



SUPPLEMENTARY BUSINESS PAPER

GENERAL MEETING

**Wednesday 14 December 2016
at 6:30PM**



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ITEM 11 **PL77/16** - Further Report - Development Application - Subdivision Of Four Allotments Into Four Lots - Water Recreation Structure - Calabash Point, Berowra Creek

*Additional information with **NO CHANGE** to Recommendation*

A late submission has been received from Concordia Pacific Environmental, Government and Town Planning Law. The submission (in part) raises concern that Council's planning report has not appropriately considered the provisions of the Hornsby Local Environmental Plan 2013.

As discussed in Section 2.2 of the Report, the proposed subdivision is subject to the provisions of the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* being the planning instrument in place prior to the *Hornsby Local Environmental Plan 2013 (HLEP)* coming into force on 11 October 2013. The subject development application was lodged on 24 September 2013.

At the time of lodgement of the application, *HLEP* was a draft planning instrument. Pursuant to Section 79C(1)(a)(ii) the provisions of any draft environmental planning instrument are to be taken into consideration by a consent authority in determining a development application.

The implications of the *HLEP* were considered in the assessment of the application as noted in the report. However, for abundant clarity, the following discussion confirms the assessment of the application against the *HLEP 2013*.

2.13A Hornsby Local Environmental Plan 2013 (HLEP)

The draft *HLEP* was referred to the Department of Planning and Infrastructure on 21 January 2013 pursuant to Section 68 *Environmental Planning and Assessment Act 1979*. The provisions of the *HLEP* that are relevant of the proposed subdivision are discussed as follows.

2.13A.1 Aims of Plan

The *HLEP* includes the following aims at Section 1.2 (2) (h), (i) and (j).

- (h) *to protect and enhance the scenic and biodiversity values of environmentally sensitive lands, including bushland, river settlements, river catchments, wetlands and waterways, and*
- (i) *to protect and enhance the heritage of the Shire, including place of historic, aesthetic, architectural, natural, cultural and Aboriginal significance, and*
- (j) *to minimise risk to the community in areas subject to environmental hazards, including flooding and bushfires.*

The aims of the Plan are implemented by the application of the land uses zones and relevant provisions of the Plan in the regulation of development. The proposal is consistent with the aims of

the *HLEP* as it would result in a more environmentally sensitive allotment design than currently exists which facilitates future development adjacent to the foreshore and away from the ridgeline.

2.13A.2 Savings provision relating to development applications

The subject application was lodged before the commencement of the *HLEP* 2013. Accordingly, the application must be determined as if the plan had not commenced. In this instance, the *HSLEP* 1994 is the relevant planning instrument and a *SEPP* 1 objection is required for the variation to the minimum allotment size development standard. The *HLEP* 2013 is relevant as a draft plan as exhibited as addressed in this memorandum.

2.13A.3 Land Use Zones

The following land use zones apply to the site under the *HLEP* namely, RE1 Public Recreation, E3 Environmental Management and E4 Environmental Living.

The objectives of the RE1 Public Recreation Zone are:

- *To enable land to be used for a public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect and maintain areas of bushland that have ecological value.*

The RE1 zone applies to the area of the site zoned Open Space B (Public Recreation – District) Zone under *HSLEP*. The proposed subdivision does not involve any works within the RE1 zone.

The objectives of the E3 Environmental Management Zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect the natural environment of steep lands and floodplains within the catchment of the Hawkesbury River.*

The E3 Zone replaces the Environmental Protection E (River Settlement) Zone area and Rural AR (Large Holdings – Rural Landscapes) Zone area of the site within Lot 78 DP 752048 and Lot 163 DP 1113746. The proposed subdivision does not involve any works within the E3 Zone.

The objectives of the E4 Environmental Living Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.

The E4 Zone replaces the remaining Environmental Protection E (River Settlement) Zone area of the site. The E4 zoning objectives essentially maintain the objectives of the Environmental Protection E (River Settlement) Zone which have been considered in the assessment of the proposal as discussed in Section 2.3 of the report.

The Calabash Bay area at the frontage of the site is zoned E2 Environmental Conservation and W1 Natural Waterways. The E2 zone replaces the Environmental Protection A (Wetlands) Zone which is discussed in Section 2.3 of the report.

