



WYONG SHIRE COUNCIL

WYONG SHIRE COUNCIL
ORDINARY MEETING
ENCLOSURES

Wednesday, 25 November,
2009



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY MEETING
TO BE HELD IN THE COUNCIL CHAMBER,
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 25 NOVEMBER 2009 ,
COMMENCING AT 5:00:00 PM

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Date: 15 October 2009
Responsible Officer: Mark Greer
Location: Lot 3 DP 1007500
 Airport Warnervale, 150-190 Sparks Road, WARNERVALE
 NSW 2259
Zoning: 7A Conservation4E Regional Industrial and Employment
 Development5A Special Uses - Aerodrome7G Wetlands
 Management Zone
Owner: Wyong Shire Council
Applicant: Wyong Shire Council
Date Of Application: 4 February 2008
Application No: DA/3130/2004/A
Proposed Development: Stage Industrial Subdivision with Residue Parcels.
 (Amended application)

PROPOSED CONDITIONS

- 1 The development taking place in accordance with the approved development plans reference number DA/3130/2004/A except as modified by any conditions of this consent, and any amendments in red.
- 2 The development taking place in accordance with the approved development plans reference 20680, sheets SA01, SA02 and SB01, except as modified by any conditions of this consent, or any amendments in red.

The approval comprises the following stages for subdivision release:

- Stage 1: Lots 1 and 2 as the industrial zoned lots.
 Lot 3 acts as the interim residue parcel
- Stage 2: Lot 3 as Conservation area
 Lot 4 as Environmental Zoned Residue Parcel
 Lot 5 as Industrial Zoned Residue Parcel

Compliance with the Concurrence conditions in accordance with the Department of Environment and Conservation Concurrence Report dated 25 January 2007, as follows:

General

- 3 The development must be undertaken in accordance with the development as proposed in the SEE, SIS, SIS Addendum A, SIS additional information (31 August 2006) and the Director's Report (9 November 2005) including the proposed conservation offset areas, unless modified by the concurrence conditions below.

Reason: To ensure that the proposal is undertaken as described by the Development Application documentation and incorporates amelioration measures for threatened species as agreed to by the DEC in the Concurrence Report.

- 4 Any proposed variations in location, design, structures or relative timing of clearing of the approved development that may adversely impact on threatened species matters must be approved in writing by the DEC before works associated with the variation can begin. Requests for proposed variations must include an assessment of the potential adverse impacts of the proposed variation on threatened species and endangered ecological communities.

Reason: To ensure that variations to the development do not increase adverse impacts on threatened species and their habitats, or lessen protection provided to threatened species and their habitats by the conditions provided in this concurrence decision.

Wildlife Corridors

- 5 An interim vegetation corridor is to be retained on land zoned IN1 to the east of the proposed Stage 1 Warnervale Business Park development and the Warnervale Aerodrome until such time that Corridor Option 1 (east of Warnervale Airport as described in Wyong Shire Council letter dated 31 August 2006) is identified as functional vegetated corridor for wildlife and subject to Condition 4.

Reason: To ensure that proposed wildlife corridors in the Wyong Employment Zone (WEZ) are viable on an ongoing temporal scale.

- 6 Prior to any vegetation removal within the interim vegetation corridor identified in Concurrence Condition No 3, the applicant must provide to the DEC detailed assessment of the viability of wildlife corridors in the WEZ and provide clear evidence of their use by, or suitability for, threatened species and other native species in general.

Reason: To ensure that vegetation removal and development of the interim vegetation corridor does not affect the functioning of wildlife corridors within the WEZ.

Habitat Restoration and Monitoring

- 7 The applicant is to prepare and implement a Habitat Restoration and Monitoring Plan (HRMP) for the proposed conservation offset areas, including Baileys Farm prior to removing any vegetation from the site.

Reason: To ensure that impacts to threatened species and endangered ecological communities are adequately mitigated against during all phases of the development.

Prior to Release of Construction Certificate:

The following conditions must be satisfied prior to the release of the Construction Certificate. Conditions may require the submission of additional information with the Construction Certificate Application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.

- 8 Survey accurate subdivision plans is to be submitted prior to the issue of a Construction Certificate. The plans will be required to depict the following:
 - a. *Proposed Lots 1 & 2 consisting of the development lots with the respective areas of 2.89 ha and 5.02 ha. Proposed lot 3 stage 1 with 3.10 hectares shall have a restriction on use.*
 - b. *Proposed Lot 3 Stage 2 (permanent conservation area) to consist of a minimum of 23 ha of existing vegetation generally in accordance with the approved development plan (reference Wyong Shire Council, dated 15 September 2005)*
 - c. *Proposed Lot 4 (conservation area) to provide an environmental corridor adjoining the F3 Freeway (eastern side) and Sparks Road frontage (southern side) and to provide an environmental corridor at the southern end of Jack Grant Avenue.*
 - d. *Proposed lot 5 shall maintain a temporary conservation corridor being a width of 150 metres wide to adjoin proposed lot 4 in accordance with the recommendations of the Species Impact Statement (Stephen Bell and Michael Murray, 21 December 2004) and Species Impact Statement Addendum A – Compensation Offsets Review (dated 2 September 2006).*
 - e. *All changes arising from the final approved design plans for the constructed wetland.*

- 9 The provision of an Integrated Water Cycle Management (IWCM) system with best practice water quality and quantity control facilities and water reuse facilities is required to manage stormwater runoff from the development in accordance with Council's requirements (including maintenance), prior to the issue of a Construction Certificate. Details are to be generally in accordance with the stormwater drainage concept plan by Matrix Consulting (reference S-WSC-403 drawings D001-D006) and the report by Ecological Engineering Pty Ltd "Integrated Water Cycle Management and Water Sensitive Urban Design Strategy - Stage One of Warnervale Supplier Park", dated November 2004). The following amendments and details are to be incorporated into the IWCM system:
 - a Modelling is required to demonstrate how the final detail design for the "interim Strategy" stormwater management system reduces stormwater pollutants in accordance with Table 6.1.1b – Council's Urban Stormwater Management Plan (1999).
 - b Full detail of the proposed dual reticulation system designed to top up water tanks is to be provided. This will include detail regarding all necessary supporting infrastructure (power supply, access provision etc) and any further clearing required.

- c. Modelling is required to demonstrate how the final design for the “Interim Strategy” water management system will sustain discharges from the southern boundary of proposed Lot 2 into the conservation area in order to protect threatened flora species and the Wallum Froglet. All modelling is to demonstrate how standards can be achieved under the “interim strategy” proposed in the report by Ecological Engineering Pty Ltd (dated November 2004) This is to include:
 - i. Maintaining existing hydrological patterns generally as depicted in Section 7.1.2 - “Baseline Hydrology “ of the Ecological Engineering report;
 - ii. Limiting the frequency of individual flows to pre-development conditions;
 - iii. Limiting the total annual flow volumes to pre-development conditions;
 - iv. Maintaining pre-development cease to flow conditions including median cease to flow period and number of cease to flow days.
- d. An erosion and sediment control plan is to be approved by Council prior to the commencement of works on site and shall include necessary details to minimise site disturbance, define construction sequence and staging, cover and revegetate exposed areas, provide adequate sedimentation pondage and prevent wind erosion.
- e. A water quality and receiving water and conservation area water monitoring program is to be developed and submitted to Council for approval by Council's Natural Resources Unit prior to the issue of a Construction Certificate. Stormwater pH is to be between 5.0 and 7.0, prior to release to conservation areas, and monthly monitoring of the water quality from ponds and constructed wetlands will need to be provided to Council's Natural Resources Unit and in the event of pH falling outside this range dosing methods will be required to ensure the pH of discharge is within this prescribed range.
- f. The provision of a complete planting schedule for all water quality structures prepared by a suitably qualified and/or experienced practitioner. Plants to be used shall be generally endemic to Porters Creek catchment and appropriate for the proposed application. Design plans are to be approved by Council prior to the issue of a Construction Certificate and all works inspected and approved by Council prior to the issue of a Subdivision Certificate.

Certificates / Engineering Details

- 10 A Construction Certificate is to be issued by the Certifying Authority prior to commencement of any works for each stage of the subdivision. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

- 11 The obtaining of a Certificate of Compliance for design under the Water Management Act 2000 for water and sewer requirements from Wyong Shire Council as the Water Supply Authority. Design plans are to be approved by Council prior to the issue of a Construction Certificate.

