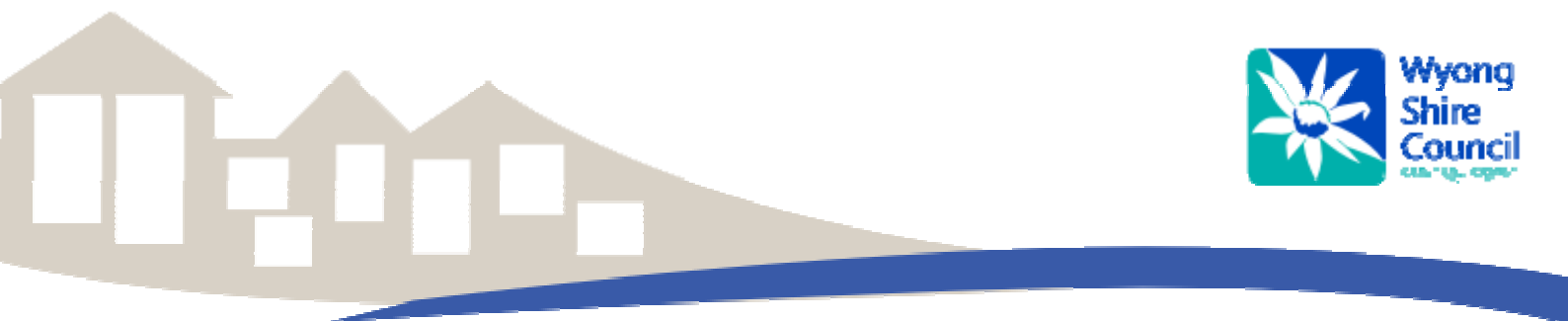


Wyong Shire Council
ORDINARY MEETING

ENCLOSURES

Wednesday, 28 July, 2010



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY MEETING
TO BE HELD IN THE COUNCIL CHAMBER,
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 28 JULY 2010 ,
COMMENCING AT 5:00:00 PM

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14 July 2010
To the Ordinary Meeting

Director's Report
Shire Planning Department

2.5 DA/66/2010 Two Storey Dwelling-house and Demolition of existing Structures at 26 Stewart Street, The Entrance North

TRIM REFERENCE: DA/66/2010 - D02265493

AUTHOR: SVD

SUMMARY

An application as been received for the erection of a two storey dwelling-house at 26 Stewart Street, The Entrance North. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is reported to Council in accordance with Council's resolution of 10 March 2010 regarding applications affected by the State Government's Sea Level Rise Policy.

Applicant	Pretech Pty Ltd
Owner	Urusa Pty Ltd
Application No	DA/66/2010
Description of Land	Lot 8 DP 18519 (26) Stewart Street, The Entrance North
Proposed Development	Two Storey Dwelling and Demolition of Existing Structures
Site Area	580.60m ²
Zoning	2B Multiple Dwelling Zone
Existing Use	Single storey dwelling
Employment Generation	N/A
Estimated Value	\$220,000

RECOMMENDATION

That Council defer consideration of the application and request the applicant to redesign the proposal to incorporate a floor level of 3.6 metres ADH for the proposed dwelling-house.

PRECIS

- The application seeks approval for the erection of a two (2) storey dwelling-house.
- The site is zoned 2(b) Multiple Dwelling Zone under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling-house is permissible with consent.
- The site is wholly flood affected.
- The Department of Environment, Climate Change and Water's (DECCW'S) *NSW Sea Level Rise Policy Statement* applies to the development.

- The 1% Annual Probability (AEP) flood level at the subject property is 2.2m AHD (average flood depth 700mm over the site). Application of DECCW's sea level planning benchmarks raises the 1% AEP to 3.1m AHD (average flood depth increases to 1.6m over the site) and the addition of a 500mm free board results in a finished floor level (FFL) for habitable rooms set at 3.6m AHD. The proposed development does not meet this requirement.
- A FFL of 3.6 metres AHD would result in the habitable rooms being approximately 2.1m above natural ground level (RL 1.5m).
- The proposed floor level of the ground floor habitable rooms is 2.7 metres AHD which complies with the 2.7 metre AHD Flood Planning Level (FPL) for the site under Council's existing Flood Prone Land Development Policy (including 500mm freeboard).
- On 19 March 2010 Council staff corresponded with the applicant advising that the proposal must be amended to reflect a minimum habitable floor level of 3.6m AHD to comply with the NSW adopted Sea Level Rise Policy Statement.
- The applicant has been given the opportunity to amend the proposal to comply with the above legislative requirements, but has declined to amend the application and has requested the application be determined in its current form.

Options Table

Option	Implications
Approve Development Application as proposed by applicant.	<ul style="list-style-type: none"> • The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>. • Will set an undesirable precedent.
Approve Development Application with a habitable floor level of 3.6 metres AHD.	<ul style="list-style-type: none"> • Dwelling will breach maximum 7 metre ceiling height requirement of Wyong DCP 2005 Chapter 100 giving rise to bulk and scale issues.
Council defer decision for redesign incorporating habitable floor level of 3.6 metres AHD.	<ul style="list-style-type: none"> • Allows staff to undertake an amended assessment. • Will set a positive precedence for future similar applications. • Will eliminate future sea level rise flooding problems.
Refuse Development Application as recommended.	<ul style="list-style-type: none"> • This is considered to be the most appropriate course of action. • The determination will be in accordance with Council's statutory obligations.

INTRODUCTION

The Site

The site is located at 26 Stewart Street, The Entrance North (Lot 8 DP 18519), on the northern side of Stewart Street approximately 220 metres west of the coastline and 400 metres east of the North Entrance Foreshore Reserve.

The site consists of a regular shaped allotment with a total area of 580.60m², is generally flat with an average ground level of 1.5 AHD, and contains an existing single storey cottage and other associated ancillary structures (Refer Figure 1 & 2).

The site is flood affected.

Locality Plan

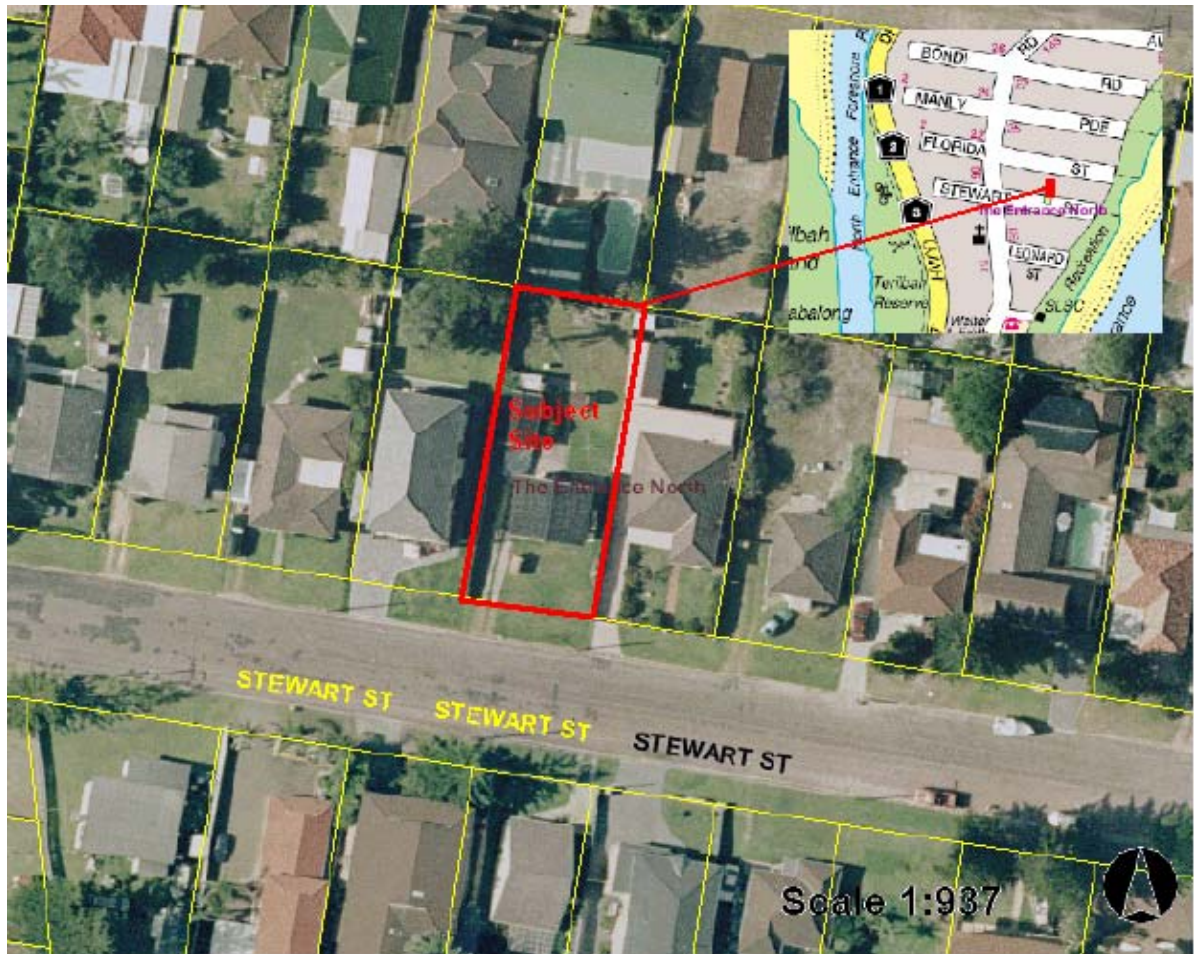


Figure 1: Aerial photograph of 26 Stewart Street, The Entrance North and surrounds (including locality insert).



Figure 2: Property frontage showing existing dwelling to be demolished.

The Locality

The subject site is bound on the north, east and west by single dwelling-house of one and two storey construction with a distinct building setback of between five and six metres being evident along this section of Stewart Street.