The objectives of the E2 Environmental Conservation Zone are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To maintain and improve water quality in the Hawkesbury River.*

The objectives of the E2 Zone have been considered in the assessment of the application and are addressed by recommended condition No. 1.

The objectives of the W1 Natural Waterways Zone are:

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To provide for a limited range of development that facilitates access to the waterways.*

The W1 Zone generally includes the proposed jetties and pontoons which are permissible in the zone with development consent. The objectives of the zone have been considered in the assessment of the application with regard to the *Hornsby Development Control Plan 2013* requirements for water recreation structures as discussed in Section 2.3.7 of the report.

2.13A.4 Minimum Lot Size

A minimum lot size of 40 hectares applies to the E3 and E4 zoned areas of the site pursuant to Clause 4.1 which specifies the minimum lot size under the *HLEP*. However, pursuant to Clause 4.6(6) development consent must not be granted for subdivision of land in the E4 Environmental Living zone if the subdivision results in 2 or more lots less than the minimum lot size or at least one lot that is less than 90% of the minimum lot size. The provision under Clause 4.6(6) would effectively prohibit the proposed subdivision as *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)* does not apply pursuant to Clause 1.9 of *HLEP*.

In this regard, the *HLEP* would be determinative of the proposed subdivision in prohibiting the development. As discussed in Section 2.2 of the report, the application must be assessed as if the *HLEP* had not commenced (which would prohibit the development).

Although the proposed subdivision would be a prohibited form of development under the *HLEP*, the proposed realignment of the subdivision boundaries would result in an improved subdivision layout from that which currently exists. The proposal would facilitate 4 regular building envelopes adjacent to the waterfront which is consistent with the pattern of development in the locality. No additional allotments would be created by the proposal. Accordingly, the application is consistent with the objective of the lot size control to provide for subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land. Furthermore, the proposal would not create a precedent as no other applications are pending for proposed subdivisions involving boundary adjustments prior to the implementation of *HLEP*.

2.13A.5 Exception to Development Standards

Clause 4.6 of *HLEP* makes provision for the variation of development standards. As discussed above, the provisions under Clause 4.6(6) would be determinative of the proposal in prohibiting the proposed subdivision. However, the application of *SEPP 1* for variation of the minimum lot size development standard under the applicable planning instrument (*HSLEP*) would in this instance result in a better environmental outcome, by reducing the potentially larger development impact that would result from the dwelling entitlement of the existing lots on the upper ridge land area of the site.

In this regard, the variation of the development standard under *SEPP 1* is consistent with the objectives of Clause 4.6 to provide an appropriate degree of flexibility in applying development controls to achieve a better planning outcome; notwithstanding the provision under Clause 4.6(6). Although a submission in accordance with Clause 4.6 is not strictly required, to avoid any doubt, the applicant has submitted a Clause 4.6 objection (copy attached) which states that:

1. *The proposed lots are entirely consistent with the scale and nature of existing waterfront lots which accommodate waterfront dwellings at Calabash Point. The existing waterfront properties at Calabash Point are proven to be environmentally capable of accommodating environmentally sensitive dwelling house developments.*
2. *The proposed subdivision and development at the site represents a minor extension of the existing Calabash Point river settlement with the proposed dwelling entitlement for the larger residual proposed Lot 1 confined to the waterfront, preventing any residential development of the bushland ridge area.*
3. *The proposal will not create a precedent for similar development in the Calabash Point River settlement as the proposed realignment of existing lot boundaries cannot readily be applied to other waterfront land within the E4 Environmental Living zone in this locality.*
4. *The proposed subdivision and development would maintain the pattern of waterfront low density residential settlement at Calabash Point.*
5. *The proposal would have limited environmental impacts in the context of the 43.38 hectare site.*

In summary, the conclusion of the Clause 4.6 variation is supported in this instance as it is agreed that the proposed subdivision will maintain the 4 dwelling lot entitlement for the site, but will achieve a better environmental outcome in respect to protection of the natural environmental attributes of the bushland ridge and waterfront and achieve consistency with the character and scale of existing waterfront residential development at Calabash Point. Accordingly, the justification within the written request is considered to be well founded.

2.13A.6 Development within the Coastal Zone

The foreshore area of the site is within the coastal zone subject to the provisions under Clause 5.5 of the *HLEP*.

