



DEVELOPMENT APPLICATION  
for  
Subdivision and Associated Infrastructure  
Including Bulk Earthworks

PART Lots 1, 2, 3 and Lot 4 in DP 1154170  
90 Viney Creek Road East  
TEA GARDENS

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# 1 INTRODUCTION

## 1.1 General

Tattersall Lander has been engaged by Wolin Investments Pty Ltd to prepare and lodge a development application for a multi-staged construction and subdivision of Durness Station. Durness Station is located within the North Shearwater urban release area which was rezoned by the Great Lakes Council in 2011.



**Figure 1 – Site Location**

This report identifies the site and describes the current existing situation, after which it discusses the proposed development and analyses the development in relation to relevant legislation and planning instruments.

A pre-lodgement DAP meeting was held between Tattersall Lander staff (Bob Lander, Adrian Varela, and Ben Folbigg) and Council staff on December 12, 2017. The primary issues discussed at the meeting were the encroachment into the E2 zoned land, bush fire, lot sizing, landscaping to Viney Creek Road and possible arrangements for public open space. Minutes of this meeting are attached in the appendices.

## **1.2 Site Description and Characteristics**

The subject land is identified as Part Lots 1, 2, 3 and Lot 4 in DP 1154170. The land is clearly identified on accompanying Development Application Plans.

The site is comprised of a large area of farming (grazing) lands, and remnant native forest. Farm lands were previously zoned rural but have recently been rezoned to partly R2 Residential and partly E2 Environmental Conservation in accordance with Council's strategic planning objectives. Part of the site has not been rezoned and remains zoned RU2 Rural Landscape.

The E2 zoned land, which includes the remnant forest, is located approximately centrally within this site. The topography is sloping and includes several steep sections, especially within the existing remnant forest. There are first and second order streams within the development footprint, with the second order stream being located centrally and running approximately west to east within the environmental zone and adjacent to the remnant forest.

Access to the development site is via Viney Creek Road East which is a partly bitumen sealed two-way road which runs adjacent to and through the site along a ridge. Adjacent to the site (to the south) are large rural residential lifestyle lots and these lots contain a mix of managed lands and remnant vegetation. There are panoramic rural and mountain views to the north west and these are especially apparent from the north western section of Precinct 1. There are ocean, Broughton Island and Port Stephens views to the east and south east respectively.



### 1.3 Previous Development Consent

Council has previously approved a large lot residential subdivision over Precinct 1 of this proposal, being DA 236/2014.

Notwithstanding, the previously approved subdivision has been determined to be economically unviable, having significant uncertainty for MidCoast Water Services with regard to ultimate lot layout and yield within the location.

### 1.4 The Proposal

The proposed development seeks the Torrens title subdivision of the land, creating two hundred and twenty-six (226) residential lots and two (2) public reserves, including associated bulk earthworks. The subdivision is to be undertaken in three (3) defined precincts with multiple construction stages occurring within each Precinct. Precinct 1 will create one hundred and fifty -three (153) lots, Precinct 2 forty-two (42) lots, and Precinct 3 will provide thirty-one (31) lots.

Landscaping is to be included in the proposal as per the landscape plans and also the restoration lands rehabilitation plans.

It is noted that there will be further stages proposed for the development of the eastern part of this area. This will be the subject of further development applications with Council.

The development application is not a Concept Development Application under section 4.22 of the *Environmental Planning and Assessment Act*.

### Bulk Earthworks

The topography of the site is such that there will be significant earthworks required. The detail of bulk earthworks is included in the Attachments.

## Roads

The proposed roads within the subdivision are appropriate with regard to Council standards, however, some of these roads are narrower than the required widths as outlined in the NSW Rural Fire Service (NSW RFS) *Planning for Bush Fire Protection* (2006). The perimeter road to the south is 5.5 metres in width (paved section only) which is less than the stipulated 8 metres, however, this is to be compensated by making this road one way and having no standing on the southern side of the road.

## Signage and Fencing

The proposal will include an entrance gateway with signage identifying the subdivision. There is also to be fencing within the subdivision along the northern edge of the residential lots in Precinct 2 and on the lots adjoining Viney Creek Road which also have frontage to an internal road: this fencing will be rural post and rail fencing. Full details of the signage and fencing will be provided with the Construction Certificate application.

### 1.5 Land Ownership

Land Description	Land Owner
Lot 1 DP 1154170	MidCoast Council Water Services
Lot 2 DP 1154170	Wolin Investments Pty. Ltd.
Lot 3 DP 1154170	MidCoast Council
Lot 4 DP 1154170	MidCoast Council Water Services

Covering letters for the lodgement of the DA are provided by all parties.

## 2 STATEMENT OF ENVIRONMENTAL EFFECTS

Considerations and evaluation pursuant to Section 4.15(1) of the *Environmental Planning & Assessment Act, 1979* as amended.

### COMMONWEALTH AND NSW LEGISLATION

#### 2.1 Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The purpose of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is to ensure that actions likely to cause a significant impact on Matters of National Environmental Significance (MNES) undergo a process of assessment. Under the EPBC Act, an action includes a project, undertaking, development or activity that may impact MNES. An action that 'has, will have or is likely to have a significant impact on a MNES' is deemed to be a 'controlled action' and may not be undertaken without prior approval from the Commonwealth Minister for the Department of the Environment and Energy (DoEE). MNES categories listed under the EPBC Act are:

- world heritage properties;
- national heritage places;
- wetlands of international importance (Ramsar wetlands);
- threatened species and ecological communities (Section 18 and 18A);
- migratory species;
- commonwealth marine areas;
- nuclear actions (including uranium mining); and
- a water resource, in relation to coal seam gas development and large coal mining development.

Initially, MNES protected under the EPBC Act are assessed in accordance with the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance (DoE 2013). This is performed to determine if there is likelihood for an action to have a significant impact on MNES. An action will require referral to, and may require

the approval of, the Commonwealth Minister for the Environment (in addition to any local or state government consent or approval) if that action will have, or is likely to have, a significant impact on the environment or on a MNES.

The project is unlikely to have a significant impact on MNES and is, therefore, not required to be referred to DoEE for consideration.