Contributions

- 12 The payment to Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act and Council's Contribution Plan. Council's contributions are adjusted on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.
- 13 The payment to Council of contributions under the Water Management Act 2000. The contributions under the Water Management Act are adjusted in accordance with the Independent Pricing and Regulatory Authority decisions. The contributions will be adjusted to the amount applicable at the time of payment.

Dilapidation

- 14 A dilapidation report must be submitted to Council prior to issue of a Construction Certificate. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.

Filling and Haulage

- 15 The submission to and approval by Council of details for the disposal of any spoil gained from the site and / or details of the source of fill, heavy construction materials and proposed routes to and from the site.

Roads

- 16 Separate approval from Council as the Roads Authority must be obtained under Section 138 of the Roads Act 1993 prior to the issue of any Construction Certificate which includes any works within a Council road reserve. For any such works, design plans must be submitted to and approved by Council prior to issue of the Construction Certificate.
- 17 The provision of a plan of management for any works for the development that impact on any public roads and public land for the construction phase of the development, prior to issue of the Construction Certificate. This plan must be certified by a suitably qualified person prior to issue of the Construction Certificate. All works must be conducted in accordance with this plan. The plan is to include a Traffic Management Plan and/or a Work Method Statement for any works or deliveries that impact the normal travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas.
- 18 The provision of additional roads and stormwater works within the road reserve or Council's land at no cost to Council necessary to ensure satisfactory transitions to existing work as a result of conditions of this consent. The extent of works required for this development will be determined by Council in conjunction with assessing the application under the Roads Act.

Design plans for any such works are to be incorporated in the design for other roads and stormwater systems required for this development. Design plans must be approved by Council prior to issue of the Construction Certificate.

- 19 The provision at no cost to Council of kerb and guttering, or similar, full road construction and associated stormwater systems including swales for the full development in accordance with the approved plans reference Matrix Consulting Job S-WSC-403 Drawings D001-D006 and C013 (dated 3/12/2004) and Council's Development Control Plan No 67 - Engineering Requirements for Development. The road design is to be suitable for use by B-double vehicles. The design plans must be approved by Council prior to the issue of a Construction Certificate.
- 20 The provision of traffic management facilities the eastern perimeter of the Warren Road extension from the southern boundary of proposed Lot 1 to the cul-de-sac head adjacent to the conservation area is to ensure prevention of vehicular access from the road into the conservation area using bollards, large logs, boulders or other approved treatments. Three secured entry points are to be provided for the use of maintenance and emergency service vehicles. Minor adjustments to lot boundaries may be required to achieve a satisfactory design. Design plans must be approved by Council prior to issue of the Construction Certificate.

Subdivision Works

- 21 The works included under Stage 2 of the development constitute a variation from the original development consent and must be approved in writing by the Department of Environment, Climate Change and Water before works associated with Stage 2 can begin. A copy of this written approval must be provided to Council before the Construction Certificate for Stage 2 can be released.
- 22 The design and construction of all subdivision works in accordance with Council's Development Control Plan No 67 – Engineering Requirements for Development, which are prescribed at the time of commencement of engineering works.

Stormwater

- 23 Stormwater drainage works discharging from the site into a public system or public land require approval from Council under Section 68 of the Local Government Act. The extent of work must be determined by Council prior to issue of a Construction Certificate. All works are to be designed and constructed in accordance with Council's Development Control Plan 67 - Engineering Requirements for Development. Design plans must be approved by Council prior to issue of the Construction Certificate.

Trees

- 24 The submission to and approval by Council of an application for any clearing of the site other than within areas identified as roads. Should the final design for the constructed wetland require further tree removal or clearing of the identified endangered ecological community (EEC) other than that identified by this approval the application will be referred to the Department of Environment and Conservation (DEC) in accordance with the conditions of concurrence issued by the Department.
- 25 The applicant is to engage a suitably qualified and experienced consulting ecologist, arborist to supervise the construction of each stage of the development and to ensure and certify to Council's Development Ecologist that the trees and vegetation within the proposed habitat protection areas and buffers are adequately retained, protected and rehabilitated during construction. This will require careful consideration of placement of stormwater, sewer, water, power, gas and telecommunications services, temporary construction access, and stockpiles to allow for the long-term retention of these trees and vegetation.

Evidence of this engagement is to be forwarded to Council's Development Ecologist prior to the issue of a Construction Certificate. The consultant ecologist and arborist are to provide reports to Council's Development Ecologist for review certifying how the proposal is meeting tree retention and protection requirements following completion of the following stages of development:

- a Following erection of required tree protection fencing (and prior to the issue of a Construction Certificate)
- b Following induction of each civil contractor and subcontractor
- c Following initial clearing and excavation/filling of the site
- d Following provision of services
- e Following completion of each construction phase (and prior to the issue of a Subdivision Certificate)

26 Deleted

The entire boundary of proposed Lot 1, southern boundary of proposed Lot 2, eastern boundary of the road reserve and perimeter of the constructed wetland (Stage 2) are to be fenced prior to the issue of Construction Certificate. The fence is to consist of a 1.8 metre-high man-proof chainwire/mesh fencing including geofabric mesh to prevent frogs accessing the site during construction erected as per the consulting arborist and ecologist's direction and maintained in good working order for the duration of works. Starpicket and wire stock fencing is not to be used for this purpose. The type and placement of fencing is to be confirmed to Council in writing by the consultant arborist/ecologist prior to the issue of a Construction Certificate. All fenced tree protection areas are to be clearly marked as "No Go Area" on all final approved engineering plans and on the fencing itself. All construction contractors and personnel are to be advised of the importance of conserving these No Go Areas as part of their site and OH&S induction program. No clearing of trees or vegetation or storage of vehicles, fill or materials or access is to occur within any of the nominated No Go Areas. The consultant arborist/ecologist may require other habitat and/or trees to be protected via fencing from time to time.

This fencing is to be erected at the appropriate root zone protection limits (as determined by the consultant arborist/ecologist), prior to works being carried out around that particular habitat or tree.

- 28 Cleared vegetation must be reused or recycled to the greatest extent practicable and generally in accordance with the approved Waste Management Plan. No burning of cleared vegetation shall be permitted. Reuse options include removing millable logs, recovering fence posts and mulching and chipping and usable vegetation waste for on-site use including landscaping. All reasonable measures to use any surplus vegetation shall be undertaken including donation to community groups and distribution to the local community. All reasonable measures will be undertaken to minimise additions to landfill.
- 29 Conservation offset areas, individual trees proposed for retention and exclusion fencing is to be clearly identified on all final approved engineering plans prior to the issue of a Construction Certificate.

The management protocols and requirements within these conditions relating to tree and vegetation retention, protection and rehabilitation are to be included in all contract documentation, plans and specifications used by each civil contractor and sub-contractors. In addition the consultant ecologist and arborist are to induct each civil contractor and sub-contractor in relation to these ecological protocols and requirements prior to commencement of works. Certification of this induction is to be provided to Council prior to commencement of works.

- 31 The applicant is to prepare and submit for approval to Council's Development Ecologist a **Habitat Restoration and Monitoring Plan (HR&MP)** for the proposed conservation offset areas, including Baileys Farm, prior to the issue of a Construction Certificate.

The conservation offset areas are to include a minimum of 27.2ha which is contained in proposed lot 7 and 8ha of contiguous land owned by Wyong Shire Council on the site referred to as Bailey's Farm as per Option 1 of the Revised Species Impact Statement– Addendum A (dated 2 September 2005).

The **Habitat Restoration and Monitoring Plan** is to be prepared by a suitably qualified and experienced ecologist and will integrate with the required Category 3 Landscape Plan, Bushfire Management Plan Engineering design (roads, WSUD, etc) water supply, sewer and Erosion Control Plans.

Water and Sewer Services

- 32 Separate development consent is required for any of the sewer system external to the property that is required to service this subdivision. All required works to extend the sewer system must not be located within any conservation area in accordance with the requirements of DCP 67- Engineering Requirements for Development.
- 33 All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's Development Control Plan 67 - Engineering Requirements for Development. The design plans for the required services must be approved by Council prior to the issue of the Construction Certificate.

