

File No: 0003/2005R
Your ref: G00/00040

Enquiries: Aurelie Blanchet

10 May 2010

Director-General
Department of Infrastructure, Planning and Natural Resources
464 King Street
NEWCASTLE NSW 2300

Dear Sir/Madam

**RE: GREATER TAREE LOCAL ENVIRONMENTAL PLAN
(DRAFT AMENDMENT NO 55)
Lot 32 in DP 516279 and Lot 52 in DP 263383, Glacken Street Harrington**

I am writing pursuant to section 68 of the Environmental Planning and Assessment Act, 1979 in regard to a proposed Draft Local Environmental Plan No 55 (LEP 55) applying to the City of Greater Taree. Council sought Parliamentary Counsel's opinion on 3 August 2004 but was advised on 15 December 2004 that Parliamentary Counsel is not prepared to advise.

The following documentation is attached:

- The supporting information (Section 68(4)) regarding this amendment,
- A copy of the Section 65 Certificate issues in respect of the Plan,
- The town planner's report to Council and Council's resolution,
- Copies of the 17 submissions received following exhibition of the Draft Plan from 14 January to 14 February 2000 and copies of 4 submissions received following exhibition of the Draft Plan from 24 March and 26 April 2000, 30 submissions 26 July and 12 September 2003
- Four copies of the original instrument, and
- The original map, named, numbered, signed and dated plus three copies.

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Please contact me on aurelie.blanchet@gtcc.nsw.gov.au if you would like to receive an electronic version of the supporting information or in regard to any additional information that may be missed in the statement.

Should you have any queries in regard to this matter, please contact me on (02) 6592 5248.

Yours faithfully

Aurelie Blanchet
Strategic Planner
Environmental & Strategic Planning

SECTION 68(4) – SUPPORTING INFORMATION

Following public exhibition of the Greater Taree Local Environmental Plan 1995 (Draft Amendment No LEP 55) Council has resolved to request the Minister to make the Plan.

Environmental Report and Flood Impact Assessment were prepared to support the rezoning for the subject land. These documents were previously provided to DIPNR and other public authorities. More recently, the proponent provided a additional information to clarify unresolved before issues. These were elaborated in Council's Report.

A certificate has been issued under Section 65 allowing exhibition of the Draft LEP.

Parliamentary Counsel has provided an opinion that the plan may legally be made, dated .xx xx 2004.

The supporting information in respect of the Plan as specified in Section 68(4) of the Act is set out as follows:

(a) Details of submissions

The Greater Taree Local Environmental Plan 1995 (Draft Amendment No 55) was exhibited for public comment between 26 July and 12 September 2003. The Draft LEP was forwarded to the relevant public authorities, and all affected landowners were notified.

Council received thirty (30) written submissions in respect of the proposed amendment; being eighteen (18) submissions from the general public and the remaining twelve (12) were from public authorities.

There are four concerns raised in these submissions. These concerns are as follows:

1. Flooding

- Land subject to flooding is not warrant residential development
- Impact of flooding uncertain – any fill will compound current problems
- Current water flow from lagoon is limited by capacity of culvert under Beach Street
- Fill will increase flooding effects in surrounding areas
- No flood modeling has been completed
- Proposal not consistent with Draft Local Government Floodplain Management Policy
- Proposal not consistent with aims of GTCC Interim Flood Management Policy
- Whether Council is satisfied with development of flood prone land

Comment

The proponent has provided additional information to clarify a number of issues in relation to flooding concerns. Council's Investigation and design Section have reviewed the Flood Assessment Report and recently provided additional information and advised that the flood levels affecting the subject land will experience a reduction of between 270 and 290 mm within the 1 in 100 year Flood Event (1% AEP) resulting in cumulative effect of barrier to flood flows constructed between the Manning River and the land north of Harrington Road and west of Wards Creek, created by the construction features for Harrington Waters Estate.

The issue of possible disturbance to the Acid Sulfate Soils is not seen as a possibility since this land has already been filled and will require additional filling to meet the required Council's flood free level. However, the details of the required level of landfill for the subject site would be determined and assessed at the Development application stage.

Council has acknowledged that some areas within the Harrington Development Strategy and anticipated residential areas will be required to be filled in to accommodate population and housing growth in this community. Filling land is an established practice at Harrington and recognized by Council in achieving flood-free residential land in this low-lying part of the Local Government area.

The examinations of studies provided reveal that the infill of the subject site would have minimal impact of possible flood level on surrounding development. The level of flood susceptibility for the Jabiru Drive crossing of the drain would be the same as for existing section of Jabiru Drive.

2. Environmental impacts

- Damaging to the environment
- Development will result in decreased water quality, disturbance of acid sulfate soils, impact on flora and fauna
- Development will result in loss trees from riverbank
- Increased bushfire hazard especially for development close to the National Park
- Acid sulfate soils problems likely
- Adverse impacts on marine life, and flora and fauna will result
- Adverse impacts on existing water quality will result
- Drain over the subject land considered to be a natural watercourse

Comment

The important natural habitat areas of site are proposed to be zoned 7(a) Environmental Protection Habitat. Also a strip of land to be zoned 6(a) Open space Recreation between the proposed 2(a) Residential and 7(a) Environmental Protection Habitat zones is proposed, wide enough to constitute a buffer for habitats and fire protection.

There are no loss of trees will occur, apart ones along the drainage reservation, which will be re-located.

The watercourse which traversing the drainage reservation is an artificial drainage channel and some disturbance to it could be expected if the land within the vicinity is to be filled in.

A number of environmental issues will be controlled at the Development Application stage, particularly issues such as the required level of fill and development (subdivision) proposal.

3. Wetlands and coastal protection

- Disagreement with “wetlands” being able to built on
- The wetlands should remain as ‘no development’ zone
- Reference to SEPP 71, and the proposed development be referred to the DIPNR
- Lack of adequate infrastructure
- Increasing population of Harrington is creating too many problems
- Inability of roads and sewer to handle future development

Comment

The wetlands classification only applies to the north-west part of the site. This part is proposed to be zoned 7(a) Environmental Protection Habitat. Also 7(a) proposed zone extend further for about 20 to 30 metres than the area affected by SEPP 14.

Some areas within the Harrington Development Strategy that could be future residential areas will be required to be filled to accommodate population and housing growth in this community. Filling of land is well-established practice at Harrington. This approach has been recognised by Council in the past in achieving flood-free residential land in this low-lying part of the Greater Tarre Council area.

The subject land is included in Council's Development Strategy and the landowner has an understandable expectation that part of the land can be developed. However, a Master Plan in accordance with SEPP 71 is required to support future Development Application.

4. Social consideration

- Proceeding with rezoning that would be contrary to the views of many neighbours
- Real estate agent advised before that the subject land would not be developed.

Comment

The subject land is within the Harrington Development Strategy, which is intended to accommodate incremental growth proposed in the infill areas. Also, the required social and technical infrastructure to support planned growth for the area are included in the Strategy.

The prospective purchases within the area should have considered the Harrington Development Strategy in making their land purchase decision rather than rely on real estate agent.

VIEWS OF PUBLIC AUTHORITIES

There were twelve (12) submissions from public authorities. Public authorities comments on the draft plan are as follows:

NSW Fisheries

They raised objection to the DCP, which proposes the filling or modification of Wards Creek (i.e. the drainage reservation which passes through the site).

Comment. Council has not adopted the DCP and there is no proposal to fill in the Creek itself. The drainage reserve starts to the north of the Wards Creek, which is an artificial lagoon. However, permits from the NSW Fisheries could be required to remove some mangroves either from an artificial or natural watercourse.

Former Environmental Protection Authority

The authority has made its comments and suggestions, which relate more to the future site development. These are as follows:

- Water cycle management and water sensitive urban design principles should be part of the Development Control Plan and need to be included in the assessment of any future development and subdivision application.
- Concern as to the close proximity between the proposed residential development and the adjoining SEPP 14 wetlands of Crowdy Bay National Park west of the proposal has led to the suggestion that detailed investigation measures to prevent development impacting on the SEPP 14 wetlands will be needed.
- That the issues of sustainability and accessibility be incorporated into the future Development Application assessment.

Comment. These issues are able to be addressed through the development application process.

Department of Lands

The Department has advised that:

- To consider a strategic approach to the drainage reserve, which enters Wards Creek and starts north of High Street as they are currently considering a number of applications to change part of the drainage reserve.
- The adjoining Crown land cannot be used for bushfire hazard protection areas to protect residential development on private property.

Comment. The issue of the drainage reserve would be resolved through the process of preparation of a Master Plan required under SEPP 71, and as elaborated earlier during the process of the Development Application assessment.

Former National Parks and Wildlife Services

The specific points raised in their submission are:

- The responsibilities relate to threatened fauna are under the following State legislations:
 - o Threatened Species Conservation Act 1995,
 - o Environmental Planning and Assessment Act, 1979 (SEPP 44 – Koala Habitat),
 - o Vegetation and Native Vegetation Act , 1997, and
 - o Environmental Biodiversity Legislation.
- Mitigation measures proposed by the report prepared by Daintry Gerrand will need to be implemented.
- To ensure archaeological assessment is required as part of the detailed subdivision design and application process.
- Direct and indirect impacts on National Parks Services estates are adequately considered as part of the assessment process.

Comment. The Local environmental study prepared for the area revealed that there is no impact on Crowdy National Park. The proposed 7(a) Environmental Protection Habitat zone which covers part of the site, could be well incorporated into the State Reserve. The remnant mature vegetation will become part of continuous native vegetation adjoining the site to the north-west.

The Purfleet-Taree Local Aboriginal Land Council advised that it has not objection to the rezoning subject to surface investigation. However, the previous sand mining over the part of the site proposed for 2(a) Residential zone has left a highly modified and disturbed surface. Also additional investigations for archaeological artifacts will be imposed at the Development Application stage.

Roads and Traffic Authority

The Authority has advised that it has no objection to the proposed rezoning, and suggested that a road system may incorporate access from High Street to ensure that a pedestrian/cycleway from High and Glacken Streets be incorporated into DCP.

Comment. High Street is not constructed road to the north-east of the subject land and although this appears desirable on paper, the utilisation of High Street as part of the perimeter bushfire protection/access road linking through to perimeter Harrington Development Strategy infill area would be a better outcome and serve the purposes recommended by the RTA.

MidCoast Water

The MidCoast Water confirmed adequate capacity to cater for likely residential development of the site.

Comment. Should future residential development of the land occur, there is adequate capacity at Harrington Sewerage Treatment plant for such development as MidCoast Water has confirmed that.

Department of Infrastructure, Planning and Natural Resources

The Department has provided the following comments:

- The diversion of Wards Creek (drainage reserve) would require a permit under the Rivers and Foreshore Improvement Act, 1948 at the DA stage. However, without pre-empting that position, the Department would not usually support the diversion of rivers as it is inconsistent with State Policies associated with Rivers and Estuaries and State Wetlands legislations.
- If the current location of the Creek is not altered, a vegetation buffer of approximately 20 metres will be required along the foreshore, which then introduces bushfire hazard issues rendering the layout presented in the DCP inappropriate.
- The former National Parks and wildlife services has been identified this site as part of a regional corridor which under the draft Manning Regional Vegetation Management Plan and Lower North Coast Blueprint regard this as of high conservation value to be retained wherever possible.
- The proposed development raises other natural resources issues including acid sulfate soil – urban run-off and resulting water quality issues and loss of habitat for threatened species. Also, the existing drainage regime and water management of the site require further consideration and the extent of the proposed residential zone may not be appropriate.

Comment. A 20 metre wide foreshore public area has been considered and proposed, which impacts on future subdivision layout potential, and the channel will remain unchanged.

Habitat impacts were adequately identified, assessed and suitably proposed as 7(a) Environmental Protection and 6(a) Open Space zones.

The additional documentation provided by the proponent clarified issues of impact on the environment through acid water generation and lack of water management strategy for the site.

Acid Sulfate Soils and water management issues can be addressed at the Construction Certificate stage, although the level of filling and site recontouring will be involved rather than excavation.

Rural Fire Service

The Service raised the following points:

- The fire trail proposed between the wetland and residential development should be replaced with a perimeter road to comply with Planning for Bushfire Protection 2001.
- The proposed residential subdivision could increase the demand for fire fighting resources and the potential for upgrading facilities may be addressed in the Section 94 Contribution Plan.

- Amendments to Clause 49 of Greater Taree LEP 1995 to make it consistent with Planning for Bushfire Protection 2001 and have enclosed a sample clause.
- Comments to future development of the site:
 - o To provide asset protection zone wholly within the development site, developing inner protection and outer protection areas.
 - o Provide two way access which links the road or fire trail network.
 - o Provide adequate water supply for fire fighting services.
 - o Minimise the perimeter of the area of land interfacing the hazard, which may be developed.

Comment. A number of the suggested issues are already incorporated into Greater Taree LEP 1995, as part of Stage 1 Review. All other issues can be addressed at the Development application stage.

NSW Agriculture and NSW Mineral Resources

Both Departments provided no objection to the proposed rezoning.

Area Health Service – Mid North Coast

Provided several comments in relation to either DCP or future residential development. These are as follows:

- Design of dams, drains and artificial waterways to reduce the potential of these water bodies to become mosquito or sand fly breeding areas.
- Concern of the reduction in air quality arising from the installation of solid fuel heaters.
- Need to provide footpath, cycleways and open space within the area to encourage physical activity.
- Overcome nuisance arising from dust from unmade roads.
- Need for street lighting for safety and security of residents.
- The reticulated sewerage to new lots and rainwater tanks should be screened to prevent mosquitoes breeding with tanks used only for external domestic use.

Comment. If the drainage reserves poses significant mosquito breeding threats, an alteration and reengineering of the drain may be required. This however, as other issues generated by Area Health Service can be controlled at the development application stage.

(b) The report of any public hearing

A public hearing was not required in this case. However a public meeting was convened on 22 December 2003. The issues generated at the meeting were elaborated above among other comments.

(c) The draft local environmental plan and reason for any alterations made to the plan pursuant to subsection (3)

This draft local environmental plan aims to rezone certain land as shown on the attached map from 1(a) Rural General to 2(a) Residential under *Greater Taree Local Environmental Plan 1995*.

(d) A statement:

- i. All provisions of Section 66 and 67 of the Environmental planning and Assessment Act, 1979 have been complied with.
- ii. All State Environmental Planning Policies and Section 117 Directions affecting the subject land, and the Hunter Regional Environmental Plan have been taken into consideration.
- iii. The Plan is consistent with all instruments and directions referred to in subparagraph (ii) above.
- iv. No provision of the Draft Plan or area of subject land is excluded from the application of the Plan pursuant to Section 68(5) of the Act.