The proposed subdivision is a boundary adjustment of the existing lots and would provide for future dwelling houses on the waterfront which is permissible development in the subject E4 Environmental Living zone and is subject to the requirements of the *Hornsby Development Control Plan 2013* for the river settlements. The character of future development would be consistent the desired outcome for

the river settlement at Calabash Point to maintain scenic quality, protect landscape features and be of environmentally sustainable design.

The proposed lots are designed with regard to the principles and objectives of the NSW Coastal Zone in being of sufficient size and width to provide for future dwelling houses and for foreshore access and to minimise impacts on the coastal zone in maintaining scenic quality and protecting landscape features. The relevant matters required to be considered under Clause 5.5 in respect to public access, impacts on scenic quality, biodiversity, heritage, marine environment, water quality and cumulative impacts are addressed in the body of the report.

2.13A.7 Heritage Conservation

The *HLEP* includes provision for consideration of Aboriginal objects in the assessment of development applications in Clause 5.10. In this regard, the applicant submitted an Aboriginal Cultural Heritage Assessment which was considered by the NSW Office of Environment and Heritage pursuant to Section 90 of the *National Parks and Wildlife Act 1974*. The Office has issued General Terms of Approval for the application.

Refer to discussion in Section 2.5 of the report.

2.13A.8 Terrestrial Biodiversity

The site is mapped for terrestrial biodiversity under the *HLEP* which includes provision under Clause 6.4 for consideration of the site's ecology. The mapping includes the area of the proposed lots fronting Calabash Bay.

The applicant submitted a Flora and Fauna Impact Assessment for the proposed waterfront lots. The assessment includes detailed analysis of the ecology of the site in respect to State and Commonwealth legislative requirements and mitigation measures necessary to ameliorate impacts of the proposal. Refer to discussion in Section 2.9, 2.16.1, 2.17 and 3.1.

The provisions under Clause 6.4 have been considered in the assessment and are generally addressed by recommended Conditions Nos. 1, 18 and 19.

2.13A.9 Limited Development on Foreshore Area

Clause 6.5 of the *HLEP* makes provision for development in the foreshore area. The site however, is not subject to foreshore building line mapping under the *HLEP*. Notwithstanding, the matters for consideration under Clause 6.5 are generally addressed in the assessment of the application as discussed in Section 2.16.5 of the report.

Late Submissions

Following the completion of Report No. PL77/16 a further 30 submissions have been received including a submission from a solicitor on behalf of a residents association 'Save Calabash Bay'.

The submission from Concordia Pacific comments that *State Environmental Planning Policy 1 (Development Standards) (SEPP 1)* does not apply to land which is subject to the *HLEP*. The submission suggests that consideration should be given to Clause 1.9(2) of the *HLEP* which states that *SEPP 1* does not apply in Hornsby Shire.

As indicated in Section 2.2 of Group Manager's Report No. PL77/16, the subject application was lodged prior to the commencement of the *HLEP*. Accordingly, the application is subject to Clause 1.8A of the *HLEP* which states that "*the application must be determined as if this Plan had not*

commenced". Prior to the making of the *HLEP*, *SEPP 1* applied to lands within Hornsby Shire. Therefore, it is open for Council to consider the *SEPP 1* objection to the minimum allotment size development standard of the *HSLEP*, being the applicable planning instrument in force at the date the application was lodged. Council's solicitor was consulted in reviewing this issue and has confirmed the advice of Council officers as appropriate.

The matters raised in the other late submissions concerning bushfire impacts, recreational water access, flora and fauna impacts, scenic quality, infrastructure at Berowra Waters, emergency access, marine environment, dredging, water quality, wetlands and biodiversity have been addressed in the report. The submissions also include a submission in support of the application.

RECOMMENDATION

THAT Council seek the concurrence of the Secretary of the Department of Planning and Environment pursuant to *State Environmental Planning Policy No. 1 – Development Standards* and approve Development Application No. DA/1009/2013 for subdivision of four allotments into four lots and construction of two jetties and pontoons at Lot 1 and Lot 2 DP 882783, Lot 78 DP 752048 and Lot 163 DP 1113745, Calabash Point, Berowra Creek as a deferred commencement pursuant to Section 80(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL77/16.