- 34 The connection of the proposed new lots to the water supply and sewerage systems in accordance with Council's Development Control Plan No 67 - Engineering Requirements for Development. The design plans must be approved by Council prior to the issue of a Construction Certificate.

Prior to Commencement of Works:

The following conditions must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.

- 35 Following the issue of a Construction Certificate, but prior to any clearing works commencing on site, community environmental groups are to be permitted access to that part of the site to be cleared. The purpose of this access is to source plants that will be otherwise destroyed during clearing and permit them to be used for purposes of propagation, seed collection and transplant to community environmental restoration sites. Formal notification of relevant groups is to be undertaken by the applicant for a period of 28 days prior to access being proved. Access for suitable community environmental groups is to be permitted for a minimum period of 7 (seven) days.

Erosion and Sediment Control

- 36 The provision of a single all weather access way incorporating a vehicle shake down device within the property, extending from the kerb and gutter 15 metres into the construction site so as to provide appropriate access to the site which will reduce the potential for erosion to occur and for materials to be tracked onto the road by vehicles in accordance with the requirements of Council's Policy E1 – Erosion and Sediment Control from Building Sites. Note: On-the-spot fines may be imposed by Council for non-compliance with this condition.
- 37 Sand and other materials that could potentially be washed off the site during rain periods are to be stored behind the silt control barrier. **Note: On-the-spot fines may be imposed by Council for non-compliance with this condition.**
- 38 The display of an appropriate sign to promote the awareness of the importance of the maintenance of sediment control techniques on the most prominent sediment fence or erosion control device, for the duration of the project. **Note: On-the-spot fines may be imposed by Council for non-compliance with this condition.**

General

- 39 The developer being responsible for any costs relating to minor alterations and extensions of existing roads, drainage and Council services for the purposes of the development.
- 40 The provision of evidence of compliance with the requirements of the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999, as administered by the Federal Department Environment Australia.

Site Requirements

- 41 The provision of a temporary closet on site from the time of commencement of building work to ensure that adequate sanitary provisions are provided and maintained on the building site for use by persons engaged in the building activity. The temporary closet is to be a water closet connected to the sewerage system or approved septic tank or a chemical closet supplied by a licensed contractor approved by the Council.
- 42 No access through the reserve shall be allowed without first obtaining written permission from Council's Open Space and Recreation Section. No clearing or damage to any vegetation on the reserve is permitted. No spoil, fill, waste liquids or solid materials shall be stockpiled on or allowed to move beyond the fence line for any period on the adjoining reserve during or after the development. In the event of accidental damage, the site must be revegetated to the satisfaction of Council.
- 43 No works, vehicles or materials are permitted within the footpath, reserve or adjacent allotment areas highlighted on the approved site plan.

Prior to Release of Subdivision Certificate:

The following conditions must be satisfied prior to the release of a Subdivision Certificate.

- 44 All street lighting and lighting associated with the constructed wetland or other infrastructure is to be of the type that minimises overspill into retained conservation areas and minimises any hazard to the adjoining Warnervale Airport. All street lighting proposed within the North- South section of the Warren Rd extension is to be located within the western road reserve. A certification report from an appropriately qualified and experienced electrical engineer is to be provided to Council's Development Assessment Unit prior to the issue of a Subdivision Certificate.

Certificates / Engineering Details

- 45 A Subdivision Certificate is to be issued by the Certifying Authority prior to the registration of the plan of subdivision. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.
- 46 The submission to Council of documentation to demonstrate full compliance with all consent conditions in accordance with Section 157 Clause 2 (f) of the Environmental Planning and Assessment Regulations 2000 prior to issue of the Subdivision Certificate.

Dilapidation

- 47 Any damage not shown in the Dilapidation Report submitted to council before site works had commenced, will be assumed to have been caused as a result of the site works Subdivision Certificate.

Dust Control

- 48 Appropriate measures (e.g. fine water spray) shall be employed during demolition, excavation and construction works to prevent the emission of dust and other impurities into the surrounding environment. All such measures shall be co-ordinated with site sedimentation controls to ensure polluted waters do not leave the site.

Erosion and Sediment Control

- 49 All erosion and sediment control works must be completed and inspected by Council prior to issue of the Subdivision Certificate.

Filling and Haulage

- 50 The making good to the satisfaction of Council, or payment of the costs incurred by Council in making good, any pavement damage or structural deterioration caused to Council's roads by the use of such roads as haulage routes for materials used in construction or the operation of the approved development.

All fill is to be placed on site in such a manner that surface water will not be diverted to adjoining land and so that natural drainage from adjoining land will not be obstructed.

Landscaping

- 52 The provision and maintenance of landscaping generally in accordance with the approved Landscape Plan (reference Siteplus LC01/04-LC04/04, dated December 2004) and Council's Policy Number L1 - Landscape for Category 3 development, including the engagement of an approved landscape consultant and contractor to undertake the design and construction of the landscaping. All landscaping works are to be completed prior to issue of the Subdivision Certificate.

Roads

- 53 All works within a public road, including any provision of kerb and guttering and associated stormwater management works must be completed to the satisfaction of Council under the Roads Act 1993 as the Roads Authority.
- 54 Deleted
- 55 Deleted
- 56 All works relating to traffic management facilities throughout the development must be approved by Council prior to issue of the Subdivision Certificate.
- 57 All public roads are to be constructed and dedicated up to the boundaries of all adjoining properties where shown on the approved plan.

Stormwater

- 58 The stormwater system with water quality control facilities to treat stormwater runoff from the development must be approved by Council under Section 68 of the Local Government Act prior to issue of the Subdivision Certificate.
- 59 All stormwater drainage works discharging from the site into a public system or public land must be approved by Council prior to issue of the Subdivision Certificate.

Subdivision Works

- 59 The plan of subdivision and Section 88B instrument shall establish the following restrictive covenants with the Council having the benefit of these covenants and having sole authority to release, vary or modify these covenants. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.
- Prior to release of the Subdivision Certificate, a 'Restriction on Use' on the title of the property pursuant to section 88B of the *Conveyancing Act 1919* must be created for those lands identified as the interim vegetation corridor to be retained between Stage 1 of the Warnervale Business Park development and the Warnervale Aerodrome (as shown in Attachment 3 of the Wyong Shire Council's letter dated 31 August 2006). This instrument shall be created to restrict any development that is not for the purpose of wildlife conservation in the interim vegetation corridor. This instrument shall also be created to restrict development along the eastern and western boundaries of the interim vegetation corridor, other than for the purpose of establishing an 'urban interface area' as per Council's Development Control Plan (2005) Chapter 66 section 3.9.3. This instrument shall be prepared at the cost of the owner. This instrument shall remain in place until such time that Corridor Option 1 (east of Warnervale Aerodrome as described in Wyong Shire Council's letter dated 31 August 2006) has been validated as a fully functional wildlife corridor by a suitably qualified Ecologist to the satisfaction of Council and the Department of Environment, Climate Change and Water. The Ecologist must be engaged at the cost of the owner.
- 60 The submission to Council and approval of proposed names for the roads within the subdivision prior to issue of a Subdivision Certificate.
- 61 All necessary right(s) of carriageway and easement(s) for services are to be approved by Council prior to issue of the Subdivision Certificate and registered with the plan of subdivision.
- 62 The provision of Works as Executed information as identified in Council's Development Control Plan No 67 - Engineering Requirements for Development prior to issue of the Subdivision Certificate. The information is to be submitted in hard copy and in electronic format in accordance with Council's "CADCHECK" requirements. This information is to be approved by Council prior to issue of the Subdivision Certificate.
- 63 All subdivision works must be approved by Council prior to the issue of a Subdivision Certificate.

Trees

- 64 The submission to Council of proof that millable timber has been recycled for use in construction materials, furniture or fencing or similar, through local saw mills or sawyers. Other tree waste must be wood-chipped or tub ground, or used for firewood. Tree stumps, which cannot be reasonably tub ground, may be disposed of to a Council approved site. Unless otherwise directed, the resultant materials must be used in final landscape works for soil stabilisation, improvement and rehabilitation.
- 65 The Landscape Plan is to only use native species endemic to the site and in particular focus on species characteristic of the endangered ecological community River Flat Eucalypt Forest on Coastal Floodplain. It is to integrate with the required Habitat Restoration Plan.