Existing development in the general surrounding area comprises a mix of single and two storey dwelling-houses, dual occupancies and multiple unit developments. The subject site and surrounding land at The Entrance North are low lying, with most of the area being flood affected.

No. 23 and No. 24 Stewart Street

Newer dwellings located at No. 23 and No. 24 Stewart Street have been built approximately one metre above the natural ground level presumably to meet the FPL of 2.7m AHD (Refer Figure 3 & 4). Both dwelling-houses whilst large in appearance, are still considered to be in keeping with the existing coastal character. In the case of No. 24, the elevated floor level has resulted in a dwelling which currently overlooks the subject site. Whilst this is not a desirable outcome, it is considered that appropriate design mitigation methods can be employed to sustain adjacent neighbour's privacy. It is believed that a good design can accommodate the existing FPL of 2.7m AHD plus 0.9m Sea Level Rise (3.6m AHD) whilst also achieving compatible amenity, solar access and privacy.

Accordingly, it is recommended that the Applicant be requested to redesign the proposed dwelling house to accommodate the required FPL of 2.7m AHD plus 0.9m accounting for Sea Level Rise.



Figure 3: No. 24 Stewart Street (left) and subject dwelling (right)



Figure 4: No. 23 Stewart Street

The Proposed Development

The proposal consists of a two Storey Dwelling-house development involving the following aspects:

- Average ground level of 1.5m AHD;
- Demolition of existing one-storey dwelling-house, garage and other minor structures;
- Four (4) bedroom dwelling-house (317.4m²);

- Ground floor: two car garage (1.7m AHD), guest bedroom with ensuite and walk in robe, open plan living, kitchen and dining area (2.7m AHD) with attached verandah and alfresco area, study and gallery;
- First floor (5.7m AHD): three bedrooms with ensuites and walk in robes and attached balcony to master suite and sitting room;
- Max ridge height 7.96m for western end of skillion roof pitch only;
- Mixture of cement rendered brickwork and Colorbond wall construction and Colorbond roofing; and
- Relocate driveway to western end.

The major issue for consideration relates to flooding and the application of the sea level benchmarks contained in the *NSW Sea Level Rise Policy Statement* (Policy Statement). The Policy Statement requires up to 0.9 m to be added to the existing FPL which requires the finished floor level (FFL) of habitable rooms within the dwelling to be set a minimum of 3.60m AHD, being 900mm higher than the development proposed by the applicant.

HISTORY

Nothing relevant or significant.

PERMISSIBILITY

The subject site is zoned 2 (b) (Multiple Dwelling Residential Zone) under the WLEP. In accordance with Clause 10, a dwelling-house is permissible with consent.

OBJECTIVES OF THE ZONE

Clause 2(3) of the WLEP requires the consent authority to have regard to the objectives for a development in a zone when determining a development application in respect of land within the zone. The following objectives of the 2(b) Multiple Dwelling Residential Zone are relevant to the subject proposal:

- (a) *to provide land primarily for detached housing generally not exceeding a height of 2 storeys and with private gardens in an environment free from commercial and other incompatible activities and buildings, and*
- (b) *to provide for other uses, but only where they:*
 - (i) *are compatible with the residential environment and afford services to residents at a local level, and*
 - (ii) *are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for detached housing, and*
- (c) *to provide for home-based employment where such will not:*
 - (i) *involve exposure to view from any public place of any unsightly matter, or any raw material, equipment, machinery, product or stored finished goods, or*
 - (ii) *have a material adverse impact on residents”.*

The proposed detached dwelling consists of no more than two storeys and generally complies with the above objectives.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- NSW Sea Level Rise Policy Statement
- NSW Flood Plain Development Manual
- State Environmental Planning Policy 71 (Coastal Protection)
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Flood Prone Land Development Policy F5

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal is considered to be inconsistent with the following ESD Principles:

- The precautionary principle – the proposal does not account for inundation as a consequence of sea level rise.
- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment.

Taking the above into consideration the proposal is considered to be **inconsistent** with the Ecologically Sustainable Development (ESD) principles.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other statutory requirements, 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.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):

NSW Sea Level Rise Policy Statement

The Department of Environment, Climate Change and Water (DECCW) published the *NSW Sea Level Rise Policy Statement* (Policy Statement) in 2009, which sets benchmarks for sea level rise above 1990 mean sea levels of 400mm by 2050 and 900mm by 2100. The planning benchmarks have been derived from credible national and international projections of sea level rise, as explained in the technical note that accompanies the Policy Statement.

The Department of Planning recently released a draft "*NSW Coastal Planning Guideline: Adapting to Sea Level Rise*," which adopts the sea level rise planning benchmarks in the NSW Sea Level Rise Policy Statement and outlines a proposed approach to assist Councils, State agencies, planners and development proponents when addressing sea level rise in land-use planning and development assessment. It is based around the following six principles to guide sustainable development:

- (1) *Assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks;*
- (2) *Advise the public of coastal risks and to ensure that informed land use planning and development decision-making can occur;*
- (3) *Avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning;*
- (4) *Consider options to reduce land use intensity in coastal risk areas where feasible;*
- (5) *Minimise the exposure to coastal risks from proposed development in coastal areas; and*
- (6) *Implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option.*

The Policy Statement is intended to be used by Council's to assist in assessing the influence of sea level rise on new development and to incorporate the projected impacts of sea level rise in predicted flood risks and coastal hazards.

The Policy Statement provides:

The goal is to ensure that (development of land that is projected to be affected by sea level rise) recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.

The subject site is recognised as being flood affected. The current designated flood level (1% AEP) for the site is 2.2 metres AHD, with a FPL of 2.7metres AHD being the inclusion of a 500mm freeboard requirement.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, the 1% AEP increases to 3.1 metres AHD with a FPL of 2.7m plus 0.9m Sea Level Rise (3.6m AHD) being the inclusion of a 500mm freeboard requirement.

The survey plan accompanying the application indicates an average natural ground level of 1.5 metres AHD. In order to design the development to comply with the flood planning level with sea level rise, the floor levels of habitable rooms in the development would be approximately 2.1 metres above the natural and surrounding ground levels.

Legal advice was presented to Council on 27 January 2010 by Tim Robertson S.C. In summary the issues outlined by Tim Robertson were:

- Council is legally required to apply the sea level rise benchmarks in the Policy Statement which was released in October 2009.
- Should Council fail to take into account the climate change considerations contained within the NSW Flood Plain Development Manual or the Coastline Management Manual, both which consider climate change, it will be unable to establish "good faith" in accordance with the defences provided by the *Local Government Act, 1993*. Council would also lose its protection under the *Civil Liability Act*.

Taking the above into consideration, the proposal is inconsistent with the principles within the Draft NSW Coastal Planning Guideline titled 'Adapting to Sea Level Rise' and therefore also **inconsistent** with the NSW Sea Level Rise Policy Statement

NSW Flood Plain Development Manual

The subject site is located within an existing high hazard flood area and the NSW Flood Plain Development Manual ('The Manual') requires that a safe (i.e. low hazard flooding) escape route be available for the residents. Given the location of the site and surrounding topography, there is no opportunity to provide an escape route during a flood event. It is considered that a habitable floor level the first floor level, or preferably a ground floor level with an RL of 3.60m AHD would provide safe harbour and sufficient opportunity for residents to remain in the dwelling during a flood event or alternatively to enable rescue. However, this safe harbourage may potentially be for longer periods than currently experienced and residents would be without power or sewerage servicing during this time.

The Manual further provides that a 0.5m freeboard is adopted for general residential development to provide a factor of safety ensuring that the risk exposure selected is accommodated. This freeboard includes a component related to climate change impacts on flood levels in both coastal and non-coastal areas and for a wide variation in sensitivity of estimated design flood levels as well as other unquantified factors such as wind-wave impacts. The freeboard provides only a relatively small allowance to accommodate some of the projected increases in rainfall intensity of flood-producing storm events associated with climate change, which has currently not been accurately quantified or included with the sea level rise projections. The manual's small allowance for climate change in the 0.5metres freeboard figure should be considered to only address some of the uncertainty associated with estimating climate change impacts and as such should not be used to allow for sea level rise impacts, which should be quantified and applied separately.

Taking the above into consideration, the proposal is **inconsistent** with the requirements of the NSW Flood Plain Development Manual.

State Environmental Planning Policy 71 (Coastal Protection)

The provisions of State Environmental Planning Policy (SEPP) No 71 - Coastal Protection requires Council consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the Department of Planning NSW with the subject property falling within this zone.

The aims of the policy are:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) to ensure that the visual amenity of the coast is protected, and*
- (f) to protect and preserve beach environments and beach amenity, and*
- (g) to protect and preserve native coastal vegetation, and*
- (h) to protect and preserve the marine environment of New South Wales, and*

- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the [Protection of the Environment Administration Act 1991](#)), and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (l) to encourage a strategic approach to coastal management.

The development is not considered to be consistent with objective (j) due to the proposal not being ecologically sustainable and (l) due to insufficient consideration with regards to coastal management. Furthermore, the matters listed under Clause 8 have been considered with the proposal being generally compliant, with the exception of Clauses 8 (a) due to its inconsistency with the abovementioned objectives and (j) due to its likely impact on the development on the coastal processes.

Taking the above into consideration, the proposal is **inconsistent** with the requirements of State Environmental Planning Policy 71 (Coastal Protection).

Development Control Plan 2005, Chapter 100 (Quality Housing)

Section 3.63 (c) of Quality Housing provides that:-

“A maximum height of 7 metres from natural ground level applies to the ceiling of the uppermost storey; and

A maximum height of 11 metres from natural ground level applies to the peak of the roof”

The development as proposed complies with the maximum ceiling and ridge height controls. However, applying the FPL of 2.7m plus 0.9m Sea Level Rise (3.6m AHD) would result in the ceiling level of the dwelling exceeding the maximum permitted by 0.8m - giving rise to unacceptable bulk and scale impacts. It is considered that a good design can accommodate the existing FPL of 2.7m AHD plus 0.9m Sea Level Rise (3.6m AHD) and also address the issues of bulk and scale, privacy and solar access.