ROD PICKLES
Manager - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. [View](#) DFP - Written request

File Reference: DA/1009/2013
Document Number: D07116052



planning consultants

14 December 2016
Our Ref: 7470A.11RP

The General Manager
Hornsby Shire Council
PO Box 37
HORNSBY 1630

Attention: Garry Mahony and James Farrington

Dear Sir

**RE: WRITTEN REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD
CLAUSE 4.1 MINIMUM SUBDIVISION LOT SIZE DEVELOPMENT STANDARD
PROPOSED SUB-DIVISION OF 4 EXISTING ALLOTMENTS INTO 4 LOTS AND
CONSTRUCTION OF 2 JETTIES AND PONTOONS
LOT 1 DP 882783, LOT 2 DP 882783, LOT 78 DP 752048 AND LOT 163 DP 1113746,
CALABASH POINT, BEROWRA CREEK**

1.0 Introduction

DFP has been instructed by Stephen Berry on behalf of the Land Owners to prepare a request pursuant to Clause 4.6 of *the Hornsby Local Environmental Plan 2013 (HLEP)* in respect of the proposed subdivision of 4 existing Torrens Title allotments into 4 lots and construction of 2 jetties and pontoons at the abovementioned site which is the subject of Development Application DA/1009/2013 lodged with Council on 24 September 2013 and subsequently amended.

It is the opinion of DFP that a Clause 4.6 written request to vary the 40 hectare minimum subdivision lot size requirement under Clause 4.1 of HLEP for the proposed subdivision, the subject of DA/1009/2013 is not required as the subject application was lodged with Council prior to HLEP coming into force. The HLEP includes a savings provision under Clause 1.8A which is applicable to DA/1009/2013 for the proposed development which was lodged prior to the commencement of the HLEP as follows:

“Clause 1.8A Savings Provision relating to Development Applications

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Accordingly, DA/1009/2013 for the proposed development is subject to the provisions of the former Hornsby LEP 1994 which applied to the site and was in force prior to the commencement of HLEP.

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Notwithstanding, for the purpose of abundant clarity and as a precautionary measure, this letter provides Council with a written request under Clause 4.6 for the HLEP to seek Council's approval to a variation to the 40 hectare minimum subdivision lot size development standard under Clause 4.1 of the HLEP for the proposed development at the site.

2.0 Hornsby Local Environmental Plan 2013

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the LEP states the objectives of the clause as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances."*

Our response to these provisions is contained within this submission.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The Clause 4.1 development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Written Request

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard."*

The proposed development does not comply with the 40 hectare minimum subdivision lot size development standard pursuant to clause 4.1 of HLEP. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

2.4 Subclause 4.6(4) – Written Request

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for*

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- development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained."*

Furthermore, subclause 4.6(5) provides that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence."*

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the HLEP.

2.5 The Nature of the Variation

Clause 4.1 – Minimum Subdivision Lot Size under the HLEP states as follows:

"4.1 Minimum subdivision lot size

- (1) *The objectives of this clause are as follows:*
- (a) *To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure of the land,*
- (b) *To ensure that lots are of sufficient size to accommodate development.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this Clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3A) *If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculated the lot size*
- (4) *This Clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme."*

The site is located within the E4 Environmental Living zone under the HLEP which permits subdivision and dwelling houses and accordingly the proposed development is permissible under the provisions of the current HLEP.

The site is subject to a minimum subdivision allotment size requirement of 40 hectares as shown on the Lot Size Map of the HLEP.

The proposal is for the subdivision of 4 existing Torrens Title lots which do not comply with the 40 hectare minimum lot size development standard under the HLEP into 4 proposed lots having frontage to Calabash Bay. The proposed development also includes the construction of 2 jetties with pontoons. The proposed subdivision would alter the boundaries and site areas of the 4 existing Torrens Title allotments to form 3 new waterfront lots (Proposed Lots 2, 3 and 4) and a large residual lot (Proposed Lot 1) with water frontage as follows:

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- Proposed Lot 1 has an area of 42.632 hectares and will form a residual lot which will comply with the 40 hectare minimum lot size development standard under the HLEP. A dwelling house site is proposed at the waterfront of proposed Lot 1.
- Proposed Lot 2 has an area of 2,980m² and a width of 35 metres and will accommodate a dwelling house site. Proposed Lot 2 will not comply with the 40 hectare minimum lot size development standard under the HLEP.
- Proposed Lot 3 has an area of 2,320m² and a width of 30m² and will accommodate a dwelling house site. Proposed Lot 3 will not comply with the 40 hectare minimum lot size development standard under the HLEP.
- Proposed Lot 4 has an area of 2,108m² and a width of 30 metres and will accommodate a dwelling house site. Proposed Lot 4 does not comply with the 40 hectare minimum lot size development standard under the HLEP.