Water and Sewer Services

- 66 A Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development must be obtained from Wyong Shire Council as the Water Supply Authority prior to issue of the Subdivision Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.
- 67 All water and sewer works for the development must be approved by Council prior to the issue of the Subdivision Certificate.
- 68 The connection of the proposed new lots to the water supply and sewerage systems in accordance with Council's Development Control Plan No 67 - Engineering Requirements for Development, prior to issue of the Subdivision Certificate.

Ongoing Operation:

The following conditions must be satisfied during use / occupation of the development.

Advertising Signs

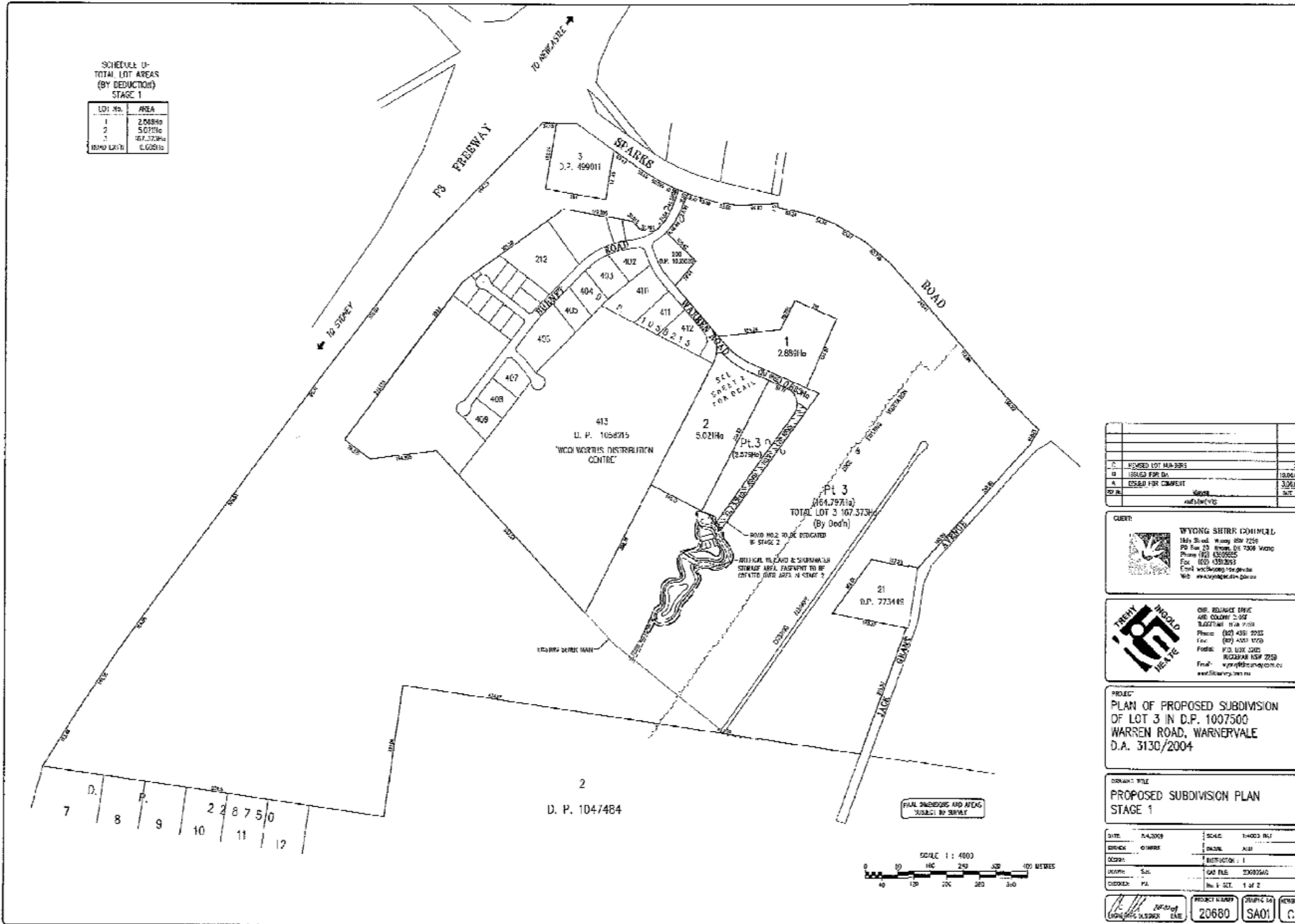
- 69 No advertisement shall be erected on or in conjunction with the development without prior development consent unless the advertisement is an 'approved sign' under Council's Advertising Signs DCP No 50.

Stormwater

- 70 All stormwater treatment devices (including the constructed wetland, drainage systems, dual reticulation water supply system, sumps and traps) being regularly maintained in order to remain effective in accordance with the approved Wetland Management Plan.

SCHEDULE OF CONTRIBUTIONS

Warnervale/Wadalba Roads Proposed Supplier Park	\$346,324.76
Gorokan Area 1 Water DSP	\$5,147.88
Warnervale West Sewer DSP	\$7,383.34



1. NUMBERED LOT NUMBERS	28
2. ISSUED FOR D.P.	1007500
3. ISSUED FOR COMMENT	30408
4. DATE	3/1/04

CLIENT:

WYONG SHIRE COUNCIL
 145 St. Pauls Way, Woy Woy NSW 2256
 PO Box 25, Woy Woy NSW 2256
 Phone: (02) 4352 2222
 Fax: (02) 4352 2223
 Email: wyc@wyc.nsw.gov.au
 Web: www.wyong.nsw.gov.au

TREHILL INGOULD

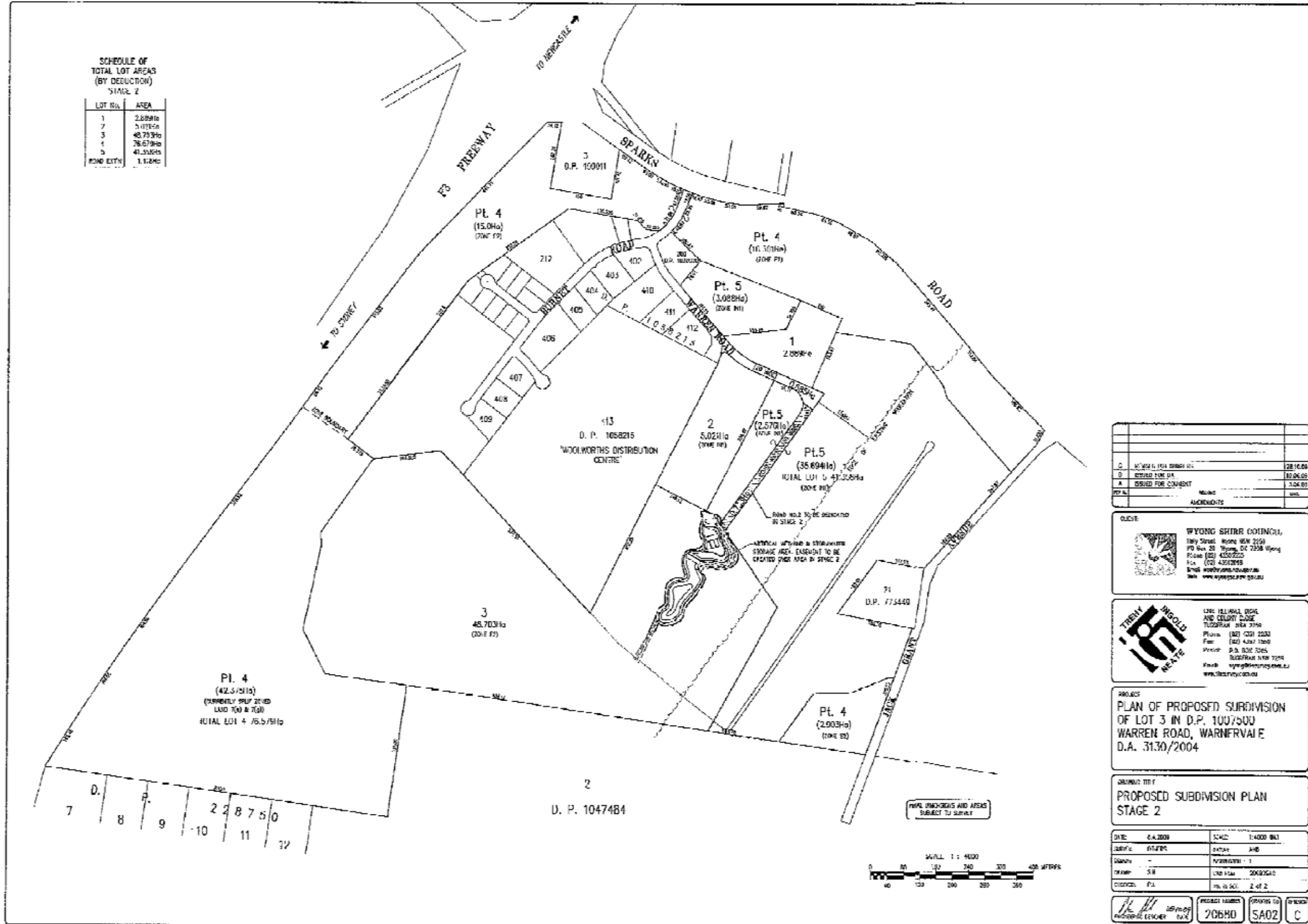
ONS: REGULAR SURVEY
 408 COLONY ST, WYONG
 Phone: (02) 4351 2222
 Fax: (02) 4351 1100
 Mobile: 0411 222 222
 Email: wry@trehill.com.au
 www.trehill.com.au