## **2.2 NSW Environmental Planning and Assessment Amendment Act 2017**

The *Environmental Planning & Assessment Act 1979* (EP&A Act) was legislated to require the consideration and management of impacts of proposed development and land use change on the environment and the community.

Part 1 Section 1.7 of the EP&A Act requires consideration of the proposed development under Part 7 of the Biodiversity Conservation Act 2016 (BC Act).

The EP&A Act is also supported by other statutory environmental planning instruments, including State Environmental Planning Policies (SEPPs) which are discussed below.

## **2.2 Coastal Management Act 2016**

The Coastal Management Act provides clarification of the relevant coastal zones and management objectives. The Coastal Zone as being land comprised as:-

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

The subject land is within the *Coastal Environment Area* and the requirements are:-

### **8 Coastal environment area**

- (1) The coastal environment area means the land identified by a State environmental planning policy to be the coastal environment area for the purposes of this Act, being land containing coastal features such as the coastal waters of the State, estuaries, coastal lakes, coastal lagoons*

*and land adjoining those features, including headlands and rock platforms.*

*(2) The management objectives for the coastal environment area are as follows:*

*(a) to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,*

*(b) to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,*

*(c) to maintain and improve water quality and estuary health,*

*(d) to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,*

*(e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,*

*(f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.*

**Comment:** The proposed development has marginally located part of the development footprint within this zone. The proposed open space has been located to strategically utilise land, for public recreation, that would otherwise be effectively and economically under-developable for any other purpose. Lands adjoining this recreational parcel are specifically designed to protect the

biological diversity and ecosystem integrity, together with water quality and estuary health.

### 2.3 Biodiversity Conservation Act 2016

The BC Act and supporting regulations establish a modern and integrated legislative framework for land management and conservation in NSW. The purpose of the BC Act is *"to establish a pathway to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity and to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values"*.

In accordance with the BC Act, the BAM (OEH 2017c) and entry into the Biodiversity Offsets Scheme (BOS) is applicable to certain development activities based on specific criteria. Preparation of a Biodiversity Development Assessment Report (BDAR) is required for a development application that meets any of the following criteria:

- Part 4 development activities deemed to be 'State Significant' under the NSW Environmental Planning and Assessment Act 1979 (NSW EP&A Act);
- Development activities that have the potential to impact Areas of Outstanding Biodiversity Value (AOBV) as listed under Part 3 of the BC Act;
- Development activities that have the potential to cause a significant impact on a threatened species, population or ecological community, listed under Schedules 1 and 2 of the BC Act, as determined by application of a five-part-test of significance in accordance with Section 7.3 of the BC Act;
- Development activities that have the potential to impact areas mapped as having 'high biodiversity value' as indicated by the NSW Biodiversity Values Map (BV Map); and
- Development activities that involve clearing of native vegetation that exceeds the Biodiversity Offset Scheme thresholds (BOS thresholds) as determined by the NSW BC regulation.

As the proposed development will require removal of native vegetation which exceeds the BOS clearing threshold detailed in Section 7.2 of the Biodiversity Conservation Regulation 2017, a BDAR is required to support a development application for the proposed development. This BDAR report has been prepared

according to the methodology detailed within the BAM and is attached to this report. In this BDAR, biodiversity impacts have been assessed through:

- Comprehensive mapping and assessment of biodiversity values completed in accordance with the BAM,
- The identification of potential threatened species within the development site,
- Avoidance and mitigation measures which have been outlined to reduce the impacts to biodiversity; and
- The generation of 42 Ecosystem Credits within the study area for impacts to native vegetation and paddock trees
- The generation of 26 Species credits within the study area to allow for the assumption that Rough Doubletail is present within the study area

## 2.4 Biosecurity Act 2015

The NSW Biosecurity Act 2015 (BS Act), amongst other considerations, provides regulatory controls and powers to manage noxious weeds in NSW. For weed management, this Act divides NSW into regions based on combined LGAs and priority weeds for a region are listed. Some weeds are managed at a state level as they form part of a broader containment strategy. The legislation compliments listed Weeds of National Significance (WoNS). Four priority weed species listed under the BS Act were identified within the study area. Further information on this matter is provided in Appendix A of the BDAR.

## 2.5 National Parks & Wildlife Act 1974

The objects of the NP&W Act are:

2A *Objects of Act*

(1) *The objects of this Act are as follows:*

*(a) the conservation of nature, including, but not limited to, the conservation of:*

*(i) habitat, ecosystems and ecosystem processes, and*

*(ii) biological diversity at the community, species and genetic levels, and*

*(iii) landforms of significance, including geological features and processes, and*

*(iv) landscapes and natural features of significance including wilderness and wild rivers,*

*(b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:*

- (i) places, objects and features of significance to Aboriginal people, and*
- (ii) places of social value to the people of New South Wales, and*
- (iii) places of historic, architectural or scientific significance,*
- (c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,*
- (d) providing for the management of land reserved under this Act in accordance with the management principles applicable for each type of reservation.*

*(2) The objects of this Act are to be achieved by applying the principles of ecologically sustainable development.*

*(3) In carrying out functions under this Act, the Minister, the Chief Executive and the Service are to give effect to the following:*

- (a) the objects of this Act,*
- (b) the public interest in the protection of the values for which land is reserved under this Act and the appropriate management of those lands.*

With respect to the Objects of the Act, a Due Diligence Assessment on Aboriginal Cultural Heritage has been undertaken and is Attachment N. The recommendations and conclusions contained within the Due Diligence Report have confirmed that appropriately an Aboriginal Cultural Heritage Report (ACHAR) and Aboriginal Heritage Impact Permit (AHIP) be undertaken with full consultation with the local Aboriginal community. With respect to the conservation of habitat and ecosystem processes, the project has carefully designed the development to preserve and enhance the E2 lands and, over time, establish a viable corridor of native vegetation through the development areas.

