3.4.6 Conclusion**

It is considered that the proposed subdivision makes a positive contribution to the provision of additional housing for the Nowra Bomaderry urban area which is consistent with both the NBSP and the SCRS.

The proposal will result in the provision of additional housing stock and is to be undertaken on land that is predominantly cleared or otherwise disturbed and therefore, it avoids development on environmentally sensitive lands. The design of the subdivision proposes appropriate mitigation measures including the provision of suitable stormwater management, conservation of all environmentally sensitive lands, provision of landscaping within public areas, subdivision layout that is permeable and incorporates pathways to encourage active transport methods, and the implementation of bushfire mitigation measures.

Further, the proposal is consistent with the Mundamia Masterplan principles adopted by SCC and these result in a subdivision layout that incorporates appropriate lot sizes with good orientation for direct solar access, commercial precinct sited along the proposed spine road and the creation of an area with a distinctive character.

## **3.5 DEVELOPMENT OPTIONS**

The extent of developable area has been determined based on the extensive assessment that has been undertaken by SCC and our clients in the consideration of the development of the site. This has resulted in the identification of constrained areas, including those having greater ecological significance, along with that part of the site adjacent to native forest which requires provision of an Asset Protection Zone. This process has identified that part of the site which is suitable for residential development, and that portion which is not suitable for further more intensive development.

This assessment also has been considered in the preparation of Draft Shoalhaven LEP 2013 which proposes to zone only a portion of the site for development (R1), with the remainder having a conservation zone (E2).

The subdivision layout itself has been guided by the principles conveyed in the Mundamia Masterplan adopted by SCC.

The Masterplan considered two options for the subdivision of the developable area, with the main difference being the orientation of the proposed allotments, with one being based on a north south grid, the other on an east-west grid.

The final Masterplan adopted by Council, and the subdivision layout currently proposed in this Major Project application, is based on the north-south grid. This proposal is considered to have the following advantages over the east-west grid pattern:

- Maximises the properties which have an east-west orientation, thereby enabling longer boundaries with a northern aspect to maximise passive solar benefits.
- Orientation of road reserves enables maximum outlook towards adjoining forested lands and the Cambewarra Mountain Range to provide the desired character.
- Enables an appropriate hierarchy of roads to service the subdivision with good legibility and connectivity to desire lines.
- Maximises the permeability of the subdivision in order to encourage pedestrian and cycle movements within the subdivision.
- Enables the development of adjoining lands within the Mundamia New Living Area to maintain the desired character in a consistent fashion.

In addition, the selected design provides the opportunity to address all environmental constraints identified in the assessments that have been undertaken and allows the conservation of those areas identified as having ecological significance. Further, the proposal enables the development of relevant infrastructure (stormwater drainage, water and sewer) in an efficient manner.

Further, the selected subdivision layout enhances the public domain through the provision of a wider road reserve running east-west to visually connect the proposed public reserve with the substantial bushland to the east which is to be conserved. This road reserve will also function as a biofiltration system allowing the combined carriage and treatment of stormwater.

The Mundamia Living Area has been well planned by SCC and our client through the Masterplanning process. This has not only addressed the ecological constraints and other hazards, but has also thoroughly considered the liveability of the area, and the appropriate siting of support infrastructure, such as public reserves and neighbourhood shopping precincts. The layout provides for bus routes, and the permeable layout ensures that residents will not have to rely on motor vehicles for local trips, thereby enhancing the sustainability of the community.

In addition, the proposal has been mindful of the further planned extension of the Mundamia Living Area to the west and the layout enables the efficient extension in due course. The completion of relevant road works in Stage 1 of the development, along

with alternative access opportunities that are available to these lands, will enable the adjoining lands to be developed independently of the subject site.

Staging of the proposal has been considerate of the need to provide for the efficient implementation of infrastructure, and also the need to provide appropriate levels of cleared land for asset protection purposes.

## 4.0 PLANNING AND LEGISLATIVE PROVISIONS

### 4.1 COMMONWEALTH LEGISLATION

#### 4.1.1 Environment Protection & Biodiversity Conservation Act

The Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* specifies that approval is required from the Commonwealth Minister for the Environment for actions that have, will have or are likely to have a significant impact on a matter of “national environmental significance”, including:

- (i) declared World Heritage Areas;
- (ii) declared RAMSAR wetlands;
- (iii) listed threatened species and ecological communities;
- (iv) listed migratory species;
- (v) nuclear actions; and
- (vi) the environment of Commonwealth marine areas.

Actions on or outside Commonwealth land that have, will have or are likely to have a significant impact on the environment on or outside Commonwealth land must also be referred to the Commonwealth Minister for assessment and approval.