PROJECT:
 PLAN OF PROPOSED SUBDIVISION
 OF LOT 3 IN D.P. 1007500
 WARREN ROAD, WARNERVALE
 D.A. 3130/2004

DRAWING TITLE:
 PROPOSED SUBDIVISION PLAN
 STAGE 1

DATE: 14/4/2009	SCALE: 1:4000 RL1
DRAWN: G. HARRIS	DRAWN: ALB
CHECKED: S. J.	INSTRUCTION: 1
CHECKED: P.L.	DATE FILED: 20/08/09
	No. 1 - OCT. 1 of 2

PROJECT NUMBER: 20680
 DRAWING NO: SA01
 REVISION: C



12 August 2009
To the Ordinary Meeting

Director's Report
Shire Planning Department

3.1 DA 382/2009 - Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley

TRIM REFERENCE: DA/382/2009 - D01962455

AUTHOR: MG

SUMMARY

An application has been received to adjust a common boundary involving land in Corona Lane at Glenning Valley. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is reported to Council as directed by the Mayor at the request of a Councillor.

Applicant	Highlight Consulting Pty Ltd
Owner	Mr and Mrs Law
Application No	382/2009
Description of Land	Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley
Proposed Development	Boundary Adjustment
Site Area/Zoning	Lot 101 = 2.997 hectares, 7(a) Conservation Lot 103 = 1.00 hectare, 7(c) Scenic Protection

RECOMMENDATION

- 1 That Council refer the application to the General Manager for determination having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues with an indication that based on the information available to it, Council favours refusal of the application subject to appropriate reasons for refusal.
- 2 That Council not support the use of State Environmental Planning Policy No 1 in order to vary the subdivision standards of Wyong Local Environmental Plan 1991.

ORDINARY MEETING HELD ON 12 AUGUST 2009

COUNCILLOR BEST DECLARED A NON-PECUNIARY INSIGNIFICANT CONFLICT OF INTEREST IN THE MATTER, FOR THE REASON THAT HE IS A REPRESENTATIVE ON THE BUSINESS ENTERPRISE CENTRE BOARD AND THE APPLICANT'S REPRESENTATIVE IS ALSO ON THE BUSINESS ENTERPRISE CENTRE BOARD, AND PARTICIPATED IN CONSIDERATION OF THIS MATTER.

COUNCILLOR BEST STATED:

"I CHOOSE TO REMAIN IN THE CHAMBER AND PARTICIPATE IN DISCUSSION AND VOTING AS THE CONFLICT HAS NOT INFLUENCED ME IN CARRYING OUT MY PUBLIC DUTY."

COUNCILLOR EATON DECLARED A NON-PECUNIARY INSIGNIFICANT CONFLICT OF INTEREST IN THE MATTER, FOR THE REASON THAT THE APPLICANT COMPANY'S DIRECTOR IS A DIRECTOR WITH HIMSELF ON THE BOARD OF THE BUSINESS ENTERPRISE CENTRE, AND PARTICIPATED IN CONSIDERATION OF THIS MATTER.

COUNCILLOR EATON STATED:

"I CHOOSE TO REMAIN IN THE CHAMBER AND PARTICIPATE IN DISCUSSION AND VOTING AS THE CONFLICT HAS NOT INFLUENCED ME IN CARRYING OUT MY PUBLIC DUTY BECAUSE IT IS NOT RELATED IN ANY WAY TO COUNCIL BUSINESS AND IS NOT A PERSONAL RELATIONSHIP."

COUNCILLOR BEST LEFT THE CHAMBER AT 6.51 PM AND RETURNED TO THE CHAMBER AT 6.52 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR VINCENT LEFT THE CHAMBER AT 6.58 PM AND RETURNED TO THE CHAMBER AT 7.00 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR MATTHEWS LEFT THE CHAMBER AT 7.06 PM AND RETURNED TO THE CHAMBER AT 7.07 PM DURING CONSIDERATION OF THIS ITEM.

RESOLVED on the motion of Councillor EATON and seconded by Councillor McNAMARA:

- 1 That Council support the use of State Environmental Planning Policy No 1 to vary the subdivision standards of Wyong Local Environmental Plan 1991 to allow this proposal.**
- 2 That Council indicate its approval in principle, subject to the imposition of appropriate conditions.**
- 3 That Council refer this application to the Department of Planning for its concurrence.**
- 4 That subject to the outcome of 3 above, a report on appropriate conditions be brought back to a future Council meeting.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, McNAMARA AND WEBSTER.

AGAINST: COUNCILLORS McBRIDE, MATTHEWS, SYMINGTON, VINCENT AND WYNN.

The MOTION was put to the VOTE and declared CARRIED on the CASTING VOTE OF THE MAYOR.

PRECIS

- The application involves the adjustment of the common boundary between two properties at Glenning Valley. This form of application is considered as subdivision and the subdivision standards in Council's Planning Instrument apply.
- The subject allotments comprise environmental zonings.
- The applicant proposes the use of State Environmental Planning Policy No 1 (SEPP 1) to vary the subdivision standards of Wyong Local Environmental Plan 1991 (WLEP). The variation extends to 90% of the subdivision standard.

INTRODUCTION

The Site

The subject land involves two parcels held in the same ownership in Corona Lane at Glenning Valley. The site is approximately 1.2 km from Wyong Road via Berkeley Road and is part of the Corona Lane rural residential land precinct.

Lot 103 has an area of one (1) hectare, zoned 7(c) - "*Scenic Protection*" and presently contains a dwelling, in-ground pool, stables and several other outbuildings. The Scenic Protection zone is generally characterised by small rural-residential holdings generally between one and two hectare allotments comprising typically of a residence with a broader expanse than urban zones and capable of sustaining minor hobby farm uses. Access to the subject land is via Corona Lane.

Lot 101 has an area of 2.997 hectares, zoned 7(a) - "*Conservation*" and presently contains horse paddocks and several stables or outbuildings. The Conservation zone is generally characterised by land having special aesthetic, ecological and conservation values and generally refers to land best suited to remain in its natural state. The site has frontage to Corona Lane and is accessed via a driveway through lot 103.

The Proposed Development

Consent is sought to adjust the common boundary between lots 101 and 103 in order to establish an additional dwelling site. Currently only existing lot 103 has a dwelling right with a residence approved and constructed in the mid 1990's. Lot 101 does not have any development right due to a Section 88B restriction imposed with the previous subdivision in 1990. A Section 88B restriction (as it is generally referred to) is a restrictive covenant imposed under (Section 88B of) the *Conveyancing Act* with the intent to control land uses (as in this case) and establish beneficiaries.