The tables below summarise the above.

Proposed Dwelling (habitable room RL 2.7)

	RL	DCP 100	Complies
First floor ceiling	8.4	Max RL 8.5 being 7m above NGL (NGL 1.5)	Yes
Ridge	9.46	Max RL 12.5 being 11m above NGL (NGL 1.5)	Yes

Dwelling with NSW Sea Level Rise Policy Statement (Policy Statement) with Sea Level Benchmarks Applied (RL 3.60)

	RL	DCP 100	Complies
First floor ceiling	9.3	Max RL 8.5 being 7m above NGL (NGL 1.5)	No. The ceiling exceeds maximum height limit by 0.80m. It is acknowledged that this non compliance could be resolved through re-design of the dwelling.
Ridge	10.36	Max RL 12.5 being 11m above NGL (NGL 1.5)	Yes

Taking the above into consideration the proposal in its current form is deemed **consistent** with the relevant provisions of Chapter 100, however does not meet the required FPL of 2.7m plus 0.9m Sea Level Rise (3.6m AHD).

A complete assessment against Chapter 100 has been provided at attachment 2.

When considering the built form of existing dwelling-houses on surrounding properties, it is considered that an exceedance of the height control under Chapter 100 may have merit in the circumstances.

Flood Prone Land Development Policy F5

As discussed earlier in the report, the FPL for the site under Council's Flood Prone Land Development Policy is set at 2.7 metres AHD. The development proposes ground floor habitable floor levels of 2.7 metres AHD and therefore meets this requirement.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, raises the FPL of 2.7m plus 0.9m Sea Level Rise to a minimum floor level of 3.6m AHD.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

*The relationship to the regional and local **context and setting**.*

The proposed development is considered acceptable in its appearance and in relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

However, the proposal does not meet the required FPL of 2.7m plus 0.9m Sea Level Rise (3.6m AHD). If floor levels were raised to comply with this level, the development would sit approximately 2.1 metres above natural ground level potentially creating privacy, amenity and design concerns. It is considered that appropriate design mitigation methods could be employed to eliminate these concerns should a further application be lodged incorporating a finished floor level of 3.6m AHD.

*The **access, transport and traffic management measures**.*

The current gutter crossing access will be relocated from the eastern end to the western end.

*The **impact on utilities supply**.*

No issues to report under existing conditions.

Any effect on the conservation of soils or acid sulphate soils.

The site is identified as having Class 2 soils according to the Acid Sulphate Soils Planning Map. In accordance with Wyong LEP Clause 15, a preliminary site investigation is justified where works are proposed which are likely to lower the water table. This is not applicable to the proposed development.

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

Flooding & Sea Level Rise

The Draft NSW Coastal Planning Guideline - Adapting to Sea Level Rise (DoP 2009) provides detail about the consideration of flooding and sea level rise information in land use planning and development assessment.

The proposal is contrary to the principles within the Draft NSW Coastal Planning Guideline titled including:

- Avoid intensification of land use in coastal risk areas;
- Minimising exposure to coastal risks for proposed development in coastal areas;
- Implementing appropriate management responses and adaption strategies, with consideration for environmental, social and economic impacts.

Over and above the sea level rise affect on the designated flood level there is also the prospect that the property will be regularly inundated by lake water day to day with the high tide.

A statistical analysis to establish the mean lake level was undertaken on the Tuggerah Lakes water levels between 1984 and 1989. This statistical analysis determined that once every twenty hours the lake level may be as high as 0.55metres AHD. When the predicted sea level rise is added to the lake level this means that at 2050 the lake level could increase up to RL 0.95metres AHD and at the 2100 lake level could increase up to RL 1.45metres AHD.

Based on the information above the adjacent road and front portion of the property (being at its lowest 1.34m ADH) has the potential to be inundated by Tuggerah Lakes without flooding, up to .09m deep with the high tide.

In times of flood, the Electricity Authority may be required to shut down the network in the flood areas where sewer pump stations are located due to inundation of flood waters.

The NSW Department of Health consider all flood waters as potentially contaminated and may contain untreated sewage. They advise that all unnecessary contact with flood waters should be avoided and children should be kept away from flood waters. This is pertinent to the safe evacuation of residents particularly children in deeper flood waters.

Approval of this development application in its current form would give rise to negative social and economic impacts, set an undesirable precedent and possibly result in liability issues for Council.

*Any **social impact** in the locality.*

The proposed development is likely to place both people and property vulnerable to flooding events.

*Any **economic impact** in the locality.*

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood, in rectifying flood damaged property, and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

Any impact of site design and internal design.

The site design is not considered appropriate in terms of the finished floor levels for habitable rooms as they fail to achieve the Policy Statement's minimum flood planning level.

Any cumulative impacts.

Allowing the proposed development contrary to the DECCW *NSW Sea Level Rise Policy Statement* sea level rise planning benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act, including the likely impacts of the development and the public interest.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):

Whether the proposal fits in the locality.

As outlined earlier in this report, the proposed development is not considered suitable for the site given that the floor level does not adequately address sea level rise and the development could potentially result in adverse privacy, amenity and streetscape impacts if the floor levels were raised to incorporate the 2100 sea level rise planning benchmark. It is considered that appropriate design mitigation methods could be employed to eliminate these concerns should a redesign of the proposed dwelling be submitted incorporating a finished floor level of 3.6m AHD.

Whether the site attributes are conducive to development.

As mentioned above, the low lying nature of the site creates the potential for frequent future flooding and is therefore not conducive to the proposed development.

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 and no submissions were received.

Any submission from public authorities.

N/A

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies and DECCW's *NSW Sea Level Rise Policy Statement*. Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the projected sea level rise of 900mm by 2100; the development is not considered suitable for the site. To permit the development on the basis of a lack of full scientific certainty with respect to sea level rise may result in lives and property being placed under threat.

CONCLUSION

The proposal has been assessed having regard to Section 79C of the EP&A Act, WLEP 1991, SEPP 71, NSW Sea Level Rise Policy Statement, DCP 2005 - Chapter 100 (Quality Housing), DCP 2005 - Chapter 69 (Waste Management), DCP 2005 - Chapter 67 (Engineering Requirements) and Flood Prone Land Development Policy and is considered unsatisfactory.

The proposal is unacceptable in terms of the proposed reduced levels of the ground floor habitable room levels. The proposed development has not been designed having sufficient regard to the impacts of flooding and sea level rise and would, if approved, unacceptably contribute to social disruption, economic costs and environmental impacts during a 1% AEP flood event up to the year 2100.

Approval of the development application would also set an undesirable precedent.

It is therefore recommended that the application be deferred for a redesign incorporating appropriate design mitigation methods to accommodate a habitable floor level of 3.6 metres AHD.

ATTACHMENTS

- | | | |
|---|--|-----------|
| 1 | SEPP 71 Compliance Table (distributed previously) | D02258081 |
| 2 | DCP 2005 - Chapter 100 Compliance Table (distributed previously) | D02258083 |
| 3 | Development Plans (A3) (distributed previously) | D02267983 |

14 July 2010
To the Ordinary Meeting

Director's Report
Shire Planning Department

2.4 DA/93/2010 Single Storey Dwelling at 1B Cooranga Road, Wyongah

TRIM REFERENCE: DA/93/2010 - D02265489

AUTHOR: SVD

SUMMARY

An application as been received for the erection of a single storey dwelling at 1B Cooranga Road, Wyongah (Lot 2 DP 1068060). The application has been examined having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is reported to Council in accordance with Council's Resolution of 10 March 2010 regarding applications affected by the State Government's Sea Level Rise Policy.

Applicant	Mr W C Porter
Owner	Mr W C Porter
Application No	DA/93/2010
Description of Land	Lot 2 DP 1068060 (1B) Cooranga Road, WYONGAH
Proposed Development	Single Storey Dwelling
Site Area	765.2m ²
Zoning	2A Residential Zone
Existing Use	Vacant
Employment Generation	N/A
Estimated Value	\$194,750

RECOMMENDATION

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.

PRECIS

- The application seeks approval for the erection of a single storey dwelling house on a concrete slab.
- The site is zoned 2(a) Residential under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling is permissible with consent.
- The site is flood affected.
- The NSW State Government released its *Sea Level Rise Policy Statement* (Policy Statement) in 2009, applies to the development

- The 1% Annual Exceedence Probability (AEP) flood level for this property is RL 2.5m above Australian Height Datum (AHD). Scientific studies and State Government Policy in relation to climate change, and specifically Sea Level Rise (SLR), have been recently published which have the effect of raising floor levels through the imposition of an allowance for SLR applied to the existing base Tuggerah Lakes flood planning level.
- The new minimum floor level for this application is 3.6m above AHD, derived by adding the 0.5m freeboard and a 0.9m SLR allowance to the base flood level of 2.2m above ADH.
- A finished floor level of 3.6 metres AHD would result in the habitable rooms being approximately 1.2m above natural ground level (RL 2.4m).
- On 31 March 2010 Council staff corresponded with the applicant advising that the proposal must be amended to reflect a minimum habitable floor level of 3.6m AHD to comply with the NSW adopted Sea Level Rise Policy Statement.
- The applicant has been given the opportunity to amend the proposal to comply with the above legislative requirements however, has declined to amend the application and has requested the application be determined in its current form.

