

5 June 2013

Mr Grant Nelson
Senior Strategic Planner
Nambucca Shire Council
PO Box 117
MACKSVILLE NSW 2447

Dear Grant,

AMENDMENT NO. 14
24 CORONATION DRIVE, CONGARINNI

We refer to your correspondence dated 8 May 2013 requesting further information relating to the Planning Proposal for Amendment No. 14 to the Nambucca Shire Local Environmental Plan 2010 (the LEP).

The matters raised are addressed, in turn, below.

State Environmental Planning Policy No. 71 – Coastal Protection

Clause 8 of State Environmental Planning Policy No. 71 (SEPP 71) is relevant to this Planning Proposal, by virtue of Clause 7(a). The clause and the proposal's response to this is provided below.

(a) the aims of this Policy set out in clause 2

The aims of SEPP 71 are:

- (a) *to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*

The proposal will allow for the management of the natural attributes of the site through a design outcome that deals with the environment constraints thereon and provides a development footprint outside of these areas. In addition, the proposal will assist the economic attributes of the New South Wales coast by providing employment opportunities during construction and operation of the site, once completed.

The increased number of persons living on the site is also anticipated to have a positive benefit to existing businesses, such as shops, medical facilities, professional services and health care. We are advised that there is a significant shortage of retirement accommodation within this geographic region and therefore foresee that this proposal will assist to attend to that shortfall, with positive benefits accruing to the economic position of the local government area.

- (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*

The proposal will not impede public access to, nor along, the coastal foreshore.

- (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*

The location of the site is such that it would not impede any future opportunities for access to the coastal foreshore. The site, which is not directly located along the coastline, is opposite Taylors Arm Waterway. Given that it is on the opposing side of the waterway, it is not considered that the proposal would impede access. In addition, that section of the site is floodprone, and therefore constrained in terms of development purposes. As a result, no development that would impede an opportunity for public access to the waterway area will result from this proposal.

- (d) *to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*

At this stage, there are no known items on the site. Should investigations, as part of the planning proposal be required, then the necessary studies would be carried out accordingly. This is anticipated, however, to be unlikely.

- (e) *to ensure that the visual amenity of the coast is protected, and*

Given the size of the site, on balance with the constraints thereon, it is considered that the proposal will impede the visual amenity of the coast. Albeit that part of the site is elevated and the most likely location in which built form will be located, it is considered that a sympathetic design relating to the

topographical and environmental constraints may be achieved that provides a positive response to the visual context of the land and broader surrounds. This will be refined at the planning proposal stage, through discussions with the Council.

(f) *to protect and preserve beach environments and beach amenity, and*

The proposal is not considered to have any impact on beach environments or amenity, due to its location away from these and therefore not relevant to this proposal.

(g) *to protect and preserve native coastal vegetation, and*

As indicated in the planning proposal, the site maintains a number of environmental constraints relating to vegetation. These areas will not be affected as part of the proposal. The initial feasibility testing, based on previous reports, indicates that sufficient land area is available to enable a profitable development scheme on the land available. Therefore, the environmental sensitivities associated with the site can be maintained and the development still viable.

(h) *to protect and preserve the marine environment of New South Wales, and*

The proposal is not considered to compromise the marine environment and adequate water quality measures will be put in place to ensure that this is protected accordingly.

(i) *to protect and preserve rock platforms, and*

There are no known rock platforms on the site.

(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*

The principles of environmentally sustainable development will form an integral part of the proposal and refined at the next stage of the planning proposal.

(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

The proposal will be designed of a scale, size and bulk that is commensurate to its location. The site is highly constrained at the lower levels which will require that development take place at the upper levels of the site.

The masterplan provided with the planning proposal demonstrates preliminary locations for built form. These will be refined at the next stage, upon further field investigations being undertaken. Fundamentally, however, the layout of built form on the site will be driven by the natural and scenic elements of the site.

(l) to encourage a strategic approach to coastal management.

It is not considered that the proposal will result in any compromise with response to a strategic approach to coastal management.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

The site does not maintain direct access to the coastal foreshore, being located on the opposing side of the watercourse to Coronation Drive.

