

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

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 hunteriana* 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 community to provide informed comments on the proposal during its consultation.

Panel Recommendation

Recommendation Date : **30-Jan-2014**

Gateway Recommendation : **Passed with Conditions**

Panel
Recommendation :

The planning proposal should proceed subject to the following conditions:

- 1. Prior to undertaking public exhibition, Council is to update the planning proposal to ensure consistency with the requirements of A Guide to Preparing Planning Proposals**

(Planning and Infrastructure 2013) and to reflect the outcomes of the studies and investigations undertaken.

2. Council, in consultation with Office of Environment and Heritage is to commission an independent ecological consultant to undertake a review of the existing biodiversity studies and reports for the subject northern precinct and Badgee Lagoon areas.

3. Additional information regarding the below matters is to be prepared or undertaken and placed on public exhibition with the planning proposal:

- Biodiversity of Badgee Lagoon areas and the area subject to release
- Flooding – particularly the impact of fill
- Acid sulfate soils

Once the above information has been obtained and consultation with public authorities has been undertaken, Council is to update its consideration of S117 Directions 2.1 Environment Protection Zones, 2.2 Coastal Protection, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 5.1 Implementation of Regional Strategies, 6.3 Site Specific Provisions, State Environmental Planning Policy No. 71 and Illawarra Regional Environmental Plan No.1 to reflect the outcomes of the work and consultation undertaken.

4. Council is to ensure that draft maps that clearly identify the existing and proposed amendments and the subject land, are included with the planning proposal for exhibition purposes and are prepared in accordance with Planning and Infrastructure's 'Standard technical requirements for LEP maps' prior to finalisation of the plan (including all maps affected by the amendment).

5. 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 must be made publicly available for a minimum of 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 LEPs (Planning & Infrastructure 2013).

6. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

- Office of Environment and Heritage (S117 Direction 2.1 Environment Protection Zones)
- 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)
- Commonwealth Department of Sustainability, Environment, Water, Population and Communities (controlled activities under the EPBC Act)

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

7. A public hearing is not required to be held into the matter by any person or body 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).

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

Badgee Deferred Areas, Sussex Inlet

Plan making delegation:

The Minister delegated his plan making powers to councils in October 2012. Council requested not to be issued with delegation for this planning proposal. Council should not be issued with plan making delegation due to the complex nature of the planning proposal.

Signature:



Printed Name:

JAMES MATTHEWS

Date:

3/3/14