Options Table

Option	Implications
Approve Development Application as proposed by applicant.	<ul style="list-style-type: none"> • The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>. • Will set an undesirable precedent. • Could result in legal issues for Council. • The development will not comply with Council's Flood Prone Land Development Policy.
Approve Development Application with a habitable floor level of 3.6 metres AHD.	<ul style="list-style-type: none"> • May result in unacceptable privacy, amenity and design impacts.
Council defer decision for redesign incorporating habitable floor level of 3.6 metres AHD.	<ul style="list-style-type: none"> • Added assessment time. • Redesign may result in unacceptable privacy, amenity and design impacts.
Refuse Development Application as recommended	<ul style="list-style-type: none"> • This is considered to be the most appropriate course of action. • The determination will be in accordance with Council's statutory obligations.

INTRODUCTION

The Site

The site is located at 1B Cooranga Road, Wyongah (Lot 2 DP 1068060); on the eastern side approximately 400 metres west of Tuggerah Lake.

The site consists of an irregular shaped allotment with a total area of 765.2m², is generally flat with an average ground level of 2.4 AHD, and currently vacant (Refer Figure 1 & 2).

The site contains Class 2 acid sulphate soils and is bushfire prone.

The 1% Annual Exceedence Probability flood level for the site is RL 2.5m above AHD.



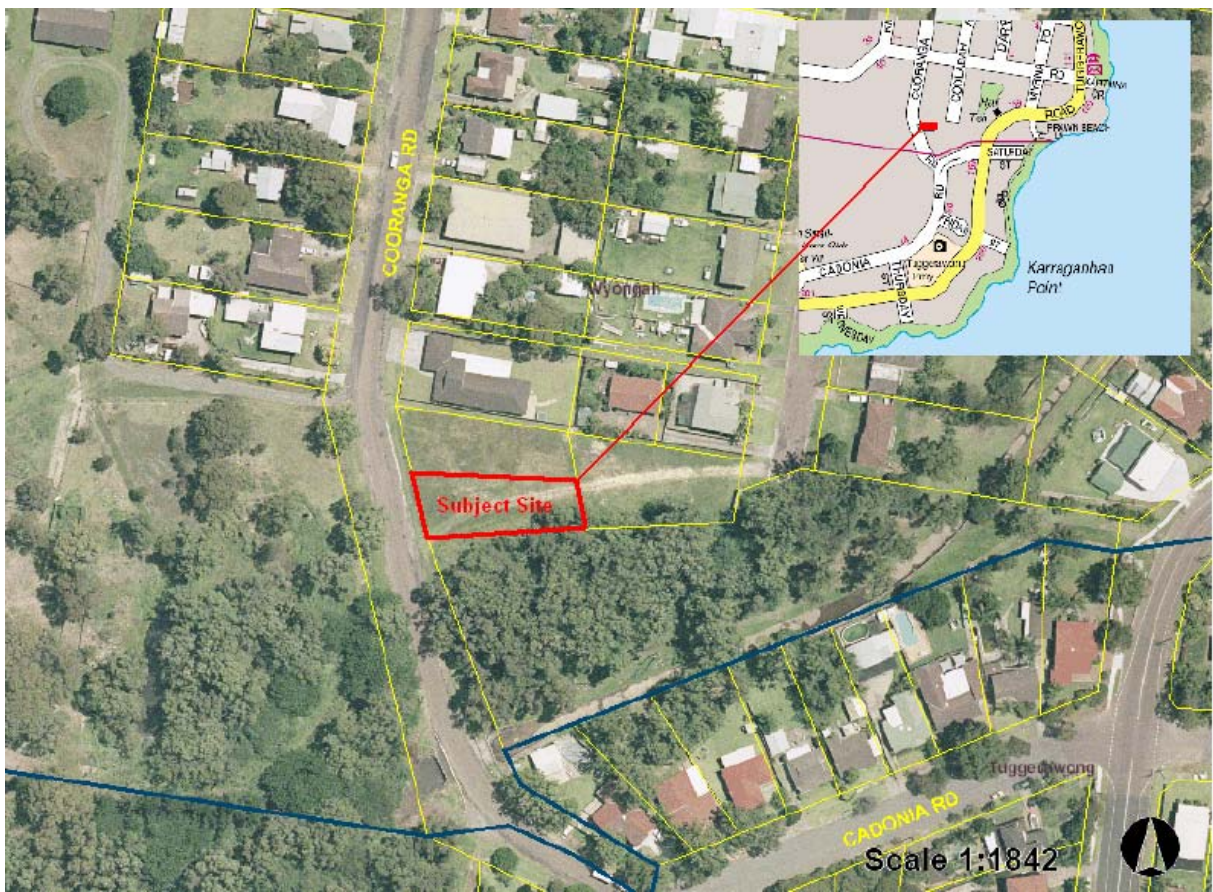


Figure 1: Aerial photograph of 1B Cooranga Road, Wyongah and surrounds (including locality insert).



Figure 2: Current vacant site looking east from road boundary.

The Locality

The subject land is bound by vacant land to the north, south and west and by a recently constructed dwelling to the east. The area is characterised by generally low density residential development consisting mainly of smaller single storey detached dwellings.

The subject site and all lots generally to the south west are low lying and flood affected.

The Proposed Development

The proposal consists of a single storey dwelling-house involving the following features:

- A four bedroom dwelling (223.3m²) with FFL of 2.85m AHD;
- The dwelling comprises a double garage, four bedrooms - one with ensuite; open plan rumpus, family and kitchen area, living and dining area, bathroom and porch.
- Maximum ridge height 5.4m;
- Colorbond roof and face brick wall construction; and
- 3,500 litre rainwater tank.

HISTORY

- Lot 1 DP 805621(2602m²) was subdivided into Lots 1, 2 and 3 DP 1068060 (785.9m², 765.2m² & 1051m² respectively) on 30 April 2004.
- 2 February 2010 the subject application was lodged with Council incorporating a habitable floor level of RL 2.85m AHD.
- 31 March 2010 Council requested the applicant to amend floor levels to 3.6m AHD.
- 14 April 2010 the applicant requested a determination be made on existing floor levels for the following reasons:
 - The Contractor will not build to the required floor level as they do not provide a bearers & joist type construction. For the applicant to meet the required floor level they will need to change builders and as such will lose their deposit.
 - The applicant has received quotes from other project home builders for a similar design using a bearers and joist construction with an approximate additional cost of \$25,000.
 - The actual "on-the-ground" construction cost difference between a slab on ground construction and a bearers and joist construction is minimal, however, a number of project home Builders add additional costs, should a client request bearers and joist construction.

The reality is that project home companies while filling an important role in the market, add substantial extra cost where clients wish to deviate from the standard "slab on ground" construction. However, this type of construction cannot be achieved without placing fill within the floodplain to enable the required floor levels to be achieved.

PERMISSIBILITY

The subject site is zoned 2(a) Residential under the WLEP. Pursuant to Clause 10 of WLEP, a dwelling-house is permissible with consent.

OBJECTIVES OF THE ZONE

Clause 2(3) of WLEP requires the consent authority to have regard to the aims and objectives of the WLEP when determining a development application. The following objectives of the 2(a) Residential Zone are relevant to the subject proposal:

“(a) to provide land primarily for detached housing generally not exceeding a height of 2 storeys and with private gardens in an environment free from commercial and other incompatible activities and buildings,”

The proposed single storey detached dwelling generally complies with the above objective.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- NSW Sea Level Rise Policy Statement
- NSW Flood Plain Development Manual
- State Environmental Planning Policy 71 (Coastal Protection)
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Flood Prone Land Development Policy F5

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal is considered to be inconsistent with the following ESD Principles:

- The precautionary principle – the proposal does not account for inundation as a consequence of sea level rise.
- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment.

Taking the above into consideration the proposal is considered to be inconsistent with the Ecologically Sustainable Development (ESD) principles.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP& A Act 1979 and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for Council's consideration.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):**NSW Sea Level Rise Policy Statement**

The NSW State Government released its *Sea Level Rise Policy Statement* (Policy Statement) in 2009, which sets benchmarks for sea level rise above 1990 mean sea levels of 400mm by 2050 and 900mm by 2100. The planning benchmarks have been derived from credible national and international projections of sea level rise, as explained in the technical note that accompanies the Policy Statement.

The Department of Planning recently released a draft "*NSW Coastal Planning Guideline: Adapting to Sea Level Rise*," which adopts the sea level rise planning benchmarks in the NSW Sea Level Rise Policy Statement and outlines a proposed approach to assist Councils, State agencies, planners and development proponents when addressing sea level rise in land-use planning and development assessment. It is based around the following six principles to guide sustainable development:

- (1) *Assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks;*
- (2) *Advise the public of coastal risks and to ensure that informed land use planning and development decision-making can occur;*
- (3) *Avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning;*
- (4) *Consider options to reduce land use intensity in coastal risk areas where feasible;*
- (5) *Minimise the exposure to coastal risks from proposed development in coastal areas; and*
- (6) *Implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option.*

The Policy Statement is intended to be used by Councils to assist in assessing the influence of sea level rise on new development and to incorporate the projected impacts of sea level rise in predicted flood risks and coastal hazards.

The Policy Statement provides:

The goal is to ensure that (development of land that is projected to be affected by sea level rise) recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.

The subject site is recognised as being flood affected. The current designated flood level (1% AEP) for the site is 2.5 metres AHD. The minimum floor level is 3.6m AHD, derived from adding the 0.5m freeboard and 0.9m SLR allowance to the base flood level of 2.2m AHD.

The survey plan accompanying the application indicates an average existing ground level of 2.4 metres AHD. In order to design the dwelling house to comply with the flood planning level incorporating sea level rise, the floor levels of habitable rooms in the development would be approximately 1.2 metres above the natural ground level.