It is anticipated as part of the planning proposal process that works will be required, which may extend to pedestrian works along Coronation Drive which will assist in this regard.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

As stated above, the site does not maintain direct access to the coastal foreshore, being located on the opposing side of the watercourse to Coronation Drive.

It is anticipated as part of the planning proposal process that works will be required, which may extend to pedestrian works (including for less mobile persons) along Coronation Drive which assist in this regard.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

It is considered that the type and location of development, for the intended purpose, is

suitable in this location.

While constrained, the size of the site is such that there is sufficient land available for the intended purpose and will not adversely impact on the environmental amenity, nor attributes, of the site.

The design, which is yet to be formalized, but considered as a masterplan concept at this stage, will be appropriate to the surrounding area.

While the proposal will result in a greater density than that which is permitted under the zoning instruments, it is considered that the benefits of servicing a significant shortage of this type of accommodation will outweigh concerns in this respect.

It is, however, acknowledged that the future design will need to be respectful of its context, in terms of density, location of services and materials to ensure compatibility.

- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

The proposal will not result in any such adverse impacts.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

It is considered that, with an appropriate design outcome, the proposal will provide a complimentary opportunity to the coastline. The preservation of the natural environment on the site will further assist the perception of natural context and amenity, with the built elements responsive to these.

It is not considered that the proposal, with a sensitive design outcome, will compromise the scenic quality of the coast.

- (g) measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats,

There are certain species which are known to be protected on the site, as referenced in the previous environmental studies undertaken.

Such studies will be updated as part of this planning proposal and managed accordingly in terms of further design and layout of the site.

- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*

Any such requirements established as part of further reporting will be adhered to. Further investigations will be undertaken subject to receipt of the Director General's Requirements.

- (i) existing wildlife corridors and the impact of development on these corridors,*

Again, the studies undertaken to date reflect the need for some level of environmental protection in this regard. These studies will be updated as part of the next stage of the planning proposal and incorporated into the design and layout of the site, as necessary.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

It is not considered that the proposal will have any adverse impact in this regard.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,*

It is not considered, by virtue of the location of land, nor nature of this proposal, that land use conflict would result.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

The site is not known, at this stage, to contain any relevance to the Aboriginal community. The Director General's Requirements are anticipated to require due consideration in this respect.

- (m) likely impacts of development on the water quality of coastal waterbodies,*

It is considered that, subject to detailed design, appropriate water quality measures will be incorporated into the proposal and no adverse implications will accrue to coastal waterbodies. Detailed design has not been undertaken at this stage, but would be undertaken as part of the next stage of the planning proposal.

- (n) the conservation and preservation of items of heritage, archaeological or historic significance,*

There are no known items requiring conservation or preservation on the site at this time. It is anticipated, however, that this will be a required consideration included in the Director General's Requirements if there is any potential for concern in this regard. However, there are no heritage registers at this time suggesting that the site has any benefit to historic or archaeological significance at this time.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

This is not relevant to this planning proposal.

It is therefore considered that the proposal will accord with the requirements of State Environmental Planning Policy No. 71 and those matters requiring further clarification will be done so during the next stage of the gateway process.

Section 117 Ministerial Direction No. 22 – Rural Zones

Clause (2) of the Direction states that:

Draft LEPs shall not rezone rural land for urban purposes, including residential, business or industrial purposes.

However, Clause 4 permits that a draft LEP may be inconsistent with the direction, if the proposal can be justified having regard to Section 5 of the Environmental Planning & Assessment Act 1979. Section 5 states as follows:

The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) the protection, provision and co-ordination of communication and utility services,*
- (iv) the provision of land for public purposes,*
- (v) the provision and co-ordination of community services and facilities, and*
- (vi) the protection of the environment, including the protection and conservation of*

- native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) ecologically sustainable development, and*
- (viii) the provision and maintenance of affordable housing, and*
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

It is considered that the proposal will allow for the preservation and protection of natural resources on the site, while providing a land use to which there is a significant shortage, for aged housing. It is considered that this outcome will have significant social benefits in a community where there is limited resources for an aged population to live, and depend on one another, in a consolidated, community environment in their later years. The proposal will result in the generation of economic growth and activity during both construction and operation. Aside from facilities management, it is anticipated that the proposal would provide a nursing home which will also generate on-going employment attached to the site.