All 4 proposed lots in the proposed subdivision of the site are water access only lots via the 2 proposed jetties and pontoons. The existing boat berthing facilities and public car parking at Berowra Waters are relied upon for vehicular/boat access for the proposed subdivision.

2.6 The Objectives of the Development Standard

Clause 4.1(1) of the HLEP states the objectives of the 40 hectare minimum subdivision lot size development standard as follows:

- “(a) To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,
- (b) To ensure that lots are of a sufficient size to accommodate development.”

2.7 The Objectives of the Zone

Clause 2.3 of the HLEP states the objectives of the E4 Environmental Living Zone as follows:

- “• To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values
- To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.”

2.8 The Grounds of the Objection

The proposed variation to the development standard for the proposed subdivision and development has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the following reasons:

1. The proposed subdivision of 4 existing Torrens Title lot into 4 new lots is considered to be consistent with the objectives of the 40 hectare minimum subdivision lot size development standard under the HLEP as the proposal does not create any new lots or dwelling entitlements. Indeed, the proposed subdivision will result in proposed Lot 1 being compliant with the 40 hectare minimum lot size standard under the HLEP and with proposed Lots 2, 3 and 4 being 3 new waterfront lots which are of a similar size to the larger of existing allotments along the water frontage of Calabash Point. The proposed lots are entirely consistent with the scale and nature of existing waterfront lots which accommodate waterfront dwellings at Calabash Point. The existing waterfront properties

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at Calabash Point are proven to be environmentally capable of accommodating environmentally sensitive dwelling house developments. The proposed development, and in particular the proposed 4 into 4 lot subdivision of the site, is consistent with the objectives of the E4 Zone to provide for low-impact waterfront dwelling house development in the Calabash Point locality having regard to the special ecological, scientific and aesthetic values of this area; with measures to protect the natural environmental values of the locality; and to permit low density residential development on waterfront lots that will be compatible with existing waterfront dwelling lots and the character of the Calabash Point river settlement with appropriate access and provision for utility services; and in maintaining the scenic quality of the waterway.

2. The proposed subdivision and development at the site represents a minor extension of the existing Calabash Point river settlement with the proposed dwelling entitlement for the larger residual proposed Lot 1 confined to the waterfront, preventing any residential development of the bushland ridge area. Similarly, proposed Lots 2, 3 and 4 in the subdivision proposal, will facilitate residential development of waterfront lots similar to existing waterfront residential lot developments at Calabash Point and will also not impact on the bushland ridge area. The proposal forms a limit of potential extension of the Calabash Point River settlement.
3. The proposal will not create a precedent for similar development in the Calabash Point River settlement as the proposed realignment of existing lot boundaries cannot readily be applied to other waterfront land within the E4 Environmental Living zone in this locality.
4. The proposed subdivision and development would maintain the pattern of waterfront low density residential settlement at Calabash Point.
5. The proposal would have limited environmental impacts in the context of the 43.38 hectare site. The proposed building sites on the 4 proposed lots step up the slope promoting a design approach to minimise adverse visual, acoustic and solar access impacts on neighbouring properties and the wider locality.
6. The site is suitable for the proposed subdivision and development in respect to water access, the provision of utility services, waste water treatment and bushfire protection.

2.9 Director-General's Considerations

As indicated above, subclause 4.6(5) of the HLEP also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”

The proposed subdivision from 4 existing Torrens Title lots into 4 new lots at the site will not raise any matters of significance for State or Regional Environmental Planning.