Legal advice was presented to Council on 27 January 2010 by Tim Robertson S.C. In summary the issues outlined by Tim Robertson were:

- Council is legally required to apply the sea level rise benchmarks in the Policy Statement which was released in October 2009.
- Should Council fail to take into account the climate change considerations contained within the NSW Flood Plain Development Manual or the Coastline Management Manual, both which consider climate change, it will be unable to establish "good faith" in accordance with the defences provided by the *Local Government Act, 1993*. Council would also lose its protection under the *Civil Liability Act*.

Taking the above into consideration, the proposal is inconsistent with the principles within the Draft NSW Coastal Planning Guideline titled 'Adapting to Sea Level Rise' and therefore also **inconsistent** with the NSW Sea Level Rise Policy Statement

NSW FloodPlain Development Manual

The subject site is located within an existing low hazard flood area however in the future would be located within a high hazard flood area and the NSW FloodPlain Development Manual ('The Manual') requires that a safe (i.e. low hazard flooding) escape route be available for the residents. Given the location of the site and surrounding topography, there is no opportunity to provide a flood free escape route during a flood event. It is considered that a habitable floor level with an RL of 3.60m AHD would provide safe harbour and sufficient opportunity for residents to remain in the dwelling during a flood event or alternatively to enable rescue. However, this safe harbourage may potentially be for longer periods than currently experienced and residents may without power or sewerage servicing during this time.

The Manual further provides that a 0.5m freeboard is adopted for general residential development to provide a factor of safety ensuring that the risk exposure selected is accommodated. This freeboard includes a component related to climate change impacts on flood levels in both coastal and non-coastal areas and for a wide variation in sensitivity of estimated design flood levels as well as other unquantified factors such as wind-wave impacts. The freeboard provides only a relatively small allowance to accommodate some of the projected increases in rainfall intensity of flood-producing storm events associated with climate change, which has currently not been accurately quantified or included with the sea level rise projections. The Manual's small allowance for climate change in the 0.5metres freeboard figure should be considered to only address some of the uncertainty associated with estimating climate change impacts and as such should not be used to allow for sea level rise impacts, which should be quantified and applied separately.

Taking the above into consideration, the proposal is **inconsistent** with the requirements of the NSW FloodPlain Development Manual.

State Environmental Planning Policy 71 (Coastal Protection) (SEPP)

The provisions of SEPP No 71- Coastal Protection requires Council to consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the DoP with the subject property falling within this zone.

The aims of the policy are:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (f) to protect and preserve beach environments and beach amenity, and
- (g) to protect and preserve native coastal vegetation, and
- (h) to protect and preserve the marine environment of New South Wales, and
- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the [Protection of the Environment Administration Act 1991](#)), and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (l) to encourage a strategic approach to coastal management.

The development is considered to be inconsistent with objective (j) due to the proposal not being ecologically sustainable and (l) due to insufficient consideration with regards to coastal management. Furthermore, the matters listed under Clause 8 have been considered with the proposal being generally compliant, with the exception of Clause 8 (a) due to its inconsistency with the abovementioned objectives and (j) due to the likely impact of the development on the coastal processes.

Taking the above into consideration, the proposal is inconsistent with the requirements of SEPP 71 (Coastal Protection).

Development Control Plan 2005, Chapter 100 (Quality Housing)

Section 3.63 (c) of Quality Housing provides that:-

“A maximum height of 7 metres from natural ground level applies to the ceiling of the uppermost storey; and

A maximum height of 11 metres from natural ground level applies to the peak of the roof”

The single storey slab on ground dwelling as proposed or with a floor level of 3.6m AHD addressing Sea Level Rise would comply with the maximum ceiling and ridge height controls.

Whilst meeting the above objectives however - a floor level of 3.6m AHD may present future privacy issues with regards to elevated floor levels for living areas.

Taking the above into consideration the proposal in its current form is deemed **consistent** with the relevant provisions of Chapter 100, however would require certain privacy design elements to be included with any increased floor levels.

A complete assessment against Chapter 100 has been provided at Attachment 2.

Flood Prone Land Development Policy F5

Council's Flood Prone Land Policy prohibits "new development" in high hazard flood areas. The proposed development is not considered "new development" and as such is not prohibited.

As discussed earlier in the report, the Flood Planning Level for the site under Council's Flood Prone Land Development Policy is set at 3.0 metres AHD. The development proposes ground floor habitable floor levels of 2.85 metres AHD and therefore fails to meet this requirement.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, raises the FPL plus 0.9m Sea Level Rise to 3.60 metres AHD with the proposed dwelling also failing to achieve this level.

Taking the above into consideration, the proposal is **inconsistent** with the requirements of Council's Flood Prone Land Development Policy F5.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

*The relationship to the regional and local **context and setting**.*

The proposed development is considered acceptable in its appearance and in relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

*The **access, transport and traffic** management measures.*

In the event of a designated flood (1%AEP), access to the subject property would be flooded to a depth of up to 100mm.

Any effect on the conservation of soils or acid sulphate soils.

The site is identified as having Class 2 soils according to the Acid Sulphate Soils Planning Map. In accordance with WLEP Clause 15, a preliminary site investigation is justified where works are proposed which are likely to lower the water table - this is not applicable to the proposed development given that no excavation is proposed.

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

The site is subject to bushfire. Should the application be approved suitable conditions of construction should be applied.

*Any **social impact** in the locality.*

The proposed development placing both people and property vulnerable to flooding events is considered to be unacceptable.

Any economic impact in the locality.

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood, in rectifying flood damaged property, and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

Any impact of site design and internal design.

The site design is not considered appropriate in terms of the finished floor levels for habitable rooms as they fail to achieve the Policy Statement's minimum flood planning level as well as Council's current flood planning level.

Any cumulative impacts.

Allowing the proposed development contrary to the NSW State Government *Sea Level Rise Policy Statement* sea level rise planning benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act, including the likely impacts of the development, and the public interest.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):

Whether the proposal fits in the locality.

As outlined earlier in this report, the proposed development is not considered suitable for the site given that the proposed floor level does not adequately address current flood planning levels or future sea level rise and the development would potentially result in adverse privacy, amenity and streetscape impacts if the floor levels were raised to incorporate the 2100 sea level rise planning benchmark.

Whether the site attributes are conducive to development.

As mentioned above, the low lying nature of the site creates the potential for frequent future flooding and is therefore not conducive to the proposed development.

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

Any submission from the public.

The application did not require advertising in accordance with Clause 2.4. of DCP 2005 Chapter 70-Notification of Development Proposals as it generally complies with Chapter 100 – Quality Housing.

Any submission from public authorities.

N/A

THE PUBLIC INTEREST (s79C(1)(e)):

Any Federal, State and Local Government interests and community interests.

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies and *NSW Government Sea Level Rise Policy Statement*. Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the projected sea level rise of 900mm by 2100, the development is considered unsuitable for the site. To permit the development on the basis of a lack of full scientific certainty with respect to sea level rise may result in lives and property being placed at risk.

CONCLUSION

The proposal has been assessed having regard to Section 79C of the EP&A Act, WLEP 1991, SEPP 71, NSW Sea Level Rise Policy Statement, DCP 2005 - Chapter 100 (Quality Housing), DCP 2005 - Chapter 69 (Waste Management), DCP 2005 - Chapter 67 (Engineering Requirements) and Flood Prone Land Development Policy and is considered unsatisfactory.

The proposal is unacceptable in terms of the proposed 2.85m AHD floor level as not being sufficient with regards to the impacts of flooding and sea level rise.

It is therefore recommended that the application be refused.

ATTACHMENTS

- | | | |
|---|--|-----------|
| 1 | SEPP 71 - Compliance Table (distributed previously) | D02257550 |
| 2 | DCP 2005 - Chapter 100 Compliance Table (distributed previously) | D02257552 |
| 3 | Development Plans (distributed previously) | D02277341 |

14 July 2010
To the Ordinary Meeting

Director's Report
Shire Planning Department

2.2 DA/790/2009 - Proposed Boundary Adjustment at Wyong Creek

TRIM REFERENCE: DA/790/2009 - D02265225

AUTHOR: PF

SUMMARY

An application has been received for a two lot boundary adjustment at Wyong Creek. The application has been examined having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The Department of Planning (DoP) has advised Council under Circular No PS 08-014, that where variations in excess of 10% to an LEP provision occurs, the application must be determined by the elected Council.