## **2.6 Roads Act 1993**

The objects of this Act are:

- (a) to set out the rights of members of the public to pass along public roads, and*
- (b) to set out the rights of persons who own land adjoining a public road to have access to the public road, and*
- (c) to establish the procedures for the opening and closing of a public road, and*
- (d) to provide for the classification of roads, and*



- (e) to provide for the declaration of RMS and other public authorities as roads authorities for both classified and unclassified roads, and
- (f) to confer certain functions (in particular, the function of carrying out road work) on RMS and on other roads authorities, and
- (g) to provide for the distribution of the functions conferred by this Act between RMS and other roads authorities, and
- (h) to regulate the carrying out of various activities on public roads.

**Comment:** A Section 138 Application to Council as the local Roads Authority will need to be made to allow for the connection of the development to the existing public road being Viney Creek Road. In addition, any reconstruction and the insertion of additional drainage works within the road alignment of the existing public road that will be required by the approval of this Application is to be included in the Section 138 Application Form. The Section 138 process is undertaken post approval as part of the Construction Certificate process.

## 2.7 Rural Fires Act 1997

The objects of this Act are to provide:

- (a) for the prevention, mitigation and suppression of bush and other fires in local government areas (or parts of areas) and other parts of the State constituted as rural fire districts, and
- (b) for the co-ordination of bush fire fighting and bush fire prevention throughout the State, and
- (c) for the protection of persons from injury or death, and property from damage, arising from fires, and
- (c1) for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires, and
- (d) for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c1) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

### **Division (8) Subdivision 2 Bushfire Prone Land:**

- (1) The Commissioner may issue a bush fire safety authority for:
  - (a) a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or
  - (b) development of bush fire prone land for a special fire protection purpose.

- (2) A bush fire safety authority authorises development for a purpose referred to in subsection (1) to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire.
- (3) A person must obtain such a bush fire safety authority before developing bush fire prone land for a purpose referred to in subsection (1).
- (4) Application for a bush fire safety authority is to be made to the Commissioner in accordance with the regulations.
- (5) Development to which subsection (1) applies:
- (a) does not include the carrying out of internal alterations to any building, and
- (a1) does not include the carrying out of any development excluded from the operation of this section by the regulations, and
- (b) is not complying development for the purposes of the [Environmental Planning and Assessment Act 1979](#), despite any environmental planning instrument.
- (6) In this section:

**special fire protection purpose** means the purpose of the following:

- (a) a school,
- (b) a child care centre,
- (c) a hospital (including a hospital for the mentally ill or mentally disordered),
- (d) a hotel, motel or other tourist accommodation,
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
- (f) seniors housing within the meaning of [State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) 2004](#),
- (g) a group home within the meaning of [State Environmental Planning Policy No 9—Group Homes](#),
- (h) a retirement village,
- (i) any other purpose prescribed by the regulations.

**Comment:** The Rural Fires Act utilises the Planning for Bushfire Protection (PfBP) 2006 Guideline to enforce compliance and the RFS, as an Integrated Agency, is required to issue a 100B Authorisation or Bush Fire Safety Authority prior to the determination of the Application by the Consent Authority. Compliance with the PfBP standards regarding setbacks, building attack levels and provision of water supply and access has been achieved and the Bushfire Assessment Report is contained in Attachment G.

## 2.8 Water Management Act 2000

The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- (a) to apply the principles of ecologically sustainable development, and*
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and*
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
 
  - (i) benefits to the environment, and*
  - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and*
  - (iii) benefits to culture and heritage, and*
  - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,**
- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,*
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,*
- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,*
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,*
- (h) to encourage best practice in the management and use of water.*

### **Chapter 3 Part 3 Division 1 Section 91 Activity approvals**

- (1) There are two kinds of activity approvals, namely, controlled activity approvals and aquifer interference approvals.*
- (2) A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.*
- (3) An aquifer interference approval confers a right on its holder to carry out one or more specified aquifer interference activities at a specified location, or in a specified area, in the course of carrying out specified activities.*

**Note.**

Examples of where an aquifer interference approval may be needed include mining operations, road construction and any other large-scale activity that involves excavation.

**controlled activity** means:

- (a) the erection of a building or the carrying out of a work (within the meaning of the Environmental Planning and Assessment Act 1979), or
- (b) the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or
- (c) the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- (d) the carrying out of any other activity that affects the quantity or flow of water in a water source.

**Comment:** The Water Management Act (WMA) seeks to protect the water resources of the State. DoI Water have prepared the Guidelines for Riparian Corridors on Waterfront Land to provide practical advice on the mechanism whereby development can interact and protect riparian corridors. The proposed development requires the realignment of first order streams within Precinct 1 to allow for efficient lot layouts and to enable servicing of those lots. Additionally, the second order stream location in the central E2 zoned land is intended to be expanded. The General Terms of Agreement (GTA) of the Natural Resource Access Regulator (NRAR) will need to issue prior to the approval of the Application and it is expected that a Controlled Activity Approval will be required prior to the commencement of works within 40m of any WMA identified stream.

**STATE ENVIRONMENTAL PLANNING POLICIES**

**2.9 State Environmental Planning Policy (State and Regional Development) 2011**

Schedule 7, Clause 8 of SEPP (State and Regional Development) 2011 states:-

8 Coastal subdivision

(1) Development within the coastal zone for the purposes of subdivision of the following kind:

- (a) subdivision of land for any purpose into more than 100 lots, if more than 100 of the lots will not be connected to an approved sewage treatment work or system,

- (b) subdivision of land for residential purposes into more than 100 lots, if the land:
  - (i) is not in the metropolitan coastal zone, or
  - (ii) is wholly or partly in a sensitive coastal location,
- (c) subdivision of land for rural-residential purposes into more than 25 lots, if the land:
  - (i) is not in the metropolitan coastal zone, or
  - (ii) is wholly or partly in a sensitive coastal location.

(2) In this clause:

**coastal zone** has the same meaning as in the [Coastal Management Act 2016](#).

**metropolitan coastal zone** means that part of the coastal zone between the northern boundary of the local government area of the City of Newcastle and the southern boundary of the local government area of the City of Shellharbour.

