
REPORT OF GENERAL MANAGER

DEVELOPMENT COMMITTEE

WEDNESDAY, 9 OCTOBER 2013

PLANNING AND DEVELOPMENT

ITEMS TO BE REFERRED TO ORDINARY MEETING

1. **Badgee Urban Release Area, Sussex Inlet - Deferred Matters – Planning Proposal (Rezoning) LP407** **File 47611E**

SECTION MANAGER: Gordon Clark

PURPOSE: Delivery Program Activity: 2.4.2.3

To seek Council direction in regard to a Planning Proposal to rezone the areas 'deferred' from the recently rezoned Badgee Urban Release Area at Sussex Inlet.

RECOMMENDED that Council resolve to:

- a) **Support the Planning Proposal for Badgee deferred areas Sussex Inlet; and**
- b) **Submit the Planning Proposal to the Department of Planning and Infrastructure requesting 'gateway determination'**

OPTIONS

1. Support the recommendation. (preferred option)

Implications

The purpose of the Planning Proposal (PP) is to resolve two 'deferred areas' that required further investigation and consideration after the initial rezoning of the Badgee Urban Release Area (URA) rezoning. Progression of this matter will ensure the zoning of the two outstanding areas is resolved. Preparation of the draft DCP for the overall urban release area can progress parallel to this process.

2. Not support the recommendation and determine another course of action (not the preferred option)

Implications

This option is not favoured as it would stall the progress of resolving the deferred matters. These areas were initially part of the recently rezoned Badgee Urban Release Area which has been identified for future residential development in the Sussex Inlet Settlement Strategy and has strong local community support. The planning proposal process is the appropriate vehicle to resolve the zoning of the two outstanding areas and enable specific consideration of the detailed issues.

DETAILS

Council received a Planning Proposal (PP) from Lucas Properties on 28 August 2013 to rezone the two areas 'deferred' from the initial rezoning of land in the vicinity of Badgee Lagoon Sussex Inlet that was finalised 3 May 2013 (referred to as Badgee Urban Release Area). A copy of the PP is available on the Councillor's sharepoint site and a hard copy will be available in the Councillor's Room prior to the meeting.

The two areas covered by the PP are located in the vicinity of Badgee Lagoon, Sussex Inlet and adjacent to the recently zoned Badgee Urban Release Area (URA).

The PP seeks to amend Shoalhaven LEP 1985 or depending on timing SLEP 2013 to the following:

Site	Current Deferred Zoning	Proposed Shoalhaven LEP 1985 Zoning	Proposed SLEP 2013 Zoning
1. Northern Site	Rural 1(d) (General under Shoalhaven LEP 1985	Open Space 6(b) (Private)	RE2 Private Recreation
2. Southern Site	Part Village and part Non-urban under Shoalhaven Interim Development Order No. 1	Residential 2(c) (Living Area)	R1 General Residential

The Department of Planning and Infrastructure's (the Department) guidelines on making Local Environmental Plans (LEP) requires Councils to make a decision on whether to support a PP within 90 days of receipt of proposal.

Council's *Planning Proposal (Rezoning) Guidelines*, adopted on 26 March 2013, note that Council will consider a planning proposal in the following circumstances:

- The proposed amendment is supported by a Council or State Government strategy or Plan;
- A clear zoning anomaly exists on site; or
- The proposed amendment is considered to be minor in nature and has been sufficiently justified to Council.

This report assesses the submitted planning proposal against Council's guidelines and the Department's *Guidelines for preparing planning proposals*.

BACKGROUND

In finalising the LEP that rezoned the Badgee URA, the Department agreed to 'defer' two (2) areas within the original rezoning area (one in the northern part of the site and one in the southern) following concerns raised by the Office of Environment and Heritage (OEH) and other state agencies with the proposed zoning.

The key concerns with the two deferred areas raised by the State Government agencies relate to biodiversity values (Northern site) and flood related issues (Southern site).

The Northern deferred area (Northern site)

- # During the exhibition of the initial PP for the Badgee URA, Lucas Properties submitted a suggested layout plan for extension of the existing 9 hole golf course and additional residential zoning in the north western part of the site (see **Attachment 'A'** – Proponent's Layout Plan). However, a key resulting concern was that part of the proposed golf course extension was to be located on land proposed to be zoned Environmental Protection 7(a) (Ecology) due to environmental characteristics including presence of High Conservation Value (HCV) areas. The Environmental Study (and studies completed by the proponent) undertaken for the rezoning found that parts of this subject site have substantial environmental value, specifically the existence of hollow-bearing trees, Glossy Black-Cockatoo feed trees, threatened species records including the Yellow-bellied Glider and also vegetation that created significant native corridors.