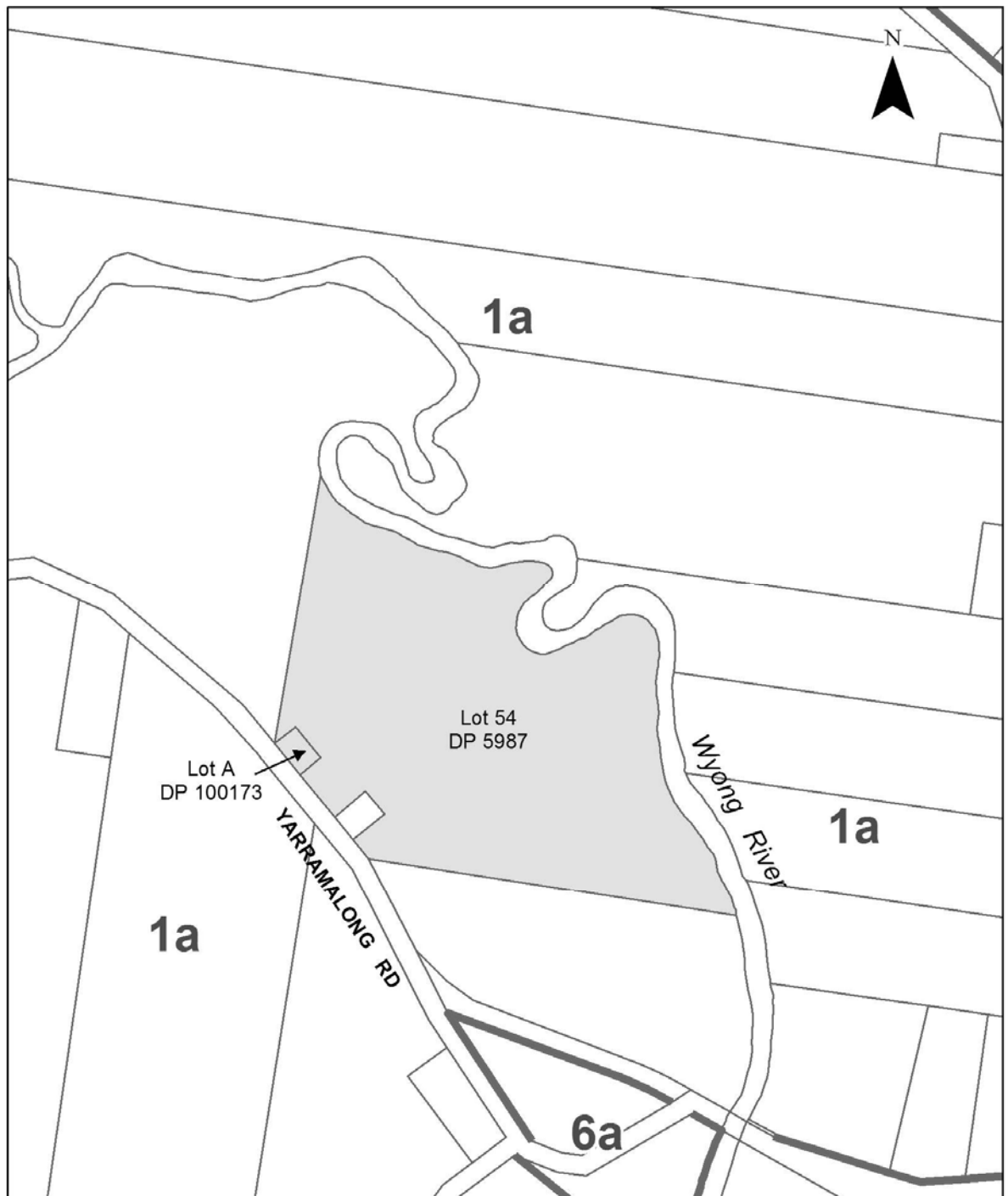
Applicant	Chase Burke Harvey
Owner	A & C Cornwall
Application No	790/2009
Description of Land	Lot 54 DP 5987, Lot A DP 100173 Yarramalong Road, Wyong Creek
Proposed Development	Boundary Adjustment
Site Area, Zoning	Lot 54 DP 5987 11.36 ha Lot A DP 100173 1,075m ²
Zoning	1(a) Rural Zone

RECOMMENDATION

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.

PRECIS

- Application involves the adjustment of the common property boundary between two allotments at Wyong Creek. A boundary adjustment is defined as “Subdivision” under the provisions of Clause 7 of the Wyong Local Environmental Plan 1991 (WLEP).
- The subject allotments are zoned 1(a) Rural zone.
- The applicant proposes the use of State Environmental Planning Policy No 1 (SEPP 1) to vary the subdivision standards of WLEP. The proposal involves an 88% variation to the subdivision standard.
- Council delegation extends to assuming concurrence of the DoP for the use of SEPP 1 in this instance. The delegation issued under Circular B1 allows Council to assume concurrence for two lot boundary adjustments where both lots are presently below the minimum subdivision standard subject to no additional allotments being created, the agricultural use of the land not being jeopardised and that no additional housing entitlements are created.

Locality Plan

INTRODUCTION

The Site

The subject site comprises two parcels of land (Lot 54 and Lot A) on Yarramalong Road adjacent to Wyong Creek and is approximately 2.5 kilometres west of the Wyong Post Office. The land is relatively level and is used for grazing and other rural purposes.

Lot A contains a dwelling house while Lot 54 is vacant (Refer to "Attachment 1"). Both allotments are held in the same ownership. Lot 'A' is relatively small and does not within itself promote any rural land use. The history in relation to the creation of Lot A as a small parcel was most likely due to the lack of strategic planning in relation to subdivision that commonly occurred during the early and middle part of the last century.

Lot 54, the larger parcel is used as grazing land for cattle.

The lower Wyong Creek valley is dominated by turf farms and grazing land.



Aerial view of Lot 54 (larger parcel) and Lot A (smaller parcel, dwelling included)

The Proposal

Development Consent is sought to adjust the common property boundary between Lots A and 54.

Matters for consideration include the extent of impact on the agricultural viability of the land and the potential for the vacant parcel (proposed Lot 542) to support a dwelling house. In circumstances where a boundary adjustment involves vacant land, it needs to be

demonstrated that the vacant parcel can adequately accommodate a dwelling house and associated structures.

A written objection under the provisions of SEPP1 has been submitted seeking variation to the development standards contained within Clause 14 of WLEP. The merits of the SEPP 1 objection are assessed in detail within the report.

VARIATIONS TO POLICIES

Clause	14(2)
Standard	20 hectares
LEP	Wyong Local Environmental Plan 1991
Extent of variation/departure	88.00% for proposed Lot 541 55.13% for proposed Lot 542
Departure basis	Not supported – recommend refusal

HISTORY

Lot 54 DP 5987 was registered circa 1902. No apparent restrictions on the title and currently used for cattle grazing.

Lot A DP 100173 was registered on 15 August 1953. No apparent restrictions on the title and occupied by a dwelling house and associated sheds.

STATUTORY PROVISIONS and RELEVANT STATE/COUNCIL POLICIES and PLANS

Environmental Planning and Assessment Act 1979

The application has been examined having regard to the matters for consideration detailed in Section 79C of the EP&A Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application is defined as “Integrated Development” under the provisions of Section 91 of the Act. Integrated Development is defined as development that requires a concurrence from a State Authority in this case being the NSW Rural Fire Service (RFS).

The RFS has responded by granting a “Bush Fire Safety Authority” under Section 100B of the Rural Fires Act, 1997.

State Environmental Planning Policies (SEPP)

The application is not subject to any specific SEPP. However, the applicant has elected to use SEPP No 1 – *Development Standards*, in order to address the provisions of the WLEP.

The merits of the SEPP 1 objection are addressed further in the report. The DoP has advised Council under Circular No PS 08-014, that where variations in excess of 10% to an LEP provision occurs, the application must be determined by the elected Council.

Regional Environmental Planning Policies

The land is not affected by Sydney Regional Environmental Plan No 8 – *Central Coast Plateau Areas*. This policy applies to most of the Shire’s 1(a) zoned land in the Kulnura region and surrounding areas but does not extend to the lower Wyong Creek valley region.

Wyong Valley Study – Planning and Strategy Reports

The Wyong Valley Study was prepared in 1998 as an overview of past and current land uses together with future strategies for the valley regions. Although the strategy for zone changes was never adopted, the principles of the review are considered relevant when assessing applications, particularly where adjustment to allotment boundaries occur.

The study concentrated on the history and future intent of the valley areas, emphasising the opportunities to establish hobby farming and encourage other rural uses. Minimum Lot size was of paramount importance in order to maintain zone objectives.

Wyong Local Environmental Plan 1991 (WLEP)

(i) WLEP - Definition

Subdivision (including boundary adjustment) is defined under Section 4B of the Act. Although not specifically defined under the definitions contained within Clause 7 of WLEP, the development is identified as “Subdivision” and “Boundary Adjustment” pursuant to Clause 13 – *Subdivision of Land*, in the WLEP and is permitted with consent.

(ii) WLEP – Aims, Objectives and Zoning

The overall aims and objectives of the WLEP relevant to the proposed boundary adjustment are contained within Clause 2 (2) (g) which state:

“2 (2) *The objectives of this plan are -*

(g) *in relation to rural and environmental areas -*

- (i) *to protect environmentally sensitive areas from development and minimise adverse impacts of urban development on the natural environment;*
- (ii) *to restrict development within flood prone areas in order to minimise flood damage and obstruction to flood waters; and*
- (iii) *to encourage use of land having a high agricultural potential for that purpose and as much as possible direct non-agricultural purposes to land of lesser agricultural potential;”*

The proposed boundary adjustment is considered to be inconsistent with the objectives contained within Clause 2(2)(g) of WLEP in that:

- * The subdivision, although not specifically for the purpose of the erection of a dwelling house, will result in the creation of a vacant allotment which would have the potential of accommodating a dwelling house. The land is flood prone and the potential for the erection of a future dwelling house may result in flood damage to occur to a future dwelling house and the obstruction of flood waters.
- * The reduction in the existing site area of Lot 54 will reduce the agricultural potential of the land contrary to objective 2(2)(g)(iii) of WLEP.

The subject land is zoned 1(a) Rural Zone. The objectives of the zone are:

- “(a) *to protect, enhance and conserve agricultural land in a manner which sustains its efficient, sustainable and effective agricultural production potential, and*
- (b) *to facilitate development requiring a rural or isolated location or associated with agricultural pursuits, and rural industry, provided that it is unlikely to-*
 - (i) *prejudice the present environmental quality of the land within this zone, or*
 - (ii) *generate significant additional traffic, or create or increase a condition of ribbon development on any road, relative to the capacity and safety of the road, or*
 - (iii) *prejudice the intent of the objective specified in paragraph (a), or*
 - (iv) *have an adverse impact on the region's water resources.”*

The proposed subdivision is considered to be inconsistent with the objectives of the 1(a) Rural zone in that:

- * The reduction in the size of existing Lot 54 would reduce the agricultural potential for the existing allotment contrary to objective (a) which is to protect, enhance and conserve agricultural land.
- * The potential for a dwelling house to be erected in the future on proposed Lot 542 is likely to prejudice the environmental quality of the site due to the flood affection of the property.