**sensitive coastal location** means any of the following that occur within the coastal zone:

- (a) land within 100m above mean high water mark of the sea, a bay or an estuary,
- (b) a coastal lake,
- (c) a declared Ramsar wetland within the meaning of the [Environment Protection and Biodiversity Conservation Act 1999](#) of the Commonwealth,
- (d) a declared World Heritage property within the meaning of the [Environment Protection and Biodiversity Conservation Act 1999](#) of the Commonwealth,
- (e) land declared as a marine park or an aquatic reserve under the [Marine Estate Management Act 2014](#),
- (f) land within 100m of any of the following:
  - (i) the water's edge of a coastal lake,
  - (ii) land to which paragraph (c), (d) or (e) applies,
  - (iii) land reserved under the [National Parks and Wildlife Act 1974](#),
  - (iv) land to which [State Environmental Planning Policy No 14—Coastal Wetlands](#) applies,
- (g) residential land (within the meaning of [State Environmental Planning Policy No 26—Littoral Rainforests](#)) that is within a distance of 100m from the outer edge of the heavy black line on the series of maps held in the Department and marked "State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)".

**subdivision of land** does not include a boundary adjustment, a strata subdivision, or a community title subdivision associated with another development that has been approved.

**Comment:** Under Schedule 7 Clause 8 (1) (b) (i) the subdivision of land for residential purposes into more than 100 lots, if the land is not in the metropolitan coastal zone classifies the development as regionally significant development and requires that the Application is referred to the Hunter and Central Coast Joint Regional Planning Panel as the relevant consent authority.

## **2.10 State Environmental Planning Policy (Coastal Management) 2018**

This SEPP became operational 3 April 2018 and provided a consolidated planning instrument for land in the coastal zone. The SEPP is supported by interactive mapping for the coastal area and the maps identify that the site is located as being part of the *Coastal Environment Area*.

Clause 13 applies to the land and provides:

*13 Development on land within the coastal environment area*

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

*(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

*(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

*(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

Comment:

- The development has been designed to improve the biophysical, hydrological and ecological attributes of the site with significant rehabilitation of riparian and ecological E2 zones. It is proposed that the E2 land will form part of a BSSAR that is being considered for the whole project.
- Water quality has been assessed as an improvement on existing discharges and the Application has provided full MUSIC Modelling.
- The development is not adjacent to any existing public beach, sensitive coastal lake, headland, rock platform, foreshore and surf zone.
- The development does not impact on any significant Aboriginal cultural heritage, practices and places within the Coastal Environment Area and the Application has prepared a relevant Due Diligence Cultural Heritage Assessment. A full ACHAR and AHIP are also being undertaken.
- The proposal will be connected to a MidCoast Water Services reticulated water and sewer system.

Separate plans indicating the location of the Coastal Environment Area within the site at specific locations have been prepared and are included as Attachment M.

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

The principal aim of State Environment Planning Policy (SEPP) 44 - Koala Habitat Protection is 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 to reverse the current trend of Koala population decline. A full BDAR has been prepared for this project and SEPP 44 is considered as part of the that report, refer Attachment O.

This policy applies to areas of more than one hectare or an area which has, together with any adjoining land in the same ownership, an area of more than 1 hectare, whether or not the development application applies to the whole or only part of the land. In addressing SEPP44 there are two questions to be considered, regarding the occurrence of 'Potential' and 'Core' Koala Habitat on site.

### **2.11.1 First Consideration – Is the Land 'Potential Koala Habitat'?**

'Potential Koala Habitat' is defined in SEPP44 as "...an area of native vegetation where trees of the type listed in Schedule 2 (Koala feed tree species) constitute at least 15% of the total number of trees in the upper or lower strata of the tree component".

*Eucalyptus microcorys* (Tallowwood) was a codominant canopy species within the vegetation patches present within the study area. Planted specimens of *Eucalyptus robusta* (Swamp Mahogany) were also present within the north of the site. Both species are designated Koala feed trees and were found to exceed the 15% requirement of Koala feed tree species within the study area. Subsequently,



the vegetation on site represents 'Potential Koala Habitat' and therefore the second question is considered.

### **2.11.2 Second Consideration – Is the land 'Core Koala Habitat'?**

*Core Koala Habitat is defined in SEPP 44 as "... an area of land with a resident population of Koalas, evidenced by attributes such as breeding females (that is females with young) and recent sightings and historical records of a Koala population.*

No koalas were identified during site surveys, as detailed within the body of this report, nor was there any recent evidence such as scats and scratches to suggest recent use of the site by Koalas. The BioNet Atlas of NSW Wildlife (OEH, 2018) search showed no records from within the study area itself, however there was a Koala recorded 100m north of the study area in September 2016. Three other records from 2013, 2010 and 2010 were present to the south and southwest of the site within 5km, however no other records are present within the vicinity of the study area within the past 10 years. Given the lack of Koala activity recorded, there is insufficient evidence to suggest that the site supports a resident population. Therefore the site would unlikely to be considered to constitute Core Koala Habitat and would rather represent potential foraging and transitory habitat as part of a larger home range, accordingly no further provisions of this policy apply to the site.

Given the recommendations made within Section 9.2 within the body of this report, in regard to the protection of fauna during the construction phase of the project, it is unlikely that the proposal would result in a significant impact on the Koala. A full copy of this assessment is contained in the attached BDAR.

### **2.12 State Environmental Planning Policy No. 64 – Advertising and Signage**

The proposal is to include a permanent estate gateway entry sign and also temporary signage relating to the sale of the resulting lots, all of which will be visible from public places and will be compliant with *State Environmental Planning Policy*

64 - Advertising and Signage. Details of the Estate Signage structure will be addressed in the Construction Certificate documentation.

None of the proposed signage will exceed 20 square metres or be located higher than 8 metres above ground, satisfying the objectives of SEPP 64.

### 2.13 Great Lakes Local Environmental Plan 2014

The subject site is zoned part R2 Low Density Residential, part E2 Environmental Conservation, and part RU2 Rural Landscape (refer Land Zoning Map – Sheet LZN\_010C), pursuant to the provisions of Great Lakes Local Environmental Plan 2014 (the LEP). The proposed residential lots are to be located wholly within the R2 zoned area and the E2 zones area will contain vegetated areas and detention basins. The RU2 land will contain a local park in a primary location for residential access.

The objectives of the R2 – Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Comment:** The proposed development will assist in the provision of residential lots, leading to additional housing within the community. The proposed development is consistent with the objectives of this zone.