“(b) the public benefit of maintaining the development standard,”

The proposed subdivision and development is considered to be in the public interest, particularly having regard to the dwelling entitlement of the 4 existing lots which is maintained, the proposed consistency with the existing Calabash Point River settlement pattern, and the management of environmental constraints and access limitations, as demonstrated by the existing Calabash Point river settlement. The lot size accommodates more environmentally sensitive designs with larger setbacks from adjoining dwelling lots and provides a more suitable transition to surrounding bushland.

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In the Land & Environment Court Judgement Four 2 Five Pty Ltd -v- Ashfield Council, the Court held that in order to support a Clause 4.6 Variation, under an LEP, it was necessary to ensure that the development was consistent with the zone objectives and also that the variation was in the public interest because it was consistent with the objectives of the development standard. The Court also held that consideration also needs to be given to whether there are sufficient Environmental Planning grounds to justify contravening the development standard. The outcome of this Court judgement was that it is not a valid argument to simply state that providing additional housing or employment opportunities delivered by a development that contravenes a development standard was acceptable.

In the circumstances of this case, DA 1009/2013 for the proposed development involving the subdivision of 4 existing Torrens Title allotments with dwelling entitlements into 4 new lots and construction of 2 jetties and pontoons has been demonstrated to be consistent with the objectives of the 40 hectare minimum lot size development standard, as well as the objectives of the E4 zone under the HLEP, as well as being in the public interest. The proposed subdivision will involve a resubdivision of 4 undersized existing allotments to create 1 residual lot complying with the 40 hectare minimum lot size standard, but with a future dwelling envelope located along the waterfront of the lot and 3 proposed new waterfront lots which are below the 40 hectare minimum lot size development standard under the HLEP. The proposed subdivision will maintain the 4 dwelling lot entitlement for the site, but will achieve a better environmental outcome in respect to protection of the natural environmental attributes of the bushland ridge and waterfront and achieve consistency with the character and scale of existing waterfront residential development at Calabash Point.

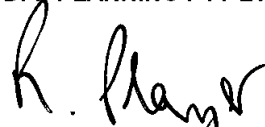
3.0 Conclusion and Recommendations

We have assessed the proposed development, and in particular, the proposed subdivision from 4 existing allotments into 4 new lots at the site, against the relevant statutory provisions of clause 4.6 of HLEP and prepared this written request which provides justification that compliance with the 40 hectare minimum subdivision lot size development standard is unreasonable or unnecessary in the circumstances of the case.

Accordingly, the justification within this written request is considered to be well founded.

Should you have any queries please do not hesitate to contact Rob Player, Managing Director of DFP Planning.

Yours faithfully
DFP PLANNING PTY LTD



ROBERT PLAYER
MANAGING DIRECTOR
rplayer@dfpplanning.com.au



Our office will close for the Christmas break at
12 noon on Friday, 23 December 2016 and will re-open at
8:30am on Tuesday, 3 January 2017.
May we take this opportunity to wish you a Merry Christmas
and a Prosperous New Year.

17 UNDERGROUNDING OF POWER LINES

Mature trees make an important contribution to our streetscapes and have been shown to provide a range of important benefits to local communities including:

- Increasing property values
- helping to reduce the heat island effect by lowering air temperatures in summer
- improving local air quality
- strengthening a communities sense of place

Unfortunately the work that local councils put into creating and maintaining appealing streetscapes is often ruined by the 'pruning' of street trees that the utility companies undertake around overhead power lines.

In other cases, Council's ability to plant significant new avenues of large trees to improve our streetscapes is prevented by the presence of overhead power lines. In their stead we have the unsightly 'visual clutter' created by overhead power lines and communication network cables.

Compounding this there is an added cost burden to councils in maintaining street trees. Research has shown that trees under overhead power lines cost councils on average 35% more to maintain than trees not constrained by power lines.

By contrast, areas with an underground power supply do not have these issues and can create appealing local environments for the community.

The benefits of placing power lines underground are both financial and environmental, including:

- reduction in tree lopping and network maintenance costs
- increased ability to plant street trees
- improved visual amenity and property values
- reduction in bushfire risk
- reduced electrical transmission interruptions and risk from electrocution
- decrease in the physical, emotional and monetary costs associated with vehicles colliding with power poles

Although the benefits of undergrounding electricity networks are numerous and well known, there remains wide disagreement over the capital costs to convert from an overhead to underground power supply. It is therefore important that reliability of supply and the public safety aspects of undergrounding power are fully quantified and costed. Similarly, the environmental, aesthetic, health and cultural values of trees in the streetscape should be given a real value, such that their damage or destruction is incorporated as a true cost in maintaining an aerial electricity network.