The type of restriction referred to above is common practice identified in the LEP as a mechanism to control subdivision in an orderly manner and thereby protect scenic protection and/or conservation zoned land. The imposition of the restriction has been used extensively throughout Wyong's rural and rural-residential regions where certain subdivisions of split zoned land occurs. Therefore, any decision taken by Council to lift the 88B Instrument restricting a dwelling on the 7A land will form a precedent for a number of other similar properties. This may have the effect of undermining the intent of the LEP which is to quarantine this 7A land from development.

The applicant seeks to adjust the property boundary which currently corresponds to the zone boundary to establish two allotments both of which would be split zoned land. Split zoned land is land affected by two or more different zones described in Council's zoning table. The applicant seeks to use SEPP 1 to enable Council to vary the development standards of WLEP for the purpose of the boundary adjustment.

SEPP 1 is a planning policy established by the NSW State Government to enable flexibility in development standards. It allows Councils to approve a development proposal that does not comply with a set standard where this compliance can be shown to be unreasonable or unnecessary. However, in this case, Council does not support the request for variation for reasons pertaining to WLEP planning provisions in addition to current Section 88B dwelling restrictions on the land and the inability to promote good planning and land management practices. The body of the report provides in-depth detail as to the reasons for refusal.

Council, at its meeting held on 26 November 2008, resolved on the motion of Councillor Graham and seconded by Councillor Symington:

- 1 *That Council refer the application to the General Manager for determination having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues with an indication that based on the information available to it, Council favours refusal of the application subject to appropriate reasons for refusal.*
- 2 *That Council not support the use of State Environmental Planning Policy No 1 in order to vary the subdivision standards of Wyong Local Environmental Plan 1991.*

FOR: COUNCILLORS GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: COUNCILLORS BEST AND EATON.

The current application, a replica of DA 408/2008, fails to respond to the previous determination offering no fresh investigation nor further justification why the 2008 refusal should be overturned in favour of the current application.

Council is undertaking a review of the WLEP to compliment the standard planning template initiated by the State Government. The present zoning and subdivision provisions in the draft LEP have not been determined in detail to date. Whilst the 7(c) and 7(a) zones are likely to change in terms of identification, at this point of time the detail of minimum standards for subdivision has not been determined. However, the issue of small lot rural residential and whether there is a sufficient supply is under review, which will include a review of the Glenning Valley area.

VARIATIONS TO POLICIES

Clause	14(2)
Standard	40 hectares
LEP	Wyong Local Environmental Plan 1991
Extent of Variation/Departure	90% for proposed Lot 1011 50% for proposed Lot 1031
Departure Basis	Not supported by Council –see report for detail

Clause	13(3)(b)
Standard	10%
LEP	Wyong Local Environmental Plan
Extent of Variation/Departure	22% for proposed lot 1031
Departure basis	Not supported by Council – See report for detail

HISTORY

Land History

Lots 101 and 103 in DP 806178 were registered 4 December 1990 from the subdivision of Lot 9 in DP 739783 approved on 20 July 1990 under Development Consent No 383/90.

Applications involving Lot 101 DP 806178

Council records do not indicate any approvals been granted to this allotment. There is a Section 88B restriction on this parcel established at the subdivision stage that prohibits the erection of any building on the land. In years subsequent to the registration of the subdivision a number of outbuildings have been erected on Lot 101 that have not been granted approval. (See attachment 2)

Applications involving Lot 103 DP 806178

On 1 November 1994, DA 983/94 for a rural dwelling was approved with construction undertaken during 1995 and 1996.

On 17 September 1999, DA 2634/99 for an in-ground pool was approved.

At the Council meeting of 26 November 2008, DA 408/2008, a two lot boundary adjustment was refused for reasons pertaining to:

- (i) Inappropriate use of State Environmental Planning Policy No 1
- (ii) Contrary to LEP and zone objectives
- (iii) Contrary to LEP subdivision provisions
- (iv) Contrary to the current restrictions on the title of the land
- (v) Impact on the scenic and conservation value of the land

RELEVANT STATE/COUNCIL POLICIES AND PLANS

Environmental Planning and Assessment Act 1979

There are no state policies (SEPP's) specifically applicable to the site. However, the applicant has elected to submit a SEPP 1 objection which is addressed in detail in the body of this report.

The application is subject to assessment against the heads of consideration under Section 79C of the EP&A Act.

The application is defined as "Integrated Development" under the provisions of Section 91 of the EP&A Act. Integrated Development is described as development that requires an approval (licence etc) or concurrence from a state body. In this case, the application was referred to the NSW Rural Fire Service (RFS) as it is bush fire prone land.

NSW RFS responded by granting a "Bush Fire Safety Authority" under the Rural Fires Act.

Wyong Local Environmental Plan 1991

(i) LEP Definition

Subdivision (including boundary adjustment) is defined under Section 4B – *Subdivision of land*, in the EP&A Act 1979. Although not specifically defined in Clause 7 – *Definitions*, of WLEP 1991, the development is separately referred to as “Subdivision” in Clause 13 – *Subdivision of Land*, in the LEP and is permitted with Council consent, and subject to compliance with other LEP provisions.

(ii) LEP Zoning

The subject properties are zoned 7(a) “*Conservation*” and 7(c) “*Scenic Protection*” under Clause 10 of Wyong Local Environmental Plan (LEP) 1991.

“The objectives of the 7(a) “Conservation” zone are:

- (a) *to restrict the type and scale of development which will be carried out on land possessing special aesthetic, ecological or conservation values to that compatible with such environments, and*
- (b) *to allow such development where:*
 - (i) *it can be demonstrated that it can be carried out in a manner that minimises risks from natural hazards, functions efficiently, does not prejudice other economic development and does not detract from the scenic quality of the land referred to in the objective specified in paragraph (a), and*
 - (ii) *it is unlikely to have a significant detrimental effect on the growth of native plant communities, the survival of native wildlife populations or the provision and quality of habitats for both indigenous and migratory species, and*
 - (iii) *it is unlikely to have an adverse impact on the region’s water resources.*

The objectives of the 7(a) “Scenic Protection” zone are:

- (a) *to enable development for the purposes of small rural-residential holdings to be carried out on land which is suitable for those purposes and which is unlikely:*
 - (i) *to inhibit the potential for urban expansion, particularly at the urban fringe, or*
 - (ii) *to create a demand for the uneconomic provision of services, or*
 - (iii) *to detract from the scenic quality of rural lands.”*

The underlying similarity between the two zones is the focus on controlling development on land having scenic quality values.

(iii) Subdivision/Boundary Adjustment and other Provisions

The proposal is required to meet the criteria of Clause 13(3) of the WLEP, which describes general criteria for boundary adjustments.

Note that the application is also assessed under Clause 14 as the applicant has lodged a SEPP 1 objection under the latter clause provisions.

Development Control Plan No 2005 Chapter No 69 – Waste Management.

The application involves designating a waste disposal area for the building envelope on the proposed vacant parcel. Further detail is provided in the body of the report.

W1 – Water Catchment Development Areas

This policy controls development in the drinking water catchments. Subdivisions are not listed as prohibited development.

F4 – Floodplain Development

This policy controls development on land affected by flooding. The subject land is identified as being affected by 1 in 100 year flood events. The application to adjust the common boundary is not prohibited under this policy; however a merits assessment is required. The flood issue is addressed in greater detail in the body of the report.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 and other statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

Preamble

Existing lot 103, the 7(c) zoned parcel, is triangular in shape with its north-western boundary following the zone boundary, the common division with lot 101. It is proposed to absorb the northern part of the land, a dimensional area of about 2,200m² into existing lot 101 to create proposed lot 1011. It is this section of land that the applicant identifies as an area for a building envelope for future residential development.

To balance the boundary adjustment, part of existing lot 101, the 7(a) zoned parcel will be absorbed into existing lot 103 to establish proposed lot 1031.

The proposal would effectively create two split zoned parcels when currently both properties are singularly zoned. It is generally not regarded as good planning nor good land management to establish split zoned land because of the potential for zoning and land use conflicts in future situations. Historically, Council's LEP prohibited the creation of split zoned parcels.

Background to Subdivision creating Subject Lots – DC 383/90

Before addressing the proposal within the LEP provisions, it is worth noting the planning framework used in assessing the original subdivision that created the subject allotments as this has a bearing on the assessment of the current application.