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.*

**Comment:** The proposal is consistent with the E2 zone objectives. The proposed development will result in an overall net benefit to ecological outcomes.

The objectives of the RU2 – Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for rural tourism in association with the primary industry capability of the land which is based on the rural attributes of the land.*
- *To secure a future for agriculture in the area by minimising the fragmentation of rural land and loss of potential agricultural productivity.*

**Comment:** The area of RU2 zoned land is to be utilised for public open space, being a local park.

Recreation Areas are permissible with consent in this zone. The final design of a local park proposed in this location will be discussed in detail with Council.

The relevant clauses of the LEP are addressed below with relevant commentary included:

**(4.1) Minimum Subdivision Lot Size**

The land, the subject of the development application, is zoned part R2 Residential, part E2 Conservation and part RU2 Rural Landscape. Minimum lot sizes for land subdivision in each of these zones is as follows:

<b>Great Lakes LEP 2014 Minimum Lot Size for Land Subdivision</b>	
<b>Zone</b>	<b>Minimum Lot Size</b>
R2	450 square metres
E2	40 hectares
RU2	40 hectares

All proposed new residential lots are zoned R2 and are above the minimum lot size, being 450 square metres.

**(4.1B) Exceptions to minimum lot sizes for ecological protection**

(1) The objective of this clause is to facilitate subdivision that will result in the improvement and protection of high value conservation land for ecological and ecosystem service purposes.

(2) This clause applies to each lot (an **original lot**) that contains any of the following land:

- (a) an environmentally sensitive area,
- (b) land identified as "Wetland" on the [Wetlands Map](#),
- (c) land the subject of a planning agreement that makes provision for the conservation or enhancement of the natural environment.

(3) Despite clause 4.1, development consent may be granted for the subdivision of an original lot to create other lots (the **resulting lots**) if the consent authority is satisfied that:

- (a) one of the resulting lots will contain all of the land referred to in subclause (2) (a), (b) or (c) that was in the original lot, and
- (b) all other resulting lots will contain land that has an area that is not less than 1 hectare.

(4) Development consent must not be granted under subclause (3) unless the consent authority is satisfied that suitable arrangements have been, or will be, made for the conservation and management of the land referred to in subclause (3) (a).

(4A) Despite any other provision of this Plan, the erection of a dwelling house:

- (a) is prohibited on any resulting lot referred to in subclause (3) (a), and
- (b) is permitted with development consent on any resulting lot referred to in subclause (3) (b).

(5) In this clause:

**environmentally sensitive area** means land that is an environmentally sensitive area for exempt or complying development within the meaning of clause 3.3.

**(4.1D) Minimum subdivision lot sizes for certain split zones**

(1) The objectives of this clause are as follows:

- (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,
- (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.

(2) This clause applies to each lot (an **original lot**) that contains:

- (a) land in a residential, business, industrial or village zone, and
- (b) land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(3) Despite clause 4.1, development consent may be granted for the subdivision of an original lot to create other lots (the **resulting lots**) if:

- (a) one of the resulting lots will contain:
- (i) land in a residential, business, industrial or village zone that has an area that is not less than the minimum size shown on the *Lot Size Map* in relation to that land, and
  - (ii) all of the land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living that was in the original lot, and
- (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the *Lot Size Map* in relation to that land.
- (4) Despite any other provision of this Plan, the erection of a dwelling house is permitted with development consent on any resulting lot.

**Comment** – The original lot contains land that has been zoned R2, Low Density Residential, E2 Environmental Conservation and RU2, Rural Landscape will be subdivided so that all residential lots will be above the minimum lot size. The E2 Environmental Conservation land will be sequentially transferred to Council as per the proposed handover strategy. The handover strategy has been prepared in accordance with the logical release of adjoining development land and in accordance with Clause 4.1B Exceptions to minimum lot sizes for ecological protection. The E2 land is the subject of the VPA and consideration of having this parcel included in a BSSAR is currently being undertaken. The RU2 land is an isolated parcel that will remain as part of the overall RU2 lands until Council accepts the offer of a Park and Sporting Fields area that is then rezoned and dedicated to Council as Public Reserve.

## **(6.2) Public Utility Infrastructure**

Necessary infrastructure will be made available to the proposed development.

## **(7.1) Acid Sulfate Soils**

Reports prepared by Douglas Partners (May and June, 2018) state that groundwater is expected to flow to the east to south-east towards the Myall River which is approximately 1 km east-south-east of the site. Groundwater is expected to be at depths greater than 2 m based on site observations.

Reference to the Port Stephens 1:25,000 Acid sulfate soil risk map indicates that all of Precincts 1 and 2 and the majority of Precinct 3 are located within in an area of 'no known occurrence of acid sulfate soils'. The south eastern portion of Stage 3 is mapped within an area of 'Low probability of occurrence of acid sulfate soils at depths greater than 3 metres.

### **(7.2) Earthworks**

Bulk earthworks will be required as part of the development. A bulk earthworks plan indicating levels of cut and fill is included in the development plans.

During the course of all construction and until such time as the site is stabilised, appropriate erosion and sediment control measures will be implemented. An erosion and sediment control plan has been included as part of the DA documentation.

Any fill required for the proposal will be either VENM (Virgin Excavated Natural Material), ENM (Excavated Natural Material) or exempt materials.

With regard to drainage lines, discussions have been undertaken with Council and also DPI Water and it is intended to fill both first order stream drainage lines within Precinct 1. All other drainage lines are to be protected and enhanced, including the construction of stormwater drainage control swales etc. Full detail has been provided in the attached plans and it is considered that the proposed earthworks will result in a significant improvement in drainage corridor infrastructure in the location.

### **(7.3) Flood Planning**

The site is not flood prone.

### **(7.5) Stormwater Management**

A stormwater management report accompanies the development application. Music modelling indicates that there will be no significant impact relating to stormwater resulting from the development.

### **(7.6) Drinking Water Catchments**

The site is identified as being partly within the drinking water catchment (refer map DWC\_010). It is considered that the proposal will have no considerable impact on the drinking water catchment for the following reasons:

- The land slopes away from the receiving waters.
- As an approved residential development, waste will be disposed of via the reticulated sewage system. No effluent will be disposed of on site.
- As residential development, the only foreseeable chemical use is that of garden fertilisers, herbicides and pesticides; currently agricultural grade chemicals are used in the operations of the farm and therefore there should be no increase in chemical use in the location.
- Whilst there will be no changes in groundwater flow direction resulting from the development.