The future use of the site would occur in an orderly and economic fashion. However, if left in its current form, will serve no meaningful purpose at an economic level.

The required services will be implemented as part of the proposal and will no doubt provide some level of assistance to service nearby land uses. It is also anticipated that a Voluntary Planning Agreement will be required to facilitate broader network upgrades such as pedestrian pathways etc in the immediate vicinity.

The proposal will not directly provide land for public purposes, but will provide public spaces in association with the development that will service the community residing therein.

The intended design and layout of the site will be such that adequate regard is had for the natural constraints and these will be protected accordingly with built form away from these areas.

The provisions of ecologically sustainable development will be integral to the proposal and refined in terms of the relevant studies and future management plans for the site.

As to housing affordability, it is considered that the proposed use of the land will improve opportunities for the ageing population to reside in the community at an affordable level. The price point will need to be commensurate with those selling existing holdings and looking to down size in the later stages of life, without the responsibilities to maintenance that often impede this later stage of the life cycle.

It is therefore considered that the proposal will provide a responsible approach to the provision of housing within the community, of which there is an identified shortfall.

The planning proposal will require input and involvement from various state and local agencies and the proponent is seeking to work closely with these at the early stages.

Finally, the public consultation requirements will be upheld as part of the process and the proponent is again willing to administer this as required.

In addition to the above, the proponent is required to consider whether:

- a) the land has been identified in a strategy prepared by the council and approved by the Director-General; or*

The land was identified for the future purpose in the Structure Plan prepared by the Council in 2008.

It is acknowledged that this was not translated into the Rural Residential Strategy which was adopted by the Council in November 2008 and by the Minister in March 2009.

- b) the rezoning is justified by an environmental study; or*

The purpose of the gateway system is for the Department to provide an early indication of support for a planning proposal. Upon doing so, the opportunity would then be available to undertake more detailed studies. The environmental studies undertaken to date reflect that, while there are evident environmental constraints, there is also sufficient land to undertake the intended purpose.

It is therefore considered, on balance, that a suitable outcome will be achieved on the site.

- c) *the rezoning is in accordance with the relevant Regional Strategy prepared by the Department; or*

The proposal is generally consistent with the Mid North Coast Regional Strategy, aside from the issue of regionally significant farmland, which is addressed below.

- d) *the rezoning is, in the opinion of the Director-General, of a minor significance.*

Not applicable.

Having regard to the above, it is considered that the proposal may be achieved on the site as it accords with Section 5 of the Act and, preliminary environmental studies indicate that there is the opportunity to utilise the land, without impeding its environmental attributes.

As such, the application should be permitted to proceed having regard to this Ministerial Direction

Local Planning Direction 1.2 – Rural Zones

The objective of this direction is to protect the agricultural production value of land.

Clause (4) states that a draft LEP cannot *contain provisions that will increase the permissible density of land within a rural zone.*

There are four grounds, however, where a draft LEP may be inconsistent. In this particular case, it is considered that an environmental study (as part of the planning proposal process), pursuant to Section 57 of the Act could be pursued. As indicated previously, the subject land is identified as having a number of environmental constraints. It has, however, also been determined that there is sufficient land holding available to develop the site, without impinging on those areas of high net worth, from an environmental perspective.

In addition, the Council has raised the matter of the Mid-North Coast Regional Strategy, and identified the land as regionally significant farmland under that study. We are instructed that the area of the site affected by this classification has not been used for any significant farming purpose. In addition, our inspections of the immediate locality did not identify that the adjoining parcels of land are being used for regionally significant farming purposes.

The proponent is well aware of the potential for conflict between land uses and would seek to ensure that this matter is dealt to through further investigation and consultation, so as not to

create difficulties for the Council in the future between adjoining parcels of land, and perceived ideas of what can and can't take place, particularly as it relates to agricultural production.

It is acknowledged that, at the next stage of the planning proposal process, a suitable study in this regard would be required, to deal with the classification of the land and suitably attest to the site not having such purpose.

However, the information to date is such that the land does not pose this benefit to the agricultural community.

It is therefore considered that despite identification of the land, for such potential purpose, through an adequate consultation strategy at the next stage of the planning proposal process, pursuant to Section 57 of the Act, inconsistency with this direction would be appropriate. In the event that this is not the case, then the planning proposal would not be permitted to proceed.