Lots 101 and 103 along with neighbouring lots 100 and 102 (neither are part of current DA) were created under a four lot subdivision under DC 383/90. The application was assessed under WLEP 1987 which included provisions enabling subdivision of split zoned land. The planning provisions of the day permitted the creation of three lots from the 7(c) zoning with the fourth lot comprising the whole of the 7(a) zone which became lot 101.

When approval was granted a condition of consent was imposed that all structures (residential or non-habitable) were to be prohibited on lot 101, the 7(a) portion of the subdivision. It is noted that the same restriction was also on the parent lot (being lot 9 in DP 739783) prior to the 1990 subdivision. The restriction remains on that land today.

The intent of the restriction is to limit development rights on land established under special subdivision provisions where such land formed a substandard allotment (in this case lot 101) in terms of minimum dimensional criteria. Being 7(a) zoned land, the minimum area requirement is 40 hectares otherwise where the land does not achieve the standard a dwelling restriction is imposed. The underlying purpose is to ensure that the conservation zone maintains aesthetic value without being compromised or destroyed by subsequent development.

This form of subdivision was an early form of offsets on land recognised for environmental value to allow some development to occur i.e., it enabled a “win-win” situation. The method used in approving DC 383/90 under WLEP Plan 1987 is generally similar to the provisions in the current version of WLEP 1991. If the four lot subdivision was to be considered today the same dwelling prohibition would be imposed as it was in 1990. This aspect is important to note in that the issues associated with the subdivision provisions have not altered in any significant manner since Council’s planning instrument of 1987.

Property Dimensional Summary

The following is the status of the current land circumstances and proposed arrangement.

The current lot status:

Lot 101 DP 806178	=	2.997 hectares, 7(a) zoned
Lot 103 DP 806178	=	1.00 hectares, 7(c) zoned

The proposed lot arrangement:

Lot 1011, predominantly from existing lot 101	=	2.997 hectares, 7(a) and 7(c) zoned – no increase in area
Lot 1031, predominantly from existing lot 103	=	1.00 hectare, 7(a) and 7(c) zoned – no increase in area

Boundary Adjustment Strategy – Clause 13(3) of WLEP

Boundary adjustments are considered under Clause 13(3) of the WLEP, which provides certain criteria for applications of this nature.

Clause 13(3) states:

“Subdivision of land - generally

- 13(3) *Notwithstanding any other provisions of this plan, including the provisions of clause 14, the Council may consent to a subdivision of land for the purpose of a minor adjustment of the boundary between two lots provided that:*
- (a) the configuration of the allotments remains substantially the same, and*
 - (b) the area of each allotment proposed is varied by no more than 10 per cent, and*
 - (c) the Council is satisfied that the boundary adjustment is necessary in the circumstances of the case.”*

The following comment is provided with regard to the criteria of 13(3)(a), (b) and (c).

(a) *Configuration*

The configuration is not substantially the same in that the proposed new boundary alignment is not consistent with the zoning and topographical features of the land. The current boundary generally follows the line of flooding. The proposed boundary does not follow any distinct land feature and in fact deviates substantially from the natural contours of the land and indeed the extent of flooding.

In this regard the proposed boundary adjustment does not comply with the criteria of the clause.

(b) *Dimensional Compliance*

While there is a direct land balance between both proposed lots the extent of change to one of the lots is greater than the nominal 10%. For existing lot 103 the change in area of about 2,200m² equates to 22% which exceeds the provisions of the clause.

In this regard the proposed boundary adjustment does not comply with the criteria of the clause.

(c) *Circumstances of the case*

There does not appear to be any circumstances that support the need to adjust the boundaries to this extent. The applicant clearly suggests by way of the indicative building envelope that the circumstance is to establish an additional dwelling right.

The intent of the boundary adjustment provisions is not to increase development rights but to merely correct any abnormal boundary situations that may have occurred through historical boundary problems. The purpose of the provision is to “tweak” the boundary to overcome site issues.

In this regard the proposed adjustment does not comply with the criteria of the clause.

In summary, the assessment reveals that the proposal is not able to comply with any of the criteria of Clause 13(3) and thus cannot be supported under this provision.

Subdivision Strategy – Clause 14(2) of WLEP

As noted in this report the application does not comply with the boundary adjustment criteria of Clause 13(3). Given that the applicant has specifically lodged the application with reference to Clause 14 it is necessary for Council’s assessment to extend beyond the boundary adjustment provisions to the subdivision criteria of Clause 14.

Clause 14 states:

“Subdivision of land within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e) 7 (f) or 7 (g)

- 14 (1) *This clause applies to land within Zone No. 1(a), 1(c), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f) or 7(g).*
- (2) *Except as provided by subclauses (3) and (4), a person shall not subdivide land to which this clause applies so as to create an allotment having an area of less than -*
- (a) *in the case of land within Zone No. 1(c), 7(a), 7(d), 7(e), 7(f) or 7(g) - 40 hectares;*
- (b) *in the case of land within Zone No. 1(a) or 7(b) - 20 hectares;*
- (c) *in the case of land within Zone No. 7(c) - 2 hectares.”*

The subdivision does not comply with the minimum dimensional standards of Clause 14(2); therefore the applicant prepared a SEPP 1 objection. The extent of departure to the standards is 92% for proposed lot 1011 and 50% for proposed lot 103.

Objection under State Environmental Planning Policy No 1

It has been recognised by Council in previous instances of applying the criteria of the clause, that the numerical values of Clause 14(2) are able to be varied under SEPP 1.

SEPP 1 provides flexibility in the application of planning controls of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5 (a) (i) and (ii) of the EP&A Act, which are to encourage proper and appropriate land management within the natural environment.

A Land and Environment Court (LEC) judgement outlined the procedure for considering SEPP1 objections. The application is assessed in accordance with this procedure. See "Attachment 3" for a full copy of the applicant's SEPP 1 objection.

It must be stated that the applicant's objection is confusing in that part of the submission refers to sections of Clause 14 that are irrelevant to the assessment process for this application. The submission objects to provisions regarding split zoned land and developer contributions which were relevant in the 1990 subdivision proposal but have no bearing on the assessment of the current DA.

First, is the planning control in question a development standard?

Putting a numerical description onto the minimum subdivision lot size permissible within particular zones, as identified under Clause 14(2), classifies this as a development standard.

The extent of departure to the minimum standards of clause 14(2) is 90% for proposed lot 1011 and 50% for proposed lot 1031. The extent of departure to the criteria of clause 13(3) is 22% for proposed lot 1031.

It should be noted that Council's delegation may not extend to assuming concurrence of the Department of Planning (DOP) for the use of SEPP 1 in this instance. The delegation notes that Council can only assume concurrence for two lot boundary adjustments where both lots are presently below the minimum subdivision standards subject to no additional allotments created, that the agricultural use of the land is not jeopardised and that no additional housing entitlements are created. The last point is the issue of doubt. Given that the two lots presently have only one housing entitlement due to the section 88b restriction it is suggested that the proposed boundary adjustment promotes an additional housing entitlement. In this respect if Council was of a mind to approve the application, concurrence of the DOP for the use of SEPP 1 would need to be sought.

Second, what is the underlying object or purpose of the standard?

The purpose of the LEP standards in this instance is to protect land with conservation or scenic values. The subject land exhibits a topography that features a broad open space land depression generally following the line of the known flood extent in the area. The original zoning strategy recognised the flood limitations and accordingly the zone boundary reflects the 1 in 100 year flood line.

In addition the subdivision strategy adopted by Council in assessing Development Consent 383/90 also recognised the site constraints which in turn were used in establishing the parameters of the lot size and shape which evolved into lots 100, 101, 102 and 103. It is considered that this determination reflects the full extent of development potential of the land.

In this regard the standard adopted in the LEP has been devised to ensure that the geographical assets identified for respective parcels are contained wholly within those parcels. As such existing lot 101 includes most of the flood affect while lot 103 comprises generally the more aesthetically pleasant and higher part of the original parent property.

The proposed boundary adjustment dramatically alters the balance that was achieved in the 1990 subdivision approval. The proposed layout promotes an allotment shape that in effect would create both parcels as partly flood affected which is not consistent with the objective of the development standard.