It is considered that the drinking water catchment will not be adversely impacted upon as a result of the proposal.

### **(7.7) Riparian Land and Watercourses**

There are no identifiable per Council's map WCL-010 watercourse or riparian lands within the development footprint.

There are, however, first and second order streams within the site. The development is nominated integrated development requiring General Terms of Approval from the NSW DPI - Water.

Impacts on the relevant first and second order streams within the site and riparian corridor rehabilitation are included in the development plans associated with the development application.

## 2.14 Great Lakes Development Control Plan

Relevant components of Great Lakes Development Control Plan (the DCP) are addressed below:

# 3 ENVIRONMENTAL CONSIDERATIONS

## 3.2 Ecological Impacts

### DCP Objectives

- *To ensure that development is designed in a manner that avoids, mitigates or offsets negative impacts on biodiversity and the quality and function of the natural environment and responds to relevant ecological constraints and opportunities.*

**Comment** – The proposal will result in the removal of a narrow band of vegetation within the environmental zoned land and some scattered trees enabling the efficient construction of a roads and associated infrastructure and the establishment of an appropriate Asset Protection Zone (APZ) to proposed residential development. A full ecological Biodiversity Development Assessment Report (BDAR) has been completed and is Attachment O of this report.

The removal of this vegetation is to be offset with compensatory plantings over an area of approximately 80 metres in width which will result in a significantly improved ecological corridor. The compensatory plantings will include significant quantities of primary koala feed trees which will greatly assist the local koala population. It is considered that the design of the proposal will result in a far improved ecological situation than that which is currently in existence on the site or that was originally proposed by Council's Restoration Management Plan (RMP). See relevant attached plans for proposed vegetation plantings.



### 3.3 Flooding

**Comment** – The proposed development will not result in any increase in flood potential of downstream areas.

### 3.4 Effluent Disposal

**Comment** – All proposed lots will be connected to a reticulated sewage system.

### 3.5 Contaminated Land

**Comment** – Site contamination is not a consideration for the development application. Refer to reports prepared by Douglas partners (attached).

### 3.6 Bush Fire

**Comment** – A separate bush fire assessment has been undertaken by a BPAD accredited bush fire consultant. The proposed development is acceptable from a bush fire planning perspective.

## 4 SUBDIVISION

### 4.2 Objectives

**Comment** – the proposed development will result in lots which are of an appropriate size to allow for the efficient development of the land, as well as providing adequate area for options for future dwellings. The road layout and the proposed revegetation works are also considered appropriate for the location. Whilst the DCP seeks to impose a large lot layout requirement within Precincts 1-3, the LEP permits the subdivision of residential land into 450 square metre lots; potentially on an ad-hoc basis.

In discussions with MidCoast Water Services in relation to their strategic planning forecasts and requirements for the provision of water and sewer services for North Shearwater, the provision of residential lots in accordance with LEP residential densities is required to enable financial viability.

### 4.3 Site Design

#### DCP Objectives

- *To preserve mature trees and significant landscape elements.*
- *To limit stormwater runoff and incorporate water sensitive design.*
- *To ensure heritage conservation objectives are met for both European and Aboriginal heritage.*
- *To avoid degradation of unique or sensitive environments such as wetlands, littoral rainforests, estuarine areas, and coastal lakes and areas.*

**Comment** – The proposed development will result in the removal of a limited number of mature trees and isolated paddock trees. This is necessary to allow for the efficient development of the site, specifically Precinct 2. The removal of these trees will be offset through the rehabilitation of the ecological corridor contained within the E2 lands, including habitat improvement for *E.robusta* (Swamp Mahogany) which is a primary koala feed tree in the location.

Proposed drainage considerations will result in a significant improvement for biodiversity conservation.

A water sensitive design has featured in the design of the proposed subdivision.

There is one (1) heritage item of local heritage significance (Great Lakes LEP Schedule5) listed on Lot 2 DP 1154170 being 'Site of original Durness homestead, including Canary Island Palms and gardens surrounding second Durness homestead'. The listed item is remote from the proposed development of the land. The development of this land is in a Council prescribed Urban Release Area.

#### 4.4 Services

**Comment** – All required services will be installed as part of the construction phase of the development. Preliminary servicing plans are provided in the relevant attachments.

#### 4.5 Landscaping

A landscape concept plan is attached.

#### 4.6 Allotments in Cul-de-sacs

**Comment** – Except for one lot, all lots within cul-de-sacs heads have frontages equal to or exceeding 12.6 metres, in accordance with the DCP. This variation is considered appropriate having regard to the proposed lot size of 900 square metres, having adequate area for residential purposes. The narrower frontage will not prevent the efficient development of the proposed lot nor will it impact upon the amenity or result in any privacy or security issues.

#### 4.7 Road Network

**Comment** – The roads have been designed so that are compliant with Councils and RFS guidelines as relevant.

#### 4.8 Public Open Space

**Comment** – The proposal includes a public playing field in Precinct 3; discussions with Council have indicated that this is appropriate. Final details regarding the internal layout arrangements within the proposed park are yet to formalised with Council. The expected outcome is for the provision of a local park that accommodates all local residents' needs. An integrated shareway (cycleway and pathway) throughout the proposed development site has been designed and indicated in the engineering plans.

## 5 WATER SENSITIVE DESIGN

**Comment** – A water sensitive design has been prepared and accompanies this Development Application.

## 6 WASTE MANAGEMENT

**Comment** – A Waste Management Plan is attached.

## 7 SITE SPECIFIC DEVELOPMENT CONTROLS

### 7.2 North Shearwater Objectives, Vision and Structure Plan

**Comment** – DCP objectives, vision and structure plan for North Shearwater are generally satisfied.

### 7.3 Integrated Water Management

**Comment** – The attached Stormwater Management Report concludes that stormwater pollutant levels post development will actually be less than pre-development, achieving a Nil or Beneficial Effect (NoBE), and that the development will result in a levelling of peak flow rates leaving the site. As such, it is considered that the proposal is beneficial.