(iii) WLEP - Subdivision and other Provisions

The relevant matters for consideration under WLEP are as follows;

Clause 14 (2) – *Subdivision of land within zone 1(a)*

This clause provides minimum lot requirements for subdivision within certain zones, generally rural and conservation zones. The proposal represents a departure to the development standard contained within Clause 14(2). The applicant has formally objected to the minimum lot requirement under SEPP 1.

Clause 18 – *Lot Amalgamation*

This clause reflects the need for some properties to be amalgamated resulting from development. Both allotments are held in the same ownership but are not subject to the “common ownership” provisions of the clause.

Wyong Development Control Plan 2005, Chapter 66 – Subdivision

While a boundary adjustment is not specifically defined within the WLEP, DCP Chapter 66 contains the following definition:

“Boundary Adjustment means the creation of new lots through the movement of their common boundary, where no additional lots are created and each lot maintains compliance with the required minimum area within the relevant zone.”

Policy W1 – Water Catchment Areas

This policy controls development within the water catchments of the Shire. Subdivision is not identified as prohibited development.

Policy F5 – Flood Prone Land

This policy controls development on land affected by flooding. The proposed boundary adjustment is not prohibited under the policy. However, the site is fully flood affected and therefore, a more detailed assessment is provided within the report.

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be inconsistent with the principles.

A precautionary principle should be applied in the circumstances when considering the likelihood of a future dwelling house being erected on proposed Lot 542 which is classified as High Hazard flood prone land.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the Act and other statutory requirements and Council's policies, the assessment has identified the following key issues, which are elaborated upon for Council's information.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):***Discussion and assessment of Boundary Adjustment/Subdivision Strategy*****Preamble**

Existing Lot A is a small parcel of land having an area of 1,075m². Lot 54 has an area of 11.36 hectares. It is proposed to incorporate the northern part of Lot 54 within Lot A to form a larger parcel.

Property Dimensional Summary

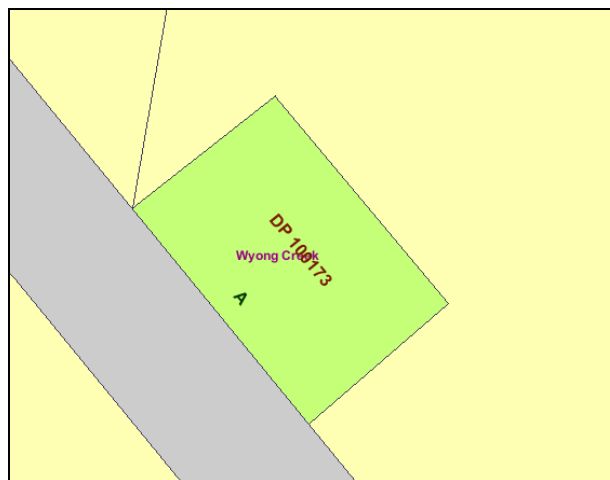
The following is the status of the current land circumstances and proposed reconfigured allotments.

The current Lot status:

Lot 54 DP 5987 = 11.36 ha zoned 1(a) Rural

**Lot 54**

Lot A DP 100173= 1,075m² zoned 1(a) Rural

**Lot 'A'**

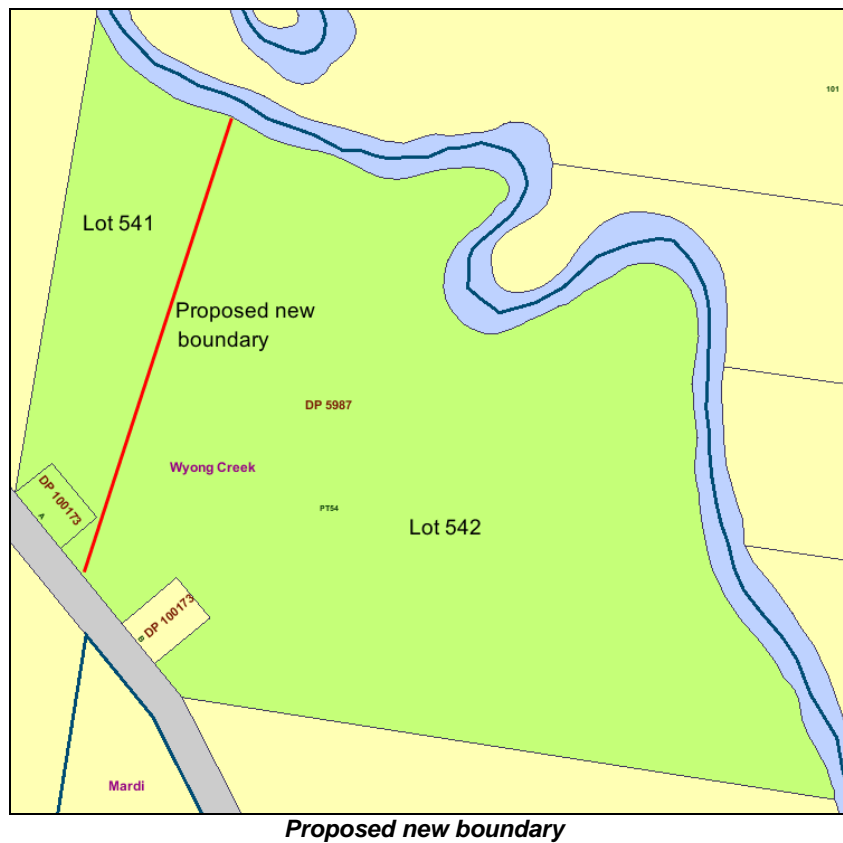
☐ The proposed Lot configuration:

Proposed Lot 541 = 2.389 hectares zoned 1(a) Rural

Proposed Lot 541 will result in an increase in area of 2.2815 hectares and represents a variation of 88% to the minimum standard of 20 hectares under the WLEP.

Proposed Lot 542 = 8.974 hectares, zoned 1(a) Rural

The area of proposed Lot 542 is reduced by 2.386 hectares and represents a variation of 55.13% to the minimum standard of 20 hectares under the WLEP.



Subdivision Strategy – Clause 14(2) of WLEP

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 allotment area requirement under Clause 14(2). The applicant has sought a variation to the minimum allotment requirement by the submission of a written objection pursuant to the provisions of SEPP 1. As previously stated, the extent of departure to the standard is 88% for proposed Lot 541 and 55.13% for proposed Lot 542.

Objection under State Environmental Planning Policy No 1 (SEPP No 1)

SEPP No 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 objectives specified in Section 5(a)(i) and (ii) of the Act, which are to encourage proper and appropriate land management within the natural environment.

Clause 6 of SEPP No. 1 allows for a written objection to be submitted to accompany a Development Application. The written objection is required to state that compliance with a specific development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

Clause 7 of SEPP No. 1 allows the Consent Authority to grant consent to a Development Application notwithstanding the non-compliance with the development standard referred to in Clause 6 of SEPP No. 1. It is incumbent upon the consent authority to seek the concurrence of the Director General of DoP, however, in most cases concurrence is delegated to consent authorities to determine the SEPP No. 1 Objection.

Clause 8 of SEPP No. 1 identifies the following matters which are required to be taken into consideration in deciding whether concurrence should be granted or not:-

- “8. (a) *Whether non-compliance with the Development standard raises any matter of significance for State or Regional Environmental Planning, and*
- (b) *The public benefit of maintaining the Planning controls adopted by the Environmental Planning Instrument”.*

Matters to be considered in the use of SEPP No. 1 are also detailed in the DoP Circular No. B1 which states: -

“If the development is not only consistent with the underlying purpose of the Standard, but also with the broader Planning Objectives of the locality, strict compliance with the Standard would be unnecessary and unreasonable”.

In *Winten Property v North Sydney* (2001) NSWLEC 46 Justice Lloyd sets out a five part test for considering SEPP No. 1 Objections.

The test in *Winten Property v North Sydney* sets the following criteria:-

- “1. *Is the planning control in question a development standard?*
2. *What is the underlying object or purpose of the standard?*
3. *Is compliance with the development standard consistent with the aims of the policy and in particular does compliance with the Development standard tend to hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the EP&A Act?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
5. *Is the objection well founded?”*

Justice Lloyd then goes on to provide further clarification regarding item 4 above by stating that the consent authority needs to consider whether a development which complies with the development standard is unreasonable or unnecessary in the circumstances.

The assessment of SEPP No. 1 Objections was given significant consideration by Chief Judge Preston in *Wehbe v Pittwater Council* (2007) NSWLEC 827 wherein the Chief Judge provided clarification of the criteria to be used when assessing a SEPP No. 1 Objection. The criteria set by Preston CJ are as follows:-

- "1. The Court must be satisfied that "the objection is well founded" (Clause 7 of SEPP No. 1). The objection is required to be in writing and be an objection that "compliance with that development standard is unreasonable or unnecessary in the circumstances of the case", and specify "the grounds of that objection" (Clause 6 of SEPP No. 1).
2. The Court must be of the opinion that "granting of consent to that Development Application is consistent with the Aims of this policy as set out in Clause 3" (Clause 7 of SEPP No. 1). Further clarification is provided by the statement that the Aims and Objects of SEPP No. 1 set out in Clause 3 are to provide "flexibility in the application of Planning controls operating by virtue 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 Act".
3. The Court must be satisfied that a consideration of the matters in Clause 8 (a) and (b) of SEPP No. 1 justifies the upholding of the SEPP No. 1 Objection. The matters in Clause 8 (a) and (b) are:-
 8. (a) Whether non-compliance with the development standard raises any matter of significance for State or Regional Environmental Planning, and
 - (b) The public benefit of maintaining the planning controls adopted by the environmental planning instrument".

Preston CJ set the following five criteria to establish the way in which an objection under SEPP No. 1 may be well founded and be consistent with the Aims set out in Clause 3 of the Policy.

These criteria are as follows:-

- "1. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the Development standard are achieved notwithstanding non-compliance with the standard.
2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the Standard is unnecessary and unreasonable.
5. Establish that the zoning of the particular land was unreasonable or inappropriate so that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary".