Local Planning Direction 5.1 – Implementation of Regional Strategies

This Direction applies to land to which the Mid-North Coast Regional Strategy applies.

The local government area of Macksville is within the sub-region of Coffs Coast. In terms of settlement and housing, the strategy identifies a significant shortage of housing for an ageing population. Research provided by Nambucca Shire Council evidences that there is very limited options arising and/or sites being developed for such purpose. There is, however, a shortage identified, within the next five years, of some four thousand people who are likely to require such accommodation. Clearly, the demand must be met and is not being dealt to.

In addition to this consideration, the town of Macksville is adequately serviced for the intended purpose of the land. While not relevant at this time, the state policy for aged housing provides a number of criteria for servicing, which relate to daily conveniences, medical facilities and transport options. The sustained economy of Macksville therefore provides a significant opportunity for aged housing to be provided and serviced as required for an ageing population. In addition, the site's proximity to major centres, such as Kempsey and Coffs Harbour, enable a good cross-section of overall needs to be serviced.

The opportunity for development is available, due to the extent of existing services available on the site. It is acknowledged that any remaining services would be provided for through the developer.

Areas of conservation value have been identified on the site and will be retained, as part of the master plan. Additional areas may be determined, as part of further studies. Should this occur, these will be separated and protected accordingly. This will therefore ensure that the environmental and natural resources obligations under the Strategy are upheld.

In terms of rural lands and the use thereof for the intended purpose, the identification of part of this site as regionally significant farmland, has been discussed above. It is considered that the proposal is appropriate, despite the classification as the land is not considered suitable, nor of high value for its purpose.

It is also relevant to note that the current masterplan for the site identifies the use of land outside of that part of the site that maintains this significance. It is acknowledged that farming practice and the intended use may not suitably integrate on the site, but the sense of openness akin to the presentation of farmland (and therefore intrinsic to character) would be appropriate.

It is therefore not considered that the proposal is inappropriate having regard to the Rural Lands objectives of the Strategy.

Having regard to the above, it is considered that the any future draft LEP would achieve the overall intent of the regional strategy and would not undermine the obligations thereof.

State Environmental Planning Policy (Rural Lands) 2008

The Aim of this SEPP is to assist in the proper management, development and protection of rural lands, with the purpose of protecting the social, economic and environmental welfare of the state of NSW.

Relevant to this proposal is Clause 7, which provides the relevant Rural Planning Principles:

- the subject lands do not have a productive agricultural purpose. Therefore, they have no benefit in terms of sustainable economic activity. The land does not have a quality akin to agricultural production, despite the findings of the Mid-North Coast Farmland Mapping Project;
- having regard to the lack of benefits associated with the agricultural productivity of the land, there are no social or economic benefits by not allow this proposal to proceed;

- it is considered that, given the environmental constraints of the land, the social, economic and environmental benefits that will be attributed to the proposed development, on balance, will accord with the intentions of this study, so as not to result in land use conflict;
- the indicative master plan prepared to date shows that the natural resources of the land will be protected, with development taking place outside of, and being sympathetic to, the natural qualities of the land;
- the proposal will provide settlement opportunities that will assist the existing community, as well as a wider catchment. This will occur through providing alternative housing opportunities for an aging population, that will create a social community for those of similar age and circumstance. This will also have a positive effect during both construction and operation from an economic perspective, whilst also contributing to the economic climate of Macksville directly;
- utilising existing infrastructure and extending this, as required, to service the development;
- ensuring consistency with the applicable regional strategy.

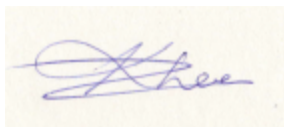
The significance of the land, having regard to Part 4 will be dealt with at the next stage of the planning proposal process. In the event that the advice received to date, which is that the land does not maintain significance for farmland production purposes, is incorrect, the planning proposal would not proceed.

Having regard for the above, it is considered that the proposal is consistent with the requirements of this SEPP.

On the basis of the above information, we would therefore seek that the application proceed for a Gateway Determination by the Department of Planning.

Should you have any further queries, please do not hesitate to contact the undersigned.

Yours sincerely,



Kristy Lee
Director