The Department of Environment and Heritage (2005) has published guidelines to assist in determining whether an action will have or is likely to have a significant impact on a matter of national environmental significance and, hence, whether a referral should be submitted to the Department for a decision by the Minister on whether assessment and approval is required under the EPBC Act.

The Guidelines state that, to make a decision as to whether or not to refer an action to the Minister, you should consider the following questions:

1. *Are there matters of national environmental significance located in the area of the proposed action?*
2. *Considering the proposed action at its broadest scope, is there potential for impacts on matters of national environmental significance?*
3. *Are there any proposed measures to avoid or reduce impacts on matters of national environmental significance?*
4. *Are any impacts of the proposed action on matters of national environmental significance likely to be significant impacts?*

The Guidelines provide the following important definitions:

"A *significant impact* is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. You should consider all of these factors when determining whether an action is likely to have a significant impact on matters of national environmental significance."

"To be *likely*, it is not necessary for a significant impact to have a greater than 50% chance of happening, it is sufficient if a significant impact on a matter of national environmental significance is a real or not remote chance or possibility."

"*Population*, in relation to critically endangered, endangered or vulnerable, threatened species, means:

- a geographically distinct regional population, or collection of local populations; or
- a regional population, or collection of local populations occurring within a particular bioregion."

"An *important population* is a population that is necessary for a species' long-term survival and recovery. This may include populations that are:

- key source populations either for breeding or dispersal;
- populations that are necessary for maintaining genetic diversity; and/or
- populations that are near the limit of the species' range.

"*Habitat critical to the survival of a species* refers to:

- habitat identified in a recovery plan for the species as habitat critical for those species or communities; and/or
- habitat listed on the Register of Critical Habitat maintained by the Minister under the Act; and/or
- areas that are necessary:
  - for activities such as foraging, breeding, roosting, or dispersal,
  - for succession,
  - to maintain genetic diversity and long term evolutionary development, or
- for the reintroduction of populations or recovery of the species."

This Environmental Assessment Report is supported by an Environmental Flora and Fauna Assessment carried out by SLR which forms **Annexure 3**. In relation to the requirements the EPBC Act, this assessment concludes:

*"It is the conclusion of this Report that the proposal is not "likely" to impose a "significant impact" upon any MNES.*

Despite the above conclusion, the matter was referred to the Commonwealth for review and consideration as to whether the proposal triggered the requirements of the EPBC Act. By letter dated 26<sup>th</sup> April, 2012 the Department of Sustainability, Environment, Water, Population and Communities advised that the proposal is not a controlled action. Therefore, the EPBC Act clearly has no further implications for this development proposal.

Flora and Fauna issues are addressed in Section 5.6 of this report.

## **4.2 STATE LEGISLATION**

### **4.2.1 Environmental Planning and Assessment Act 1979**

#### ***State Significant Development - Part 3A and the Repeal of Part 3A Environmental Planning & Assessment Act***

The proposal involves a concurrent Project Application (MP08\_0141) made pursuant to Part 3A of the Environmental Planning & Assessment Act. DGRs for this project were originally issued on 17<sup>th</sup> October 2008.

The introduction of Part 3A to the Environmental Planning & Assessment Act 1979, and the introduction of *State Environmental Planning Policy (Major Development)* in 2005, brought about a change in the regime concerning the assessment of state significant development. Part 3A initially targeted the streamlining of the assessment of projects deemed to be of state significance, including critical infrastructure projects.

Following the 2011 NSW election, the newly elected Coalition Government have instigated measures seeking to implement change to the planning, environmental legislative and policy regime applicable to projects previously subject to Part 3A.

According to Planning Circular PS 11-014 issued by the Department of Planning & Infrastructure and dated 13<sup>th</sup> May 2011 no new applications for any of the development that remains identified as Part 3A in the Major Development SEPP will be accepted and assessed during this interim period.

Projects currently awaiting declaration will not be declared. Generally, applications for the assessment of these projects will be able to be lodged once the new legislation has

commenced, provided the category of development is one to which the new system of state significant development applies.

The NSW Parliament has passed the *Environmental Planning & Assessment (Part 3A Repeal) Act* (the “Part 3A Repeal Act”) to repeal Part 3A of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). The Part 3A Repeal Act creates an alternative assessment system which allows the NSW Government to assess and determine projects which are of State significance.

The Part 3A Repeal Act establishes two separate assessment frameworks for either State Significant Infrastructure (SSI) or State Significant Development (SSD). Projects that fall under these two categories will be assessed by the Department of Planning and Infrastructure (the ‘Department’).