Preston CJ goes on to caution that the dispensing power under SEPP No. 1 is also not a general planning power to be used as an alternative to the plan making power under Part 3 of the Act to change existing planning provisions. Therefore, an objection cannot be used as a means to alter or change general planning provisions throughout a Local Government Area or to avoid the need for a rezoning.

The SEPP 1 objection submitted by the Applicant is considered to be not well founded in that the objection does not satisfy the test in Winten Property.

The SEPP 1 objection does not account for the potential future erection of a dwelling house on proposed Lot 542 and fails to address the underlying purpose of the standard contained within Clause 14 of WLEP.

The relationship to the regional and local context and setting.

The region west of the freeway to the Yarramalong Village is dominated topographically by the Wyong Creek and valley floor with hills on either side. Historically the valley has been used for rural activities such as cattle grazing and citrus growing and, more recently, turf farming has become the more dominant rural industry.

In circumstances where subdivisions or boundary adjustments involve vacant land, it is regarded as good planning practice for an Applicant to demonstrate that the vacant parcel can sustain a form of residential development, as defined under the WLEP. In this regard, a dwelling is considered an appropriate form of residential development permissible with consent for proposed Lot 542. The Applicant has identified a building envelope on proposed Lot 542. For reasons stated elsewhere in this report, the future erection of a dwelling house on the vacant Lot is not supported and is considered to be inconsistent with the objectives of the WLEP and the 1(a) Rural Zone.

The access, transport and traffic management measures.

The current access provisions to the existing dwelling will not alter.

The location of a driveway to the indicative envelope for proposed Lot 542 will not provide safe vehicular ingress and egress during periods of flooding (see more detailed comments on flooding later in the report).

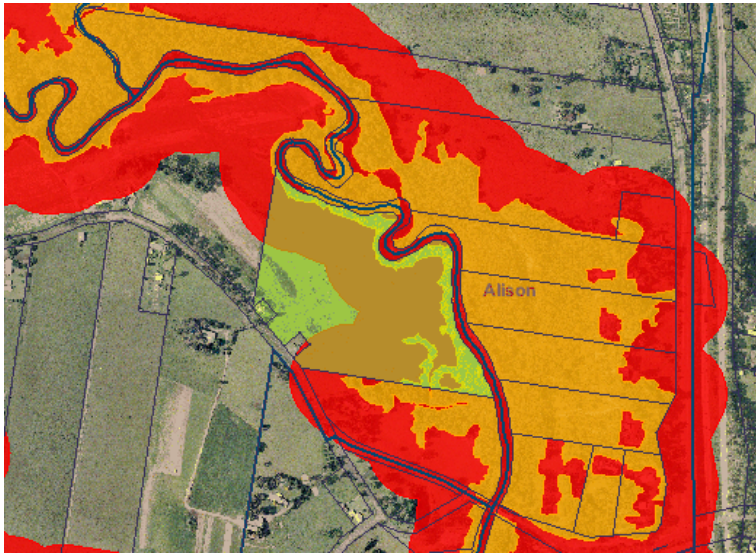
The impact on utilities supply.

The site is situated in a non-sewered area and as such, on-site waste disposal is required to accommodate domestic waste. The applicant indicates that a mounded transpiration system located adjacent to the indicative future dwelling site on proposed Lot 542 would be appropriate.

The waste disposal envelope is situated approximately 335 metres from the nearest watercourse on the highest part of the land. This is considered to be the most appropriate option for waste disposal in a floodplain.

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

Bush Fire



Aerial view of subject site and surroundings with extent of bush fire risk superimposed on image

The site is affected by the risk of fire mainly along the vegetated areas adjacent to the creek. The location of the indicative building envelope on proposed Lot 542 is toward the outer edge of the buffer to the fire risk. The bush fire assessment suggests a low risk of fire and concludes the available cleared areas surrounding the site as adequate for asset protection.

The existing dwelling is not subject to the risk of fire.

Flooding

While the boundary adjustment is of minimal concern the provision of the proposed building envelope and effluent disposal area is not supported. Both areas are in a high hazard flood zone i.e. flood waters greater than 0.8m in depth, with an average velocity up to 0.46m/s and a maximum velocity up to 1.1m/s. There is no low hazard escape route from the site should future residents become trapped. Should the residents be able to relocate to Yarramalong Road, this road will become blocked and inundated as will Old Maitland Rd again leaving residents trapped. In such circumstances the Possible Maximum Flood (PMF) level should be considered. The FloodPlain Development Manual does not support the creation of islands especially those that are inundated in a PMF. The risk to life in the above situation is high with potential mitigation measures to be introduced negligible and therefore the proposed development should not be supported.

It should also be noted that the boundary adjustment will allow the running of various rural pursuits on both properties. Council has already been under pressure to allow flood mounds for livestock on properties that are fully flood affected. This would apply to both resultant properties with the development approval.

The proposed effluent disposal area appears to rely on filling to obtain the desired results for effluent disposal. Council does not support filling in the floodplain area and therefore the effluent disposal method will need to be redesigned. The effluent disposal area is also in the water catchment area for the Shire.

The maximum ground level at the site is identified as 8.33m AHD at the boundary of the site with Yarramalong Rd. The flood level at the site has been identified in 2 reports – one indicates a 1% AEP flood level of 9.59m AHD and the other 9.38m AHD. Velocity at the site in the 2 reports indicate a velocity of 0.46m/s and 0.3m/s with a maximum velocity possible at the site of 1.1m/s. Council has based its assessment on the worst scenario from the reports but both reports indicate that the site is fully inundated by high hazard flooding. The PMF level for the site is identified as 10.58m AHD. An historical flood level has been identified at the site with a level of 8.70m AHD in 1964.

Council's Flood Policy P5 indicates that the type of development proposed may be permitted subject to meeting all State and Local legislative requirements, policies and guidelines, etc. The policy also indicates that if a low hazard flood evacuation route is not available, the development will be subject to additional investigation regarding the suitability of the proposed development. It is considered that the proposed development does not meet the requirements of the NSW Floodplain Development Manual and is considered to be a high risk development and is therefore should not be supported.

In summary,

- The proposed building envelope is in an area of high hazard flooding with no low hazard escape point. The NSW Floodplain Development Manual does not support the creation of islands. Any dwelling built in the proposed building envelope would become an island.
- The PMF is to be considered where a low hazard escape route is not available. The PMF level of 10.58m AHD would indicate a flood height over the property of 2.25m. This is considered to be extreme and a risk to life. The flood depth in the 1% flood of 1.26m including a velocity of 0.46m/s is also considered to be unacceptable and a risk to life.
- The proposed effluent disposal site indicates a need to place fill within the floodplain. This is not supported therefore an alternative effluent disposal system will be required. It should be noted that the proposed development is within the water catchment area for Wyong Shire.

Council's flood policy suggests that where a dwelling in a rural area cannot demonstrate safe evacuation then the title of the land is to carry a notation identifying that evacuation cannot be achieved.

Council's flood policy states:

"In a merit assessment in high hazard areas, the developer or property owner will not be required to satisfactorily demonstrate that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure the timely, orderly and safe evacuation of people from the area, but any approval may be subject to conditions in respect of such matters.

However any proposal for a development on flood prone land that cannot provide a flood free evacuation procedure will be subject to additional investigation by staff in conjunction with the applicant and/or the applicant's consultants. The fact that the property does not provide flood free evacuation will be noted on a Certificate issued in respect of the property under Section 149 of the Environmental Planning and Assessment Act 1979."

While the application is not for the erection of a dwelling-house, the same assessment principles apply. The proposal provides a plan identifying a building envelope on proposed Lot 542. It is a reasonable assumption to anticipate a proposal to construct a dwelling house on proposed Lot 542 in the future.

Any impact on flora and fauna

The site contains a portion of Endangered Ecological Communities (EEC - River Flat Eucalyptus) along the banks of Wyong Creek. The site of the indicative dwelling on proposed Lot 542 is at least 250 metres west of the vegetation communities.

Council's Ecologist reviewed the application and concludes that the boundary adjustment will not have a detrimental impact on the EEC.

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.

Any submission from public authorities.

NSW Rural Fire Service (RFS)

The proposed residential subdivision was referred to the NSW Rural Fire Service (RFS) for their concurrence under Section 91 of the EP&A Act 1979.

The RFS have issued their General Terms of Approval subject to conditions of consent relating to asset protection zones, design and construction.

CONCLUSION

It should be noted that Council delegation extends to assuming the concurrence of the DoP for the use of SEPP 1 in this instance. The delegation issued under Circular B1 notes that Council can assume concurrence for a boundary adjustment between two existing lots where both lots are presently below the minimum subdivision standards subject to no additional allotments being created, and that the agricultural use of the land is not jeopardised and no additional dwelling entitlements are created.

Accordingly, as the application satisfies each of the above criteria Council has the delegation to determine the application. However, the DoP has notified Council in Circular No PS 08-014 that where variations in excess of 10% to a LEP provision occur, the application must be determined at a full Council meeting rather than under delegation.

The SEPP 1 objection is considered to be not well founded and fails to satisfy the test in *Winten Property v North Sydney Council*.

The proposed building envelope is located in an area of high hazard flooding with no low hazard escape route. The NSW Floodplain Development Manual does not support the creation of "islands" for future dwelling-houses in flood affected areas.

The boundary adjustment is considered to be inconsistent with the aims and objectives of the WLEP and the objectives of the 1(a) Rural Zone and is therefore recommended for refusal.

ATTACHMENTS

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|----------|---|-----------|-----------|
| 1 | Images of the subject allotments (distributed previously) | | D02212855 |
| 2 | Applicant's SEPP 1 Objection (distributed previously) | | D02283510 |
| 3 | Development Plans (A3 Black and White) (distributed previously) | Enclosure | D02267897 |