### 7.4 Stormwater

The objectives of this part are:

- *To ensure people and assets are safeguarded from risks associated with stormwater flows.*
- *To ensure resultant development will maintain or improve the quality of storm water discharged from the site engaging the principles of water sensitive design techniques.*

**Comment** – The proposal will adhere to the principles of the Stormwater Management Strategy which was prepared in relation to the North Shearwater Urban Release Area (Worley Parsons 2010). It is also noted that all water quality treatment will occur within the residential zoned land with the treated runoff being

directed into the riparian zones and then used to enhance the riparian corridors and general E2 ecology.

### 7.5 Bushfire

**Comment** – A bushfire assessment report has been prepared by a BPAD accredited consultant and it is considered that the proposal is acceptable with regard to planning for bush fire.

### 7.6 Fauna Movement Corridors

The objectives of this part of the DCP are:

- *To ensure habitat areas are available for the safe movement of native fauna*
- *To ensure that development protects and preserves wildlife habitat on adjoining land*
- *To ensure the road network is designed to minimise impacts on fauna movement.*

**Comment** – The fauna movement corridors identified in the Structure Plan are proposed to be greatly improved by appropriate additional plantings of koala primary feed trees. This has been discussed with Council and considered beneficial and in preference to Council's adopted Restoration Management Plans (RMP) for North Shearwater.

### 7.7 Heritage

**Comment** – The proposed development is not within close vicinity of a heritage item or area and therefore a Heritage Impact Statement is not required. The proposed development is consistent with Council's direction for strategic residential growth.

### 7.8 Precinct 1

**Comment** – Access to Precinct 1 and the provision of a 5 metre wide vegetated buffer strip along Viney Creek Road has been discussed in depth with Council. Access to some of the lots directly adjoining Viney Creek Road must, in reality, be

directly off Viney Creek Road, otherwise the construction costs of driveways from within the precinct roads will be prohibitive.

With regard to the vegetated buffer strip, this is problematic as it will provide continuity with the vegetation on the opposite side of Viney Creek Road resulting in an unacceptable increase in bush fire hazard which would then result in the lots being not able to be built on – construction would need to be above BAL-29 and this is unacceptable to the RFS. In order to negate this threat, the species chosen for the buffer are rainforest species (and hence fire resistant) and the plantings are to be undertaken to provide a density which will act as an ember filter without being too dense (densities which are too high result in an unacceptable impact with regard to wind turbulence, which negates any ember filter benefit).

The distant panoramic views as discussed in this part of the DCP, will be enjoyed by the residents and it is considered that this will not result in an adverse impact upon the amenity. It is considered appropriate to plant street trees not actually in the road reserve along Viney Creek Road but within the lots; planting of the trees within the lots will satisfy MidCoast Water Services (MCWS) requirements which prohibit plantings on top of water mains and this vegetation will be protected via an easement. MCWS has three (3) water services including main town water supply mains in Viney Creek Road so the opportunity to have street tree plantings is limited. This vegetated buffer this will help ensure an appropriate level of amenity as well as contributing towards an ecological benefit.

Lapped and capped fencing is also considered to be an enhancement of the bushfire threat and is therefore inappropriate in this Precinct.

## 7.9 Precinct 2

**Comment** – The DCP requires larger lots in the size range of 1500-2000 square metres, however, the LEP stipulates a minimum lot size for this location as 450 square metres.

The *Environmental Planning and Assessment Act* states: *Compliance with non-discretionary development standards – development other than complying development:*

*If an environmental planning instrument (EPI) or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:*

*(a) is not entitled to take those standards into further consideration in determining the development application.*

Given the LEP (which is an EPI) provides a non-discretionary development standard which allows for a minimum lot size of 450 square metres, Council is unable to require a more stringent standard by way of the DCP, especially given that the DCP is not an EPI and is overridden by the LEP. In effect, the lot sizes required in the DCP are in direct contravention to the LEP. With regard to the landscaped mound and the required lapped and capped fencing, this is considered inappropriate as it will result in an unacceptable increase to bush fire hazard. The submitted bush fire report as relied upon in the rezoning process was erroneous and advised that there was no bush fire hazard to the south. The correct situation is that there is a bush fire hazard to the south and this means that the vegetated mound cannot be constructed to the extent required in the DCP without the lots within this precinct being rendered undevelopable – ie all dwellings within the southern extremity of the development would require construction to a minimum of BAL-40 and potentially BAL-FZ whereas *Planning for Bush Fire Protection (2006)* clearly states that subdivision cannot occur if the dwellings will exceed BAL-29. Each of the proposed lots in this precinct will have frontage to a new road (located approximately to the north of these lots) and this new road will act as part of the required APZ, with the remainder of the required APZ being located within the subject lots.

MCWS also has a requirement to have the location of their sewer servicing within a public road and given that all of the Precinct 2 drains to the south, there is an imperative to have a road to the south of the lots to permit MCWS servicing rather than a mandated landscape mound.

### **7.10 Precinct 3**

**Comment** – As with precinct 1, the provision of a 5 metres landscaped buffer and lapped and capped fencing to Viney Creek road is problematic and cannot be achieved as a result of bush fire restrictions. As with Precinct 2, the requested lot sizes as stipulated within this part is unacceptable due to it being in contravention to the LEP.

A geotechnical report has been prepared and accompanies this application. With regard to built form of future housing, this shall be addressed with each individual application at the relevant time.

### **7.11 Precinct 4**

Not Applicable

### **7.12 Precinct 5(a)**

Not Applicable

### **7.13 Precinct 5(b)**

Not Applicable

### **7.14 Restoration Management Plan**

**Comment** - A modified restoration management plan is proposed and is appended. It is noted that this plan focuses on the planting of primary feed trees for koalas as opposed to trees which are solely indigenous to the location. This has been discussed with Council and it is considered appropriate, resulting in a significantly improved outcome for the local endangered koala population.