All assets have a useable life before they require replacement, and good asset management and planning should progressively seek to place the power supply underground. This is particularly the case when evidence suggests that the current cost of maintaining an overhead supply far exceeds maintenance of an underground system due to exposure to wind forces, tree impact, lightning strikes, bushfire, etc. Industry data also suggests that the ongoing maintenance costs of underground cables is less than half their aboveground equivalents.

As such, I move that this Council seek to work with Ausgrid to progressively place the power supply underground as part of their network and maintenance strategy.

RECOMMENDATION

THAT Council:

1. Seek to meet with Ausgrid to discuss ways that Ausgrid can progressively place the power supply underground as part of their network maintenance and renewal strategy, with an initial focus on Peats Ferry Road between Galston Road and the Asquith Town Centre.
2. Investigate appropriate amendments to the Hornsby Development Control Plan 2013 that aim to ensure all that new subdivisions and high density developments include underground cabling or the future provision for this.

STEVE RUSSELL

Mayor

Attachments:

There are no attachments for this report.

File Reference: F2004/08619-04

Document Number: D07108106

18 MAYORAL MINUTE - SOUTH DURAL PLANNING PROPOSAL

South Dural Planning Proposal

The South Dural Planning Proposal submitted by the Lyon Group and Folkestone Joint Venture proposes the urban release of the precinct to provide opportunities for 2,900 dwellings. The delivery of the housing would require infrastructure upgrades to cater for the new population. Accordingly, when Council resolved to support investigations into the urban release of the precinct in December 2013, Council also resolved that a business plan should be commissioned to confirm the feasibility of the project being delivered with all necessary infrastructure at no net cost to government.

Council reaffirmed its position in December 2015, when it resolved (in part) to write to the proponent advising that its ongoing support for the Planning Proposal is conditional upon securing the commitment of the NSW Government to funding its share of costs associated with the upgrade of the State road network and other supporting infrastructure to support development of the precinct.

In accordance with the conditions of the Gateway Determination issued by the Department of Planning and Environment, the proponent has prepared an infrastructure and business case in support of the proposal. The proponent's transport modelling shows that the existing State road network is currently under performing and upgrades are required including works to New Line Road and Old Northern Road to a value of \$158 million. The South Dual project is proposing to contribute \$73.3 million towards the upgrades. The balance of \$84.7 million is identified for funding by the State Government as this proportion of works is needed to cater for existing and future development in the region other than South Dural.

The exhibition period for the Planning Proposal has been extended by three weeks in response to the overwhelming level of public interest in the project, with a new deadline of 23 December 2016. To date, approximately 4,000 submissions have been received with a large proportion of submitters raising concerns regarding the capacity of the roads to cater for the development.

Council's expert team of consultants is currently evaluating the proposal and the issues raised in submissions. Key government agencies are also being consulted including Roads and Maritime Services and Transport for NSW. Feedback from these agencies will assist in ensuring that any proposal includes a plan for the delivery of services in association with development.

Notwithstanding the process for the evaluation of the Planning Proposal, an urgent response is needed from the State Government confirming its commitment to fund the balance of the works to the road network as this is a key consideration in ensuring the community benefits of the proposal justify support for its progression. There is significant concern being expressed by the community about the condition of State roads in the area that requires attention even if the Planning Proposal is not progressed. Therefore, Council should seek a definitive response from the Government as to whether it supports the funding model outlined by the proponent and a commitment and timeframe to upgrade the State roads.

RECOMMENDATION

THAT:

1. Council write to the Hon. Duncan Gay, Minister for Roads, Maritime and Freight requesting an urgent response to confirm the NSW Government's position concerning the commitment of State funds for upgrades to the regional road network in accordance with the business plan for the South Dural Planning Proposal and timing of delivery for any such funds.
2. Should the State Government not support the funding model in the business plan, confirmation be sought concerning the Government's plans and timeframe for upgrading New Line Road and Old Northern Road to meet existing conditions and projected background growth.

STEVE RUSSELL

Mayor

Attachments:

There are no attachments for this report.

File Reference: PP/1/2013

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