OEH raised concerns with the proponent's plan for this area so it was considered appropriate at the time to "defer" the zoning of the area in question so as not to delay the rezoning of the whole site.

The Southern deferred area (Southern site)

- # The Badgee URA rezoning investigations identified part of the southern precinct as being subject to flooding, however, the proponent believed the site was suitable for residential zoning with further investigations. Three government agency submissions received during the exhibition of the initial PP did not support rezoning and filling of land in this area. Therefore, the proposed Residential 2(c) zone was applied outside the 1 in 100 year flood level. Based on concerns raised by the proponent and advice from the Department, Council resolved on 21 January 2013 to 'defer' the zoning in part of the southern section of the PP area to enable further detailed investigations. (**Attachment 'B'** – Council minute).

PRE-LODGEEMENT MEETING

- # The PP was lodged with no additional studies attached as it is assumed that if Council resolves to proceed with the proposal, the Department will provide detail on required studies and any further investigations that may be required through the "gateway determination". In addition a pre-lodgement meeting was held on 3 July 2013 between the Department, Council staff and the proponent (**Attachment 'C'** – Pre lodgement meeting notes) where it was agreed that the following issues will need to be considered.
- The PP will need to not only focus on the specific deferred areas but also look at the areas in context with the Badgee Lagoon URA site and any relevant surrounding lands.
 - The PP will address the specific environmental issues affecting the 2 deferred areas, and their relationship within the broader context of the recently rezoned Badgee URA site and surrounding land.
 - The Gateway determination will identify the additional work that will be required to support the PP such as but not limited to additional biodiversity studies, and flooding information and the government agency submissions in this regard.
 - Northern site – with the existence of HCV Lands, it was agreed that the best way to approach this issue will be for an independent consultant to be commissioned to

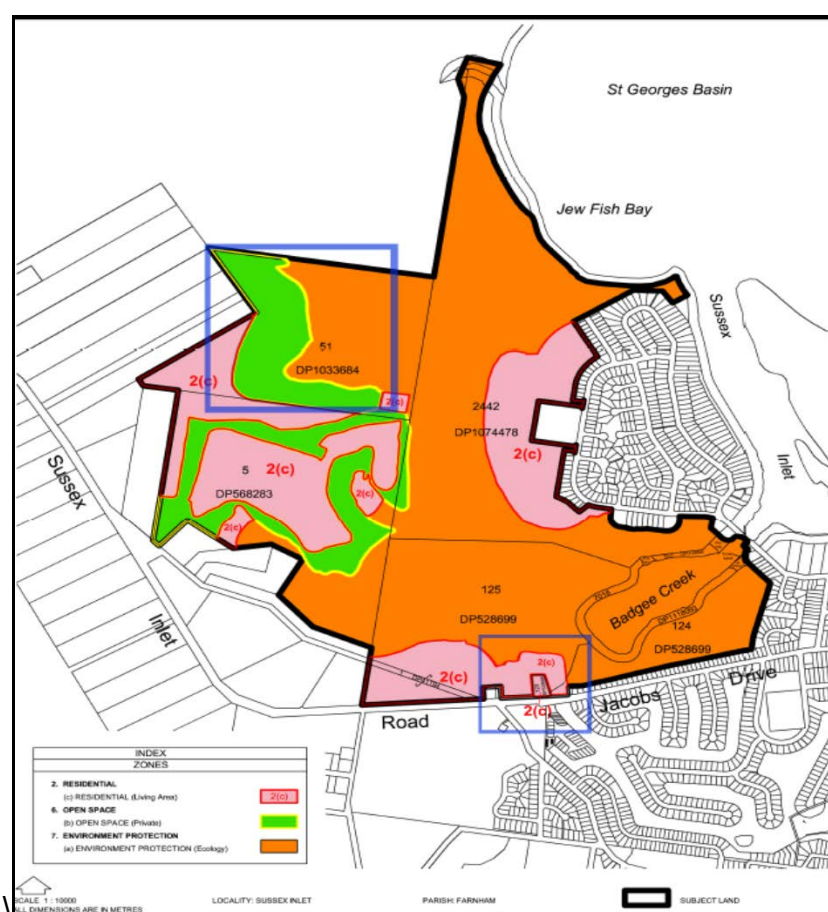
review previous reports/surveys and use a methodology agreed to by the OEH to conduct further biodiversity surveys. This should occur once the gateway determination is issued.

- Southern site - with the issue of filling and potential impacts, it was agreed that the PP will have to show consistency with Section 117 Directions, other relevant legislation and consideration of relevant flood studies and Flood Plain Risk Management Plan (FPRMP) including climate change impacts.