## **8 LIKELY IMPACTS**

### **8.2 Environmental impacts**

The proposal will result in a significant increase in trees and other vegetation in the location and is well above the expected outcome of Council's adopted RMP. The proposed development of the land will provide an improved and valuable ecological corridor for the movement of koalas and other fauna. Whilst the proposal will require the removal of limited vegetation, including approximately six (6) habitat trees, the proposal will also result in significant additional rehabilitation plantings and therefore this proposal is considered to have a net positive ecological effect.

A modified rehabilitation plan has been prepared and is attached. This rehabilitation plan demonstrates a significant net increase to the rehabilitation as previously proposed and approved. One point of note within this new rehabilitation plan is that it is proposed that there be no fencing and instead, planting densities will discourage pedestrian access within the rehabilitation areas whilst still allowing for uninterrupted fauna movements in these locations.

The dedication of the environmentally zoned areas is to occur at appropriate stages to allow for the efficient development of the subdivision.

With regard to stormwater runoff, the water quality treatment of these waters will occur on the residential zoned land; post treatment, these waters will be directed to the environmental zoned land and into the riparian zones for natural flows and ecological enhancement.

### **8.3 Social Impacts**

The proposed development is consistent with Council's strategic land use planning objectives for North Shearwater, and, consequently, will have a positive social impact including the provision of additional housing for retirees and holiday

homes/lettings and those wishing to commute in, being in close proximity to employment nodes. Construction employment associated with the proposed development of the land will also be beneficial.

The proposed development also includes future open space areas which are also socially beneficial.

#### **8.4 Economic Impacts**

The proposal will provide an economic benefit as a result of capital expenditure associated with construction works and capital expenditure on dwelling construction and fitting. Significant numbers of additional families will reside in the area, having multiplier effects to the local economy.

### **9 RURAL FIRES ACT 1997**

The subject land is identified on the NSW Rural Fire Service website as being bush fire prone and a site investigation has revealed that this is accurate.

A bush fire assessment report has been undertaken and is attached as part of this application for submission to the NSW RFS under *Section 100B* of the *Rural Fires Act, 1997*. It is considered that the proposal is acceptable with regard to bush fire protection planning.

### **10 SUITABILITY OF THE SITE FOR DEVELOPMENT**

The site is considered suitable for the proposal for the following reasons:

- The site is zoned appropriately for the proposal.
- The proposal is consistent with the strategic planning direction of Council as established through the site rezoning.
- The relevant clauses of the LEP and DCP are satisfactorily met or appropriately argued.
- There will be no adverse environmental, social, or economic impacts.

- There are no site constraints which would otherwise impede or prevent the development from occurring.

## **10.2 The Public Interest**

It is considered that there are no genuine reasons relevant to the public interest which would otherwise cause the delay or refusal of this proposal – any perceived issues of significant public interest were dealt with during the course of assessment for the rezoning of the land. It is further noted that this proposal is consistent with Councils' strategic land use planning strategy and, therefore, it should be considered to be in the public interest.

The public as a whole will benefit from this proposal for the following reasons, amongst others:

- Housing opportunities;
- Significant net increase in vegetation, which will assist in ecological improvement and amenity;
- Enhancement of recreational opportunities in the locality; and
- Increased economic growth in the area;

## **11 CONCLUSION**

This proposal is for a three (3) precinct subdivision and bulk earthworks with multiple construction stages and lot releases, resulting in 226 residential lots and public reserves.

The proposed development satisfies Council's strategic land use direction, Council's LEP and DCP and matters for consideration under the Environmental Planning & Assessment Act 1979, as amended.

Appendix A: Aerial Photograph



Source: LPI Six Viewer website

Appendix B:

DAP Meeting Minutes

## Meeting Details

Meeting Date:	12 December 2017
Applicant/s Present:	Bob Lander
Council staff present:	Bruce Moore, Dean Hartmann, Gary Mead, Prue Tucker, Mat Bell

## Subject Land & Development

Unit:		House No.:	90	Street:	Viney Creek Road
Suburb:	Tea gardens			Postcode:	2324
Lot:	2	DP or SP:	1154170	Section:	
Zoning:	B1, E2, E3, R2, R3, RU2 & SP3				
Proposed Development:	Subdivision				

## ISSUES RAISED AT MEETING:

### 1. Proposal for roads to encroach into the E2 zoned land

Council acknowledges that current bushfire obligations, limit the development potential of the residential zoned part of the land. A slight encroachment into the E2 zoned land facilitates appropriate residential development. It is also acknowledged that whilst there will be some encroachment, the proposal will result in additional lands being revegetated.

In principle, Council has no objection to the encroachment proposed into the E2 zoned land.

### 2. Reduced lot sizes

It is proposed that the residential lot sizes be reduced from that of the current approval for stage 1 and that the residential lots be of a size smaller than that prescribed by the Great Lakes Development Control Plan for precinct 2 (1500 - 2000m<sup>2</sup>).

It is acknowledged that the minimum area development standard for the residential zoned land is 450m<sup>2</sup>.

In principle, Council has no objection to lot sizes in keeping with the minimum area development standard. Justification will need to be provided for variation to the DCP provisions.

### 3. Landscaping to Viney Creek Road

A 5m wide landscaped buffer is to be provided to the lots having frontage to Viney Creek Road. There was some concern that the buffer may be subject to development standards greater than that applied to the adjoining residential lots. A further check of the applicable standards has confirmed that the buffer is zoned residential and subject to the same development standards applicable to the adjoining residential zone.

4. Public Reserve

In principle Council is supportive of the establishment of of a public sporting field and facilities within the 1(A) zoned portion of the site and is willing to continuing discussions in relation to this aspect of the development.

This preliminary assessment with DAP is based on a review of the issues relating to the proposed development and the details provided by the applicant/consultant. It should not be taken to be a detailed assessment of Council's requirements for any subsequent development application or an indication in any way of the likely outcome of any subsequent application. The points raised during the meeting are intended to assist applicants in determining issues that should be addressed in a development application. Council and its officers do not accept any liability whatsoever for the actions by others taken as a result of any preliminary information offered, or the points raised, or any issues not raised or discussed.

**Any comments made by or actions taken by Council Officers during the meeting does not amount to a decision under the Environmental Planning and Assessment Act 1979.**



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**Bruce Moore**

15 December 2017

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**DATE**