Third, does compliance with the development standard tend to hinder the attainment of the objects specified in S.5 of the EP & A Act.

It is considered that the proposal does not promote good land management in terms of conserving the natural environment. As noted the proposed shape of the allotments would create both proposed lots 1031 and 1011 as partly flood affected land, a circumstance that existing lot 103 does not experience to any significant degree.

Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant has not provided any justification in real terms as to why the development standards are unreasonable or unnecessary. The objection appears to have an underlying desire to establish an additional dwelling right which is not regarded as grounds for objection. The submission suggests that the boundary adjustment is minor and that no development rights are proposed. This is not true in that an additional dwelling right would be created if the subdivision was to be approved. The previous approval clearly established the potential on each approved lot and that as a package of four allotments (Lots 100, 101, 102 and 103) only three dwelling rights could ever be established those belonging to lots 100, 102 and 103. Lot 101 had a restriction imposed under the LEP that prohibited a dwelling or any building for that matter.

Fifth, is the objection well founded?

The applicant's objection is considered as not well founded with no grounds for Council to confidently approve the application. The objection does not prove that the standards hinder the potential of the land nor does the objection appear to counter argue the intent of the original restriction imposed on lot 101. The objection merely concludes that there is suitable land available for another dwelling with no regard to the planning ideology that established the subdivision in 1990.

The relationship to the regional and local context and setting

The zone objectives (noted earlier in this report) for the 7(a) and 7(c) zones provide a backdrop by which rural subdivision development is assessed.

As detailed earlier both zone objectives are consistent in approach regarding the aesthetic values of land. The application is however considered to be inconsistent with the objectives in that the change in boundaries would have an impact on natural hazards and could in fact have a detrimental affect on the scenic and conservation values of the respective zones.

Currently the package of the two existing properties (lots 101 and 103) has only one dwelling right which is regarded as the optimum residential density of both lots. As this report identifies there is good reason for the building restriction on lot 101, if the application was to be approved the residential density doubles and effectively erodes the quality of the landscape.

The fact that there are existing structures (illegally built) on lot 101 is by no means a reason to continue to promote the land as viable for residential uses. It is accepted that a residence (approved) on lot 103 is sustainable in terms of planning and environmental grounds. What is not acceptable is the additional dwelling that would likely occur if the subdivision layout was to be supported.

The applicant has verbally indicated that one of the non-habitable structures on lot 101 has been used for residential purposes for many years, being built prior to the introduction of planning legislation. The structure is not listed as a heritage item and resembles an old outbuilding more than likely used in an unauthorised manner over the years as a residence. The applicant is attempting to establish that the shed should be "granted" residential status enabling a pseudo dwelling right on lot 101. It is noted in Council's report of 16 July 1990 (for DC 383/90) that the parcel now known as lot 101 was indeed clear of any structure with several other structures identified as stables and sheds located on the lot now known as lot 103. A survey prepared in 1990 and submitted with DA 383/90 supports this conclusion.

Given that no approval exists, no residential rights can be considered for any structure on lot 101.

In essence the catchment of land encompassing all four lots (lots 100, 101, 102 and 103) in the previous subdivision has exhausted its residential capacity. That being the 7(c) parcels with a total area of 3ha has established dwelling rights for lots 100, 102 and 103. Given that there is a restriction on lot 101 no further potential exists. The proposed layout attempts to create the additional dwelling right that was purposely restricted in the 1990 approval process, and upheld by Council when it refused the previous Development Application 408/2008.

The access, transport and traffic management measures

An additional access is proposed from the existing dwelling on lot 103 to Corona Lane. While there are no apparent traffic safety issues with the new access it does promote an additional access that could create further land erosion issues by way of its construction.

The impact on utilities supply

The waste disposal details submitted with the application are not conclusive and given the restrictive area involved with the indicative building envelope of proposed lot 1011, Council cannot be satisfied the issue has been totally resolved.

The effect on heritage significance

There are no Aboriginal or European heritage items in or nearby the land.

Any effect on the flora and fauna

In order to establish the proposed new vehicle access for the existing residence to Corona Lane some tree loss within the roadway would occur. The road reserve is Council controlled "land" and therefore the impact to the trees to establish a second access is inappropriate.

Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc)

The issue of flooding has been identified elsewhere in this report. To reiterate, the change in boundaries would effectively establish a dividing line directly in the path of the flood pattern rather than the existing subdivision being sympathetic with the constraints. Where the current common boundary matches the extent of flooding, the proposed boundary ignores the natural flood pattern.

The proposed layout promotes both parcels of land as partly flood affected, an undesirable situation compared to the current circumstances. Such a scenario is not encouraged in subdivision design and is not regarded as good planning or good land management.

Comparison with DA 408/2008 – Boundary Adjustment

The introduction to this report notes that the application is a replica of DA 408/2008, a refusal determined at the Ordinary Meeting of Council on 26 November 2008. The applicant had previously requested Council's review of the determination under Section 82A, a process that allows the review of a determination. However, as the application involved referral to an integrated body, in this case to NSW Rural Fire Service, the provisions of S82A could not be undertaken – hence the submission of a fresh DA.

The applicant has submitted the same plan and supporting documentation as supplied with DA 408/2008, essentially as a means for Council to review the previous determination. The current application has been assessed within the same planning legislation and policy given the short space of time between both applications.

In this regard the same issues arise leading to the same conclusions, and the same recommendation is therefore forwarded to Council.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):

Any submission from the public

The application was advertised in accordance with DCP 2005 Chapter 70 - Notification of Development Proposals with no submissions being received.

CONCLUSION

It is considered that the proposal fails to satisfy a fair and accurate assessment under Section 79C on a number of issues including the use of SEPP 1. It is considered that the applicant has not proven that the development standards of Clause 14 are neither unnecessary nor unreasonable in the case of the proposal to warrant Council varying the development standards of the LEP.

A brief summary of the issues of concern are listed below:

- | | | |
|--------------------------|---|---|
| WLEP 1991: | - | Non-compliance with Clauses 13(3) and 14(2), the criteria for boundary adjustment and subdivision. |
| | - | Contrary to the zone objectives of 7(a) and 7(c) zones. |
| Suitability of the site: | - | The proposal promotes a subdivision layout that is not compatible with the natural or physical constraints of the land including the impact of flooding. |
| | - | The proposal attempts to establish an additional dwelling right beyond the scope of the original subdivision that has direct impact from flooding and aesthetic issues. |

- The proposal will promote poor land management and create split zoned land.
- Impact on trees within the road reserve.
- SEPP 1:
 - The use of SEPP 1 is not supported for this application.
- Precedent
 - Unacceptable precedent for similarly affected land throughout the shire.

The subdivision approved in 1990 establishing four lots (lots 100, 101, 102 and 103) out of the original land parcel effectively exhausted its residential capacity as intended under the subdivision provisions in the LEP. That is; the 7(c) zoned parcels of land having a total area of 3 ha established dwelling rights (for lots 100, 102 and 103) equating to one dwelling right per hectare which is the basis for the intent of the LEP provision (ie three dwelling rights on three lots, the fourth lot having no entitlement). The proposed layout attempts to create an additional dwelling right beyond the scope of the LEP, which was the logic for the restriction imposed in the 1990 subdivision approval process.

All of the above mentioned issues were addressed in detail as part of the assessment for the same boundary adjustment proposal (DA408/2008) refused in 2008. Nothing has changed in terms of planning legislation or assessment strategies to warrant a different outcome for the current application.

The proposed boundary adjustment is not supported and accordingly is recommended for refusal. However, should Council be of a mind to approve the application concurrence from the DOP will be required.

ATTACHMENTS

- | | | |
|----------|--|---|
| 1 | Locality Plan | D01956584 |
| 2 | Site Plan | D01977882 |
| 3 | Section 88B
Restriction for
Lot 101 | D01957011 |
| 4 | Applicant's SEPP
1 Objection | D01957015 |
| 5 | Photographs | d01982300 |
| 6 | Previous Council
Report to 26
November 2008
Council Meeting | D01390890 |
| 7 | Plan of Proposed
Boundary
Realignment | M:\AA-
GENERAL\INFOCOUNCIL\ARCHIVE\200908\SUBDIVISION
PLAN FOR ATTACHMENT TO 12 AUGUST COUNC_.TIF |