To this end, the Act largely returns to the situation before Part 3A where two separate assessment pathways were in place for projects to be assessed by the State, namely:

- Linear public infrastructure projects such as railways, water supply systems, pipelines and transmission lines, or other development by a State agency which has a significant environmental effect; and
- Significant development types which require consent such as mines, chemical and manufacturing plants, warehousing and distribution facilities, hospitals and associated ancillary development.

The Act also introduces a number of changes to the operation and make-up of the Planning Assessment Commission (PAC) and Joint Regional Planning Panels (Regional Panels), seeking to provide additional transparency and greater local government input.

Supporting Regulations and a new State Environmental Planning Policy (SEPP) associated with the Part 3A Repeal Act have been introduced and came into effect from the 1<sup>st</sup> October 2011. These supporting provisions provide additional detail with respect to the classes and thresholds for development to be considered as State Significant.

This new SEPP is called *State Environmental Planning Policy (State and Regional Development) 2011* and is known as the “State and Regional Development SEPP”. This new SEPP approximately halves the number of proposals dealt with by the State when compared with the former Part 3A system.

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) has also be amended to update a number of procedural and administrative arrangements.



This is an interim assessment system which will be reviewed as part of the proposed overall review of the NSW planning system that the new NSW Government has also instigated.

For the purpose of the *Environmental Planning & Assessment (Repeal of Part 3A) Act* (the '*Repeal of Part 3A Act*'), this proposed subdivision however is termed a *Transitional Part 3A Project* under the Repeal Part 3A legislation.

These circumstances are clarified in Planning Circular PS 11-021 issued by the Department of Planning & Infrastructure on the 30<sup>th</sup> September 2011. This Circular confirms that Part 3A continues to apply to certain projects subject to transitional provisions identified in Schedule 6A of the Act.

Schedule 6A of the *Repeal of Part 3A Act* makes provisions for such projects. Essentially, a *Transitional Part 3A Project* includes:

- (a) *an approved project (whether approved before or after the repeal of Part 3A),*
- (b) *a project for which environmental assessment requirements were notified or adopted before the repeal of Part 3A,*
- (c) *a project that is the subject of a Part 3A project application and that the regulations declare to be a transitional Part 3A project.*

As the DGRs for this project were originally issued on 17<sup>th</sup> October 2008, and subsequently re-issued on the 20<sup>th</sup> October 2010 this project is considered a *Transitional 3A Project* for the purposes of this legislation.

In this regard *environmental assessment requirements* are defined for the purposes of Schedule 6A as meaning:

***Environmental assessment requirements means:***

- (a) *environmental assessment requirements for approval to carry out a project notified to the proponent of the project under Part 3A, or*
- (b) *environmental assessment requirements accepted by the Director-General as environmental assessment requirements for approval to carry out a project under clause 8J of the Environmental Planning and Assessment Regulation 2000, but does not include draft environmental assessment requirements for the purposes of the approval of a concept plan.*

Clause 3 of Schedule 6A provides for the continuation of Part 3A and Transitional Part 3A projects. Essentially it states that Part 3A continues to apply to and in respect of transitional Part 3A projects. Clause 3 reads:

### **3 Continuation of Part 3A – transitional Part 3A projects**

- (1) *Part 3A continues to apply to and in respect of a transitional Part 3A project.*
- (2) *For that purpose:*
  - (a) *any State environmental planning policy or other instrument made under Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project, and*
  - (b) *declarations, orders, directions, determinations or other decisions with respect to a transitional Part 3A project continue to have effect and may continue to be made under Part 3A (including for the purpose of the application or continued application of Part 4 or 5 or other provisions of this Act in relation to the project).*
- (3) *The regulations may modify provisions of Part 3A (and the instruments or decisions referred to in subclause (2)) as they apply to a transitional Part 3A project.*
- (4) *The declaration of development as a project under Part 3A (or as a critical infrastructure project) is revoked if the development is not, or ceases to be, a transitional Part 3A project.*
- (5) *A transitional Part 3A project is not State significant development or State significant infrastructure.*
- (6) *This clause is subject to the other provisions of this Schedule.*

Given these circumstances, Part 3A will continue to apply for the proposed subdivision project.

Under these circumstances, and as confirmed in Circular PS 11-021, Part 3A continues to apply to:

- Approved projects, whether they were approved before or after 1<sup>st</sup> October 2011.
- Additionally, Part 3A continues to apply to most undetermined project and concept plan applications where the DGRs were issued before 1<sup>st</sup> October 2011 and a current major project declaration remains in force. These undetermined applications continue to be assessed and determined under Part 3A, as in force immediately before its repeal.

#### **Relevant legislation and other approvals**

Approvals under eight Acts listed under Section 75U Clause 1 of the EP&A Act are not required for developments identified as Major Projects. These Acts include: