

Badgee Deferred Areas, Sussex Inlet

Proposal Title : **Badgee Deferred Areas, Sussex Inlet**

Proposal Summary : **The planning proposal seeks to resolve two deferred areas from the 2013 rezoning of Badgee Lagoon Urban Release Area. The proposal seeks to further investigate the development potential of a northern site for private recreation and a southern site for residential development.**

PP Number : **PP_2014_SHOAL_001_00**

Dop File No : **13/19030**

Proposal Details

Date Planning
Proposal Received : **11-Dec-2013**

LGA covered : **Shoalhaven**

Region : **Southern**

RPA : **Shoalhaven City Council**

State Electorate : **SOUTH COAST**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Precinct**

Location Details

Street : **Sussex Inlet Road**

Suburb : **Sussex Inlet**

City : **Shoalhaven**

Postcode : **2540**

Land Parcel : **part Lot 51 DP1033684**

Street : **Sussex Inlet Road**

Suburb : **Sussex Inlet**

City : **Shoalhaven**

Postcode : **2540**

Land Parcel : **part Lot 125 DP528699**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Badgee Deferred Areas, Sussex Inlet

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	Southern Regional Strategy	Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :	19.10	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	17	No. of Dwellings (where relevant) :	16
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

The planning proposal covers two sites adjoining the Badgee Lagoon Urban Release Area (URA). The Badgee Lagoon URA adjoins the north-west boundary of Sussex Inlet, and includes the Sussex Inlet Golf Course and Badgee Lagoon, (listed under State Environmental Planning Policy 14 - Coastal Wetlands).

Shoalhaven City Council received a planning proposal from the proponent, Lucas Property Group PTY Ltd, on 28th August 2013 to resolve two areas deferred from the initial rezoning of the Badgee Lagoon URA (notified on 3rd May 2013 as Shoalhaven LEP 1985 Amendment No. 242).

The Deferral was considered appropriate so as not to delay the rezoning of the whole site whilst enabling issues raised during the public exhibition to be resolved. The northern area was deferred following comments from the Office of Environment and Heritage (OEH) and the NSW Office of Water objecting to the proponent's proposed extension of the golf course and additional residential development. The southern area was deferred following concerns over flooding and the proposal to fill the area, raised by OEH, NSW Office of Water and the Department of Primary Industries - Fisheries.

The concept of development of a golf course and residential development at Badgee was recognised in the South Coast Regional Strategy and the endorsed Sussex Inlet Settlement Strategy. The planning proposal has been referred to the Panel as it requires amendment to ensure that the outcomes of these strategies, particularly as they relate to environmental issues, can be achieved.

External Supporting Notes :

The planning proposal covers two sites to be considered for addition to the Badgee Lagoon Urban Release Area (URA). The Badgee Lagoon URA adjoins the north-west boundary of Sussex Inlet, and includes the Sussex Inlet Golf Course and Badgee Lagoon, a State Environmental Planning Policy 14 - Coastal Wetlands. The sites were deferred from the initial rezoning of the Badgee Lagoon URA (notified on 3rd May 2013 as Shoalhaven LEP 1985 Amendment No. 242) due to the need for further studies and negotiations with government agencies.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The stated objectives of the planning proposal for both the northern and southern areas are to:

- describe the subject site, its context, current zoning and the reason for the rezoning the land;
- address the gateway assessment criteria under the Environmental Planning and Assessment Act;
- provide justification for the proposed change in the zoning of the land;
- demonstrate that the planning proposal is consistent with broad strategic planning direction for Shoalhaven, in particular the Sussex Inlet Area, as identified in the Sussex Inlet Settlement Strategy (SISS) and the South Coast Regional Strategy (SCRS); and
- identify the proposed zone and associated planning controls that will be applied to the land when rezoned.

These objectives do not meet the requirements of the Department's 'Guide to preparing a planning proposal'. It is noted however, that appropriate objectives are provided in sections 1.1 'Introduction' and 1.3.2 'Proposed Zoning' of the planning proposal. These sections identify that:

- the two areas are proposed to be rezoned to facilitate expansion of the Sussex Inlet Golf Course in the northern area and to provide for residential development in the southern area.
- it is proposed that the sites be rezoned: northern site – Open Space (b) Private and southern site – Residential 2(c) under the Shoalhaven LEP 1985.

RECOMMENDATION:

Council ensure that its planning proposal consolidates the proponent's two planning proposals resulting in one set of revised objectives to better describe what the planning proposal actually seeks to do consistent with the Department's 'Guide to preparing a planning proposal'. Appropriate objectives could include to investigate the development potential of the northern site for private recreation and southern site for residential development.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The explanation of provisions provided in the planning proposals are to amend the Shoalhaven LEP 1985. They refer to a:

- proposed northern site zoning map (concept only) identifying the area be zoned Open Space 6(b) Private Recreation; and
- a proposed southern site zoning map (concept only) identifying the area be zoned Residential 2(c) Living Area which will yield 16 home sites.

Shoalhaven Council has provided further information clarifying that the amendments will be to the soon to be completed draft Shoalhaven LEP 2014 and the corresponding zonings are RE2 Private Recreation and R1 General Residential.

The northern area planning proposal has also identified an amendment to Schedule 1 Clause 54I(5) of Amendment 242 which would provide for the preparation of a DCP for the golf course including details on the golf course design and sensitive ecological areas to be retained on site. It is noted that Clause 54I has been transferred across into the Shoalhaven Principal Plan via the existing Urban Release Areas Map and development controls listed in Part 6 Urban Release Areas.

RECOMMENDATION:

The explanation of provisions needs to be consolidated and revised in the planning proposal to allow for an amendment of the Shoalhaven LEP 2014 to provide appropriate

land uses, boundaries and development standards in accordance with the recommendations from the further rezoning investigations. The two areas will also need to be included on the draft Shoalhaven LEP 2014 Urban Release Areas Map.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection
2.3 Heritage Conservation
3.1 Residential Zones
3.2 Caravan Parks and Manufactured Home Estates
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land
SEPP No 71—Coastal Protection
SEPP (Rural Lands) 2008
Illawarra REP No. 1

e) List any other matters that need to be considered :

The planning proposal is also affected by S117 Directions:

1.2 Rural Zones and
3.4 Integrating Land Use and Transport; and
SEPP50 Canal Estate Development

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

Section 117 Directions

Although not identified by Council, S117 Directions 1.2 Rural Zones and 3.4 Integrating Land Use and Transport apply to the planning proposal.

Council has identified that s117 Directions 2.3 - Heritage Protection, 3.2 Caravan Parks and Manufactured Home Estates and 6.1 Approval and Referral Requirements apply to the planning proposal, however, they are not relevant. The Badgee Lagoon Environmental Study Report, 2011 identifies that both sites do not contain Aboriginal or Non-Indigenous heritage objects or sites. The draft Shoalhaven LEP 2014 contains standard heritage provisions and the Principal LEP addresses where these uses are permitted. No caravan parks or manufactured homes are proposed for the sites. The planning proposal does not identify government agency approvals or requirements.

The planning proposal is consistent with the s117 Direction 3.1 - Residential Zones and 3.4 Integrating Land Use and Transport. It is investigating the urban development potential of land identified in earlier land use planning studies including the Sussex Inlet Settlement Strategy (SISS) and the South Coast Sensitive Urban Lands (SCSUL) Review as suitable for investigation for urban development. The Southern site can potentially yield 16 lots. The draft Shoalhaven LEP 2014 includes provisions to ensure that residential development is not permitted until land is adequately serviced.

The planning proposal is inconsistent with the s117 Directions 1.2 Rural Zones and 1.5 Rural Lands. These inconsistencies are justified as the sites are identified in the SISS for potential residential expansion. Also, both sites have little or no agricultural use and are unlikely to be suitable for such uses in the future as much of the land is environmentally sensitive. The Department of Primary Industries - Agriculture did not raise any concerns regarding the loss of agricultural land in this location during the agency consultation for the Badgee Lagoon URA.

The planning proposal is inconsistent with the S117 Direction 2.1 Environmental Protection Zones in that it proposes to rezone environmentally sensitive areas for residential and private recreation. Extensive investigations have been undertaken since 2007 in consultation with the Office of Environment and Heritage (OEH), to identify the biodiversity issues for the areas ie threatened species, endangered ecological communities and areas of high conservation value (HCV). Two ecological consultants for the proponent and OEH have conducted survey work whilst another two ecological consultants have been commissioned by Council to conduct independent peer reviews of the proponent's ecological reports and OEH's comments. OEH considers that the biodiversity investigations have appropriately described the high and low conservation areas and the resulting urban zone boundaries reflect robust and balanced planning outcomes.

OEH was given the opportunity to review the proponent's submission on the public exhibition of the Badgee Lagoon URA rezoning where it was proposed to extend the golf course and residential development north and east into areas identified as HCV (the deferred northern area). OEH did not support the proponent's requested extended zones. Council, however, chose to expand the development footprint into areas previously identified for environmental protection without further referral to OEH and based on the proponent's environmental consultant's justification. This matter is discussed in 'Environmental, social and economic impacts'.

To justify the RE2 zoning for the northern area against the section 117 Direction 2.2 Environmental Protection Zones, an environmental study is required. As there have been a multitude of studies completed to date, additional studies are not needed. However, a final independent review of the existing biodiversity studies is required to determine whether the proposed use for the northern area will occur on high or low conservation lands and take into consideration the recent rezoning of the Badgee Lagoon URA with its significant intrusion of residential and recreation areas into high conservation value lands. This review will enable the proposal's consistency or inconsistency with s117 Direction 2.1 to be determined and if necessary justified.

Council has identified that the planning proposal is inconsistent with the s117 Direction 4.3 - Flood Prone Land and that it will need to ensure consistency in relation to existing fill or potential to fill land to meet the 3.1m flood planning level. The southern area was deferred from the Badgee Lagoon URA rezoning as Council was concerned that it could not provide sufficient evidence to satisfy the Director General that inconsistencies with s117 Direction 4.3 Flood Prone Land and 4.1 - Acid Sulfate Soils were either justified or of a minor significance. OEH, NSW Office of Water and Department of Primary Industries – Fisheries did not support the placement of fill in this area and noted the need for further flood study investigations before an assessment of significance of impact could be made.

Council has identified the need for further studies and consistency with various planning documents including the Floodplain Management Manual, 2005, St Georges Basin Floodplain Risk Management Plan, and Floodplain Risk management Plan – Climate Change Assessment for St Georges Basin.

Council has identified that the planning proposal is inconsistent with the s117 Direction 6.3 - Site Specific Provisions. The planning proposal does not include site specific provisions, however, Council has identified in the event of the proposed rezoning of the northern area it may be a consideration to identify the land proposed for golf course design as to protect the environmental sensitivity of the site and any other potential uses. Council also identifies that in the event of the proposed rezoning of the southern area, site specific provisions as per the initial Badgee Lagoon rezoning may apply. An alternate option is to apply the Urban Release Area provisions (Part 6 of the SI LEP) as well as DCP provisions to both areas to ensure that development is controlled and addressed as part of the larger urban release area.

s117 Direction 4.4 – Planning for Bushfire Protection applies to the planning proposal. Both sites are mapped as bushfire prone and as such Council will need to consult with the NSW Rural Fire Service (RFS) prior to placing the proposal on public exhibition. It is noted that RFS have previously commented on the Bushfire Protection Assessment 2009 for the Badgee Lagoon rezoning and did not raise any comments for the lands within the northern and southern areas.

There are insufficient details at this stage to determine whether the planning proposal is inconsistent or justifiably inconsistent with the Section 117 Direction 2.2 - Coastal Protection. OEH has stated that the proposal to fill flood prone land to facilitate residential development is in conflict with the actions of the NSW Coastal Policy and the Coastal Design Guidelines which state that 'developments should not be located on flood prone land involving land fill or disturb acid sulfate soils.' For the southern area further investigations are required on the flooding, acid sulfate soils and potential wastewater management. For the northern areas the impacts of a golf course on the SEPP14 wetland are to be investigated and determined.

There are insufficient details at this stage to determine whether the planning proposal is inconsistent or justifiably inconsistent with the Section 117 Direction 4.1 - Acid Sulfate Soils. The southern area is mapped as having a low probability of acid sulphate soils (ASS). The ASS assessment recommended further assessment for areas where development has the potential to affect ASS. OEH has also raised the issue of the impact of filling on the ASS and subsequent water quality and wetland impacts.

There are insufficient details at this stage to determine whether the planning proposal is consistent with s117 Direction 5.1 - Implementation of Regional Strategies. The South Coast Regional Strategy prohibits urban development on land assessed as being of high conservation value (northern area) or flood prone land (southern area). The proposal is however consistent with the Strategy's action to implement the Sussex Inlet Settlement Strategy.

SEPPs

Although not identified by Council, SEPP 50 Canal Estate Development may also apply to the planning proposal. The eastern half of the southern area is traversed by a series of constructed canals/waterways. Further details are required to confirm whether these constructed canals/waterways are a component of an earlier development approval. Should the constructed canals/waterways not have a current development approval then canal estate development would be prohibited. This would be a matter for Council to consider at the DA stage.

The planning proposal is consistent with SEPP55 Remediation of Land. A preliminary contamination has concluded that the northern and southern areas have a low likelihood of being affected by soil contamination.

The proposal is inconsistent with SEPP Rural Lands, however, this inconsistency is justified by the SISS identifying the site for potential residential expansion. Also, both areas have little or no agricultural use and are unlikely to be suitable for such uses in the future. The Department of Primary Industries – Agriculture did not raise any concerns regarding the loss of agricultural land in this location during the agency consultation for the Badgee Lagoon URA.

SEPP71 Coastal Protection applies to the planning proposal as the northern area is mapped in the coastal zone the southern area is mapped as a sensitive coastal location. Further details are required to determine whether the planning proposal is consistent, inconsistent or justifiably inconsistent with SEPP71.

The Illawarra REP No. 1 applies to the land in regards to flood prone lands. Part 2 – 28. Flood prone lands states that 'a draft local environmental plan to control development on rural lands which has a history of flooding shall be prepared only after the consent

authority has identified lands subject to inundation and considered the need to introduce development standards or other controls in order to ensure that the effects of any flooding or development will be minimal.' Further details are required to determine whether the planning proposal is consistent, inconsistent or justifiably inconsistent with the Illawarra REP No. 1.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Proposed zoning maps (based on the Shoalhaven LEP 1985 land use zones and as a concept only) have been provided for both areas. A range of standard maps such as land zoning, lot size and development standards that comply with the Department's 'Standard technical requirements for LEP maps' will be required to be prepared by Shoalhaven Council following completion of the further investigations and prior to the consultation of the planning proposal.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal, as proposed by the proponent, did not identify any proposed public exhibition. It advised that 'extensive consultation was carried out on the overall planning of the Badgee Lagoon area. The major matters raised in this consultation from the community was the need for an 18 hole golf course in the area. The planning proposal (northern area) will implement these wishes. There were not any objections from the community in relation to the residential rezoning of this land (southern area).'**

Council has provided additional information confirming that Council proposes to exhibit the planning proposal for a minimum of 28 days in accordance with the EP&A Act and/or any other requirements as determined by the Gateway process. Public notification of the exhibition will include a local newspaper notifications and a notice on Council's website. Hard copies of the planning proposal will be available at Council's administration buildings. Council will write to all owners adjoining the subject land.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The planning proposal addresses the Department's "A guide to preparing planning proposals" and is considered adequate for a Gateway determination with conditions. However, further investigation and refinement of the proposal would be necessary for public exhibition. Council did provide some further information which needs to be incorporated into the proposal. It is recommended that the planning proposal be rewritten into Council's usual format to make for a more concise and detailed document. The proposal should be reviewed and supported by the Department prior to its public exhibition.**

A project timeframe was not provided in the planning proposal but has subsequently been provided by Council. The timeframe anticipates 24 months to complete further studies and then complete the rezoning process. 18 months is considered adequate to complete the further investigations and rezoning process.

Council has confirmed via email on 9th December 2013 that due to the complex nature of the planning proposal, Council does not wish to apply for delegation of plan making functions. The contentious and unresolved government agency/landholder issues as well as the long history mean it would be unlikely that Council could exercise its delegation. It is recommended that delegation remain with the Department.

Proposal Assessment

Principal LEP:

Due Date : **March 2014**

Comments in
relation to Principal
LEP :

The draft Shoalhaven Principal LEP is currently with the Department for finalisation. It is expected to be notified well before the end of March 2014. The two areas have been deferred from the draft Shoalhaven 2014 and thus will retain their zonings of Rural 1(d) General under the Shoalhaven LEP 1985 and Non-urban and Village under the Shoalhaven IDO 1964. The planning proposal will be an amendment to the notified Shoalhaven Principal LEP.

Assessment Criteria

Need for planning
proposal :

The planning proposal states that the proposed rezoning to RE2 for the northern area represents the most acceptable compromise to achieve the conservation, social and economic objectives for the area relating to the extension of the golf course to 18 holes. Similarly, the southern area rezoning is stated to reflect the findings of the Local Environmental Study for the previous Badgee URA rezoning and enables development and conservation objectives for the area to be fulfilled.

The planning proposal seeks to resolve two deferred areas adjoining the Badgee Lagoon Urban Release Area while the southern area has been deferred since the introduction of the current Shoalhaven LEP in 1985. Resolution of appropriate land uses is long over due. However whether the two areas are suitable for the extension of the golf course and residential still needs to be determined by further investigations and justification against s117 Directions.

Badgee Deferred Areas, Sussex Inlet

Consistency with strategic planning framework :

The South Coast Sensitive Urban Lands (SCSUL) Review, 2006 investigated the land immediately around Badgee Lagoon, including the majority of the southern area. This land was to have been developed as a further stage of the residential canal development that characterises the land to the south but did not proceed following the gazettal of SEPP50 which prohibited it. The Review considered that the area corresponding to the southern area was suitable for residential development subject to best practice water sensitive urban design and water quality management.

The Sussex Inlet Settlement Strategy (SISS), 2007 identifies the Badgee Lagoon Investigation Area as an opportunity to investigate residential development and golf course expansion subject to environmental studies. The SISS identified that "it has been proposed that part of the Area be developed for mixed residential purposes, a range of community facilities and expansion of the golf course to 18 holes. The potential social/economic benefit arising from the development of the land would include sufficient land to provide for an extension of the existing golf course from nine holes to eighteen holes". No specific location for the golf course's expansion was identified in the SISS.

The northern area subject to the planning proposal was included within the Investigation Area and identified as containing a potential wildlife connection. The SISS required further detailed flora and fauna studies to establish the appropriate location, width and linkages of the potential habitat corridors. The southern area was not included in the Badgee Investigation Area. The SISS was endorsed by the Director General in August 2007.

The South Coast Regional Strategy (SCRS), 2007 endorses the SISS and provides specific requirements regarding urban development and environmental protection. It specifically recommends that LEPs prohibit urban development on land assessed as being of high conservation value (potentially the northern area); and councils take a risk assessment approach to zoning flood prone land (potentially the southern area) until flood studies are completed. It also refers to councils considering the Regional Conservation Plan to guide implementation of conservation outcomes, including verifying habitat corridors, maximising the retention of vegetation and rehabilitation of disturbed areas. The SCRS has mapped the Badgee Lagoon area as being an area having biodiversity assets outside of conservation reserves.

The South Coast Regional Conservation Plan, 2010 has mapped the northern area as being an area of high conservation value (HCV) and within a wildlife corridor. The proponent's ecology consultants, Whelan InSites validated the location of the HVC lands in its report Ecological Issues and Assessment Report for Sussex Inlet Development, July 2010. The proponent has subsequently provided advice that the area does not contain HCV, although OEH disagrees with this position.

Environmental social economic impacts :

The planning proposal identifies that the two areas have been subject to detailed investigations in relation to the potential for urban development in the area. The 2011 Environmental Study for the Badgee Lagoon URA undertook a thorough assessment of environmental, social and economic impacts. This informed the preparation of a Land Use Strategy/Concept Land Use Plan for the site and subsequent zoning boundaries for the URA. In its submission on the Badgee URA rezoning, the proponent sought the extension of the golf course and additional residential lands which intruded on the eastern edge of the habitat corridor.

The golf course extension was deferred from the final Badge Lagoon Planning Proposal although the additional residential areas were adopted by Council as minor amendments following public exhibition. OEH had revealed that OEH did not support any changes to the E2 Environmental Conservation zone boundaries.

Northern area

The northern area is 15ha with significant environmental attributes including 1 critically endangered orchid listed under the Commonwealth Environmental Protection and Biodiversity Conservation (EPBC) Act, 1 Endangered Ecological Community (EEC), 1 flora and 9 fauna species listed under the NSW Threatened Species Conservation Act, 1995, one of the highest densities of tree hollows in the Badgee Lagoon URA, large mature trees and high conservation value (HCV) lands as well as being a central wildlife corridor connecting

to HCV lands to the north/north west.

The proponent in its northern area proposal identifies disagreement with OEH in relation to the conservation values and environmental significance of, and the future uses possible, on this area. The proponent states that the possibility of careful planning of the fairways to preserve those areas of significance and to protect connectivity has not been considered. The planning proposal proposes that the matter can be resolved through careful planning, design and management of the golf course to ensure that habitat and species are retained where necessary to provide a buffer to the residential areas and connections to the wider environmental conservation values. The proposal acknowledges that there will be some vegetation clearing to implement the golf course.

OEH identified in its letter on the publicly exhibited Badgee Lagoon Planning Proposal that "the biodiversity aspects of the Badgee Lagoon URA had been thoroughly investigated through the preparation of a number of environmental assessment reports. The process provided considerable scrutiny at the rezoning stage and resulted in what OEH considered to be robust planning outcomes. Council had demonstrated a strong commitment to achieve balanced planning outcomes, particularly through the use of independent consultants who were engaged to prepare the environmental study to inform the draft LEP. This was also assisted by the part 3A project environmental assessment studies and subsequent additional information from the proponent and a peer review process. The Environmental Study was also assisted by a further consultant's report on the interpretation of the findings of the ecological assessment."

It is noted that the process has involved two ecological consultants for the proponent and OEH conducting survey work whilst another two ecological consultants have been commissioned by Council to conduct independent peer reviews of the proponent's ecological reports and OEH's comments.

OEH considered that "the environmental study and associated documents provided an adequate basis for informed decisions on the suitable zoning of the land with regard to biodiversity protection." OEH also considered that "the outcome (being the LES boundaries) is consistent with the strategic directions of the South Coast Regional Strategy and the s117 Direction 2.1 Environment Protection Zones. The environmental study and associated reports have provided verification of the HCV aspects of the EECs, threatened species, threatened flora habitat, wildlife corridors, old growth forest and wetlands."

OEH provided a subsequent letter on the proponent's proposed rezoning plan (presented to Council as its submission) where two precincts intruding into the proposed environmental areas were proposed. Precinct 1 around the golf course, proposed extensions of the golf course and residential areas in a northerly, easterly and southerly direction. In particular, precinct 1 southern area proposed residential development in lands mapped as EEC- Coastal Sand Swamp Forest. Precinct 2 on the western side of the existing Badgee Lagoon residential area proposed extending the residential zone into the proposed environmental areas, thus diminishing the central habitat corridor by nearly a third.

OEH responded that "the proponent's proposed amendments are inconsistent with the formal Environmental Study prepared under the EP&A Act. The biodiversity aspects have been thoroughly investigated through the preparation of a number of environmental assessment reports. The proposed northern area extension was most recently found to be unsuitable for urban uses in the findings of the peer review of AH Ecology, August 2011."

"The proposed E2 zone in the exhibited draft plan is considered to be HCV land supporting a high density of hollow bearing trees and a high density of threatened species records. Importantly, the area is pivotal for providing a functional fauna movement corridor to the north/northwest. The known attributes of the area are considered to have been validated previously by a number of detailed environmental assessments."

OEH provided specific comments on each of the precincts and extension areas. In

particular OEH stated that "the proposed extension to the golf course is not seen as a compatible use that would retain the ecological values of the proposed conservation area."

Council has confirmed that only the northern area of Precinct 1 was deferred from the Badgee Lagoon URA rezoning as the other proposed changes were considered by Council to be minor modifications to the zone boundaries even though OEH did not support any changes to the exhibited E2 Environmental Conservation Zone and zone boundaries.

The planning proposal states that other environmental issues for the northern area such as bushfire and visual impacts have been dealt with in the overall LEP for the Badgee Lagoon Area. It also states that the overall planning for the Badgee area considered the social and economic aspects of the proposal in detail. One of the major aims of the future planning of the area, as identified in the SISS and SCRS, was the provision of an 18 hole golf course. The recent Badgee Lagoon amendment to the Shoalhaven LEP did not satisfy this objective. Council justifies the planning proposal on it meeting this longstanding aim. Council argues the social and economic importance of the course to the local area and Shoalhaven Region should be a factor in the assessment of its environmental impacts and a compromise needs to be reached between these competing claims in relation to the northern area. Council also notes the development of an 18 hole golf course has major community support and has always been the centre point of the proposals for the Badgee Lagoon development.

Southern area

The southern area is 4ha in area and bounded by the Badgee Lagoon SEPP14 wetlands and EECs to the north and Jacobs Drive to the south. It is below the 3.1m flood level established by the St Georges Basin Floodplain Risk Management Plan. The western end of the historical Jacobs Drive constructed canals extend onto the eastern side of the area.

The report "Sussex Inlet and Mixed Use Development", 2009 by WMA Water investigated as part of the LES, the flooding and flood hazards of the proposed residential development of the southern area. The report argued that the area will need to be filled to bring it above the flood level. OEH, NSW Office of Water and the Department of Primary Industries – Fisheries objected during the Badgee URA rezoning to the placement of fill on the flood prone land to enable residential development. Council has identified that further studies are required to address the flooding, sea level rise, climate change and land fill issues.

The southern area is mapped as having a low probability of acid sulfate soils (ASS). The report 'Proposed 1000 Lot Subdivision Preliminary Geotechnical, Contamination and Acid Sulfate Soil Assessment', Coffey Geotechnics, 2008 recommended further assessment for areas where development has the potential to affect ASS. OEH required further clarification as to whether the placement of fill on the ASS would have any consequences on water quality.

The planning proposal for the southern area identifies that this small area is an important section of the overall residential proposal. The proposal states that the area has always been zoned for residential development. It is noted that the western half of the southern area is zoned under the Shoalhaven IDO as 1(b) Non-urban which allows agriculture, forestry and other lower impact non-urban uses. The proposal also states that development of the area for home sites will complete the overall plan for the precinct and complements the residential zoning which commences at Springs Road on both sides of Sussex Inlet Road into Sussex Inlet shopping centre. The development will add to the overall economic health of Sussex Inlet area. No details to substantiate the social and economic benefits of providing 16 additional lots in the southern area were provided in the planning proposal.

Assessment Process

Proposal type : **Precinct** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority Consultation - 56(2) (d) : **Southern Rivers Catchment Management Authority
Office of Environment and Heritage
NSW Department of Primary Industries - Fishing and Aquaculture
NSW Rural Fire Service
Other**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **It is noted that the Southern Rivers CMA is now known as South East Local Land Services. Consultation with South East Local Land Services is required to determine what offsets an approval to clear native vegetation under the Native Vegetation Conservation Act would be required should the golf course extensions be supported.**

Consultation is also required with the NSW Office of Water and the Commonwealth Department of Sustainability, Environment, Water, Population and Communities. Consultation with the Commonwealth Environment Department is required to determine whether the presence of the EPBC Act listed orchid *Cryptostylis hunteriana* is affected directly by being located within the northern area of the planning proposal and indirectly as it appears to be located on adjoining lands to the east recently zoned residential rather than the exhibited environmental conservation. The Commonwealth Department of Sustainability, Environment, Water, Population and Communities was not consulted during the public exhibition of the Badgee Lagoon URA Planning Proposal. This consultation will enable a strategic comment on the presence of *Cryptostylis hunteriana* in the Badgee Lagoon area to be provided by the Commonwealth environment department.

Resubmission - s56(2)(b) : **No**

If Yes, reasons : **The planning proposal does not require resubmission at s56(2)(b). However, due to the changes required to the planning proposal prior to its public exhibition it is recommended that the planning proposal is reviewed and approved by the Department's Southern Region prior to consultation.**

Identify any additional studies, if required. :

Flora

Fauna

Flooding

Other - provide details below

If Other, provide reasons :

As a result of the long history of biological investigations for the Badgee Lagoon area no further biodiversity studies or reports are required for the northern area. However, the conflicting views between the proponent's ecological consultants and the independent ecologists commissioned by Council for peer reviews as well as OEH investigations, highlights the need for a further independent review of the existing studies to effectively arbitrate on whether the land in question is HCV. An independent ecological consultant, agreed to by OEH, should be commissioned by Council to review the existing information. The consultant should be funded by the proponent.

The consultant's review should include but not be limited to, the biodiversity information for the northern area as well as the strategic importance of the northern area to the biodiversity values of the Badgee Lagoon area, including review the functioning ability of the wildlife corridors in the area following the reduction of the central wildlife corridor due to the already extended residential areas into proposed environmental conservation areas.

Badgee Deferred Areas, Sussex Inlet

Should the environmental values of the northern area preclude a golf course on the deferred lands, then the consultant should also investigate whether other lands within the Badgee Lagoon URA or adjoining cleared/disturbed lands to the northwest, have the potential from a biodiversity point to be used for an extension of the Sussex Inlet Golf Course. This is important as no alternative means of meeting the community's expectations of an 18 hole golf course have been investigated.

It is noted that the independent review of the biodiversity studies and reports may highlight the need to reconsider development of the additional lands included by Council in the Badgee URA zoning. The Gateway determination should allow for these areas to be reconsidered in this planning proposal if that is necessary, if the consultant or Council believes that development would not achieve TSC or EPBC approval.

For the southern area further investigations are required on the proposal to fill the land and the impacts of filling on flooding, acid sulfate soils, ground water and Badgee Lagoon. In particular, Council has identified the need for the proposed filling to be consistent with the Floodplain Management Manual, 2005, St Georges Basin Floodplain Risk Management Plan, and Floodplain Risk Management Plan – Climate Change Assessment for St Georges Basin. These investigations will enable the s117 Directions 2.1, 2.2, 4.1, 4.3 and 5.1 to be addressed and to clarify where the planning proposal is consistent, inconsistent or justifiably inconsistent with the Directions.

The investigations will also enable the planning proposal to address the applicability of SEPP50 Canal Estates and whether the proposal to fill land adjoining the existing constructed canals is prohibited.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

The site is not currently serviced with electricity, water, waste/recycling, gas or telecommunications infrastructure. The planning proposal states that the Badgee Lagoon rezoning investigated the provision and adequacy of infrastructure and found it to be satisfactory.

Endeavour Energy identified in its letter of 2012 that the existing electricity network servicing the Sussex Inlet area has extremely limited capacity and major upstream works would be required to bring the network up to a standard to cater for the urban release area. A potential development yield of 16 houses is proposed for the southern site. As such no further consultation is required with Endeavour Energy until the construction stage.

Shoalhaven Water has confirmed on 15 October 2013 that the existing Sussex Inlet Wastewater Treatment Plant can serve the recently residentially zoned lands and existing residentially zoned lands on the western side of Badgee Lagoon. Thus no alternate wastewater disposal system is required for the urban release area.

Documents

Document File Name	DocumentType Name	Is Public
131108 Badgee Deferred Areas Sussex Inlet Planning Proposal letter SCC to DoPI gateway request.pdf	Proposal Covering Letter	Yes
131108 Badgee Deferred Areas Sussex Inlet Planning Proposal submitted version.pdf	Proposal	Yes
131211 Badgee Deferred Areas Sussex Inlet planning proposal email SCC to DoPI revised table 1 2comment.pdf	Proposal Covering Letter	Yes
131209 Badgee Deferred Areas Sussex Inlet Planning Proposal revised S117 directions.docx	Proposal	Yes
131209 Badgee Deferred Areas Sussex Inlet Planning proposal community consultation and timeline.docx	Proposal	Yes
131108 Badgee Deferred Areas Sussex Inlet SCC Council Resolution 131022.pdf	Proposal Covering Letter	Yes
131108 Badgee Deferred Areas Sussex Inlet SCC Council Report 131022.pdf	Proposal Covering Letter	Yes

Badgee Deferred Areas, Sussex Inlet

131108 Badgee Deferred Areas Sussex Inlet Map1 locality and site map & photo.pdf	Map	Yes
131108 Badgee Deferred Areas Sussex Inlet Map2 existing zoning and zone controls.pdf	Map	Yes
131108 Badgee Deferred Areas Sussex Inlet Map3 proposed rezoning Shoalhaven LEP 1985 .pdf	Map	Yes
131108 Badgee Deferred Areas Sussex Inlet Map4 mapping history of deferred areas.pdf	Map	No
131108 Badgee Deferred Areas Sussex Inlet Map5 Badgee Lagoon URA proposed rezoning draft Shoalhaven LEP 2014.pdf	Map	Yes
110901 Badgee Deferred Areas Sussex Inlet Badgee Lagoon Environmental Study Final.pdf	Study	Yes
090520 Badgee Lagoon rezoning Flood & Filling Report WMAWater.pdf	Study	Yes
080618 Badgee Lagoon rezoning Geotechnical and Acid Sulfate Soil Report Coffey.pdf	Study	Yes
101208 Badgee Lagoon rezoning Ecological Issues & Constraints Report Whelans InSites.pdf	Study	Yes
101208 Badgee Lagoon rezoning Ecological Issues & Constraints Report Figure 1-16 Whelans InSites.pdf	Study	Yes
110225 Badgee Lagoon rezoning report Ecological Issues & Constraints Report, Whelans InSites#1.pdf	Study	Yes
140124 Badgee lagoon Deferred Area Sussex Inlet planning proposal memo planning history of area.pdf	Study	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information :

The Deputy Director General, as delegate of the Minister for Planning and Infrastructure, determine under section 56(2) of the EP&A Act that an amendment to the draft Shoalhaven Local Environmental Plan 2014 to investigate the potential of golf course extensions and residential housing development on part Lot 51 DP1033684 and part Lot 125 DP528699, Sussex Inlet Road, Sussex Inlet should proceed subject to the following conditions:

1. An independent ecological consultant, agreed to by OEH and funded by the proponent, is to be commissioned by Shoalhaven City Council to review the existing biodiversity studies and reports for the northern and Badgee Lagoon areas.

The review should include but not be limited to, the biodiversity information for the northern area as well as the strategic importance of the northern area to the biodiversity values of the Badgee Lagoon area, especially taking into consideration the impacts of the recent extension of residential zones into areas identified for environmental conservation in the publicly exhibited Badgee Lagoon URA planning proposal that was finalised in May 2013.

The review is to form part of the planning proposal and the proposal is to be modified

accordingly prior to consultation.

2. Should the independent ecological review allow golf course extensions onto the northern area then Council will need to confirm in the planning proposal whether the proposal is consistent with the s117 Directions 2.1 Environmental Protection Zones and 5.1 Implementation of Regional Strategies. Any inconsistencies will need to be justified by the studies or be of a minor significance.

3. Should the independent ecological review preclude golf course extensions onto the northern area due to environmental values, then the review should also investigate whether other lands within the Badgee Lagoon URA or adjoining cleared/disturbed lands to the northwest, have the potential from a biodiversity point, to be used for an extension of the Sussex Inlet Golf Course.

4. Further investigations on the impacts of filling the land in the southern area, including the impacts of fill on flooding (including effects of sea level rise and climate change on flood levels), acid sulfate soils, groundwater and Badgee Lagoon are to be completed. The results of these investigations will need to demonstrate that the development can be achieved and is consistent with or justifiably inconsistent with the s117 Directions 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Lands and 5.1 Implementation of Regional Strategies.

The investigations are to form part of the planning proposal and the proposal is to be modified accordingly prior to consultation.

5. The planning proposal is to be reviewed and modified to reflect Council's usual planning proposal format and to ensure its consistency with the requirements of the Department's 'A guide to preparing a planning proposals' prior to consultation. In particular, the planning proposal requires further refinement and details on the:

- statement of objectives and intended outcomes – review of northern area's ability to be used for recreation purposes and southern area for urban residential development;
- explanation of provisions – amendment to draft Shoalhaven LEP 2014;
- aerial photograph, maps of existing zonings;
- s117 Directions and SEPPs; and
- Previous studies and reports

6. Council is to prepare draft Maps for the subject land consistent with an amendment to the draft Shoalhaven LEP 2014 prior to exhibition and in accordance with the Department's 'Standard technical requirements for LEP maps'.

7. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal is to be made publicly available for 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A guide to preparing local environmental plans (Department of Planning and Infrastructure 2013)'.

8. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- * Office of Environment and Heritage;
- * NSW Department of Primary Industries – Fisheries;
- * NSW Office of Water;
- * South East Local Land Services
- * NSW Rural Fire Service (s117 Direction 4.4 Planning for Bushfire Protection) and
- * Commonwealth Department of Sustainability, Environment, Water, Population and Communities (controlled activity under the EPBC Act).

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to

comment on the proposal, or to indicate that it will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

Consultation with the Commonwealth Department of Sustainability, Environment, Water, Population and Communities will enable advice to be received on the presence of the EPBC Act listed orchid *Cryptostylis hunterianna* in both the northern area and the lands recently zoned Residential rather than environment conservation as exhibited in the Badgee Lagoon URA Planning Proposal.

Consultation with South East Local Land Services will determine what offsets an approval to clear native vegetation under the Native Vegetation Conservation Act would require should the golf course extensions be supported.

9. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

10. The timeframe for completing the LEP is to be 18 months from the week following the date of the Gateway determination.

11. The Gateway notes that although Council has identified that the s117 Directions 2.3 - Heritage Protection, 3.2 Caravan Parks and Manufactured Home Estates and 6.1 Approval and Referral Requirements apply to the planning proposal they are not relevant and do not need to be considered.

12. The Director General can be satisfied that the planning proposal is consistent with the s117 Directions 3.1 - Residential Zones and 3.4 Integrating Land Use and Transport.

13. The Director General can be satisfied that consultation with NSW Rural Fire Service will satisfy s117 Direction 4.4 Planning for Bushfire Protection.

14. The planning proposal is inconsistent with the s117 Directions 1.2 Rural Zones and 1.5 Rural Lands in that it is rezoning agricultural lands for residential development. However, the Director General can be satisfied that the inconsistencies have been justified by local planning studies, endorsed Sussex Inlet Settlement Strategy and previously reviewed by the NSW Department of Primary Industries - Agriculture.

15. Following further investigations of biodiversity, flooding, and acid sulfate soils issues, Council will need to confirm in the planning proposal whether the proposal is consistent with the s117 Directions 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 5.1 Implementation of Regional Strategies. Any inconsistencies will need to be justified or be of a minor significance.

16. The Director General can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are only of minor significance.

17. Approval to exhibit the planning proposal under section 57(2) requires Council to resubmit the planning proposal to the Department's Southern Regional Office for review of the revisions, prior to consultation.

Supporting Reasons :

The conditions are necessary to ensure that:

- the long and contentious history of the rezoning and biodiversity investigations are independently reviewed and finalised;
- the proposed land uses are achievable without environmental impacts and there is certainty of further approvals under the EPBC, TSC and NVC Acts;
- the potential for an extension of the Sussex Inlet Golf Course from 9 to 18 holes is investigated strategically both within the Badgee Lagoon URA and/or on adjoining land;
- the planning proposal meets the requirements in the Department's 'A guide to preparing planning proposals'; and
- the planning proposal includes concise and detailed information which allows the

Badgee Deferred Areas, Sussex Inlet

Signature:



Printed Name:

BRETT WHITWORTH

Date:

24 January 2014

GENERAL MANAGER
SOUTHERN REGION