THE PLANNING PROPOSAL

The submitted planning proposal seeks to amend Shoalhaven LEP 1985 or depending on timing SLEP 2013 consistent with the map and table below:

Site	Shoalhaven LEP 1985	SLEP 2013
1. Northern Deferred Area	6(b) Open Space (Private)	RE1 Private Recreation
2. Southern Deferred Area	2(c) Residential (Living Area)	R1 General Residential



Extract from Planning Proposal – Proposed Zones

Northern Site

The Northern deferred area (Northern site) is part of Lot 51 DP 1033684 Sussex Inlet Road Sussex Inlet and is approximately 15 ha in area. The Northern site contains significant environmental attributes including areas of EECs, high conservation value (HCV) lands as well as the central wildlife corridor/connection.

The proposed zoning of the Northern site is to enable the expansion of the adjacent existing 9 hole Sussex Inlet Golf Course to 18 holes.

Southern Site

The Southern site is part of Lot 125 DP 528699 Jacobs Drive Sussex Inlet, is approximately 4 ha in area and is generally bounded by the Badgee Lagoon SEPP 14 wetland and EECs to the north and Jacobs Drive to the south. The Southern site is below the 3.1m flood level and is partly forested with some disturbance and possible acid sulfate soils.

The proposed zoning of the Southern site is to allow development of this area for residential purposes similarly to the provisions relating to the adjacent land. It is intended that the proposed zones would have the same provisions as those contained in the overall Badgee URA LEP.

Relationship to strategic planning framework:

The PP is considered to be consistent to various degrees with the following local, regional and State strategic framework:

- Sussex Inlet Settlement Strategy
- Shoalhaven Housing Strategy
- South Coast Regional Strategy (SCRS) (see section 6)
- South Coast Settlement Planning Guidelines
- South Coast Sensitive Urban Lands Review
- South Coast Conservation Plan (2010)
- NSW Coastal Policy
- Coastal Design Guidelines

Consistency is noted as this site has been identified for investigation into future urban development and providing future economic and social needs of the area. The key focus of the proposal will be to demonstrate or ensure consistency with conserving and protecting biodiversity in particular protection of high conservation value lands, minimising impact in flood prone areas specifically taking into consideration sea level rise and possible filling of land, and protection of water quality in Badgee Lagoon from development through best practice sensitive urban design and water quality management.

Ministerial Directions:

Council is required to consider and adhere to the Minister's Directions under s117 of the EP&A Act when considering an amendment to an LEP. On review, the PP has considered the consistency with relevant s117 Directions, where applicable drawing from the Environmental Study which supported the initial Badgee Lagoon Planning Proposal. However, specific s117 Directions that require further consideration through the Planning Proposal process are given further comment below.

Northern site

Direction	Comment
2.1 Environmental Protection Zones	As noted at the pre-lodgement meeting, further detailed ecological surveys of the northern deferred area will be required to adequately assess the environmental sensitivity of the area, particularly HCV areas and areas that require protection and conservation.
6.3 Site Specific Provisions	• Golf Course Design - The PP notes that it is proposed the draft LEP will contain a reference to the preparation of a DCP for the development of the Golf Course. However, there is concern that this suggests that the DCP give consideration to the environmental sensitivity of the site in the golf course design. It is important to note that the issue of protecting lands of environmental sensitivity rests at the rezoning stage and not the DCP. • Effluent Disposal – The initial Badgee Lagoon Planning Proposal LEP requested further effluent and water balance requirements to enable some recycling of treated effluent water onto the existing golf course. The proponent will need to clarify whether their intention is to do the same on any further extension of the golf course and provide the required information.

Southern site

Direction	Comment
4.1 Acid Sulfate Soils	To ensure the Planning Proposal is consistent with this direction, a study will need to be prepared which considers this direction, or concludes it is of minor significance.
4.3 Flood Prone Land	As noted at the pre-lodgement meeting, the Planning Proposal will need to ensure consistency with this direction, particularly in relation to existing fill or potential to fill land to meet the 3.1m flood planning level. Specifically consistency with various planning documents including the Floodplain development Manual (2005), SCRS, SISS, St Georges Basin Floodplain Risk Management Plan and the recent Floodplain Risk Management Plan – Climate Change assessment.

General comments / response to the Planning Proposal

The Department of Planning & Infrastructure is aware of the key concerns from State Government agencies regarding this proposal, specifically, biodiversity and flood related issues, and have confirmed further advice on required studies and methodologies used will be provided at 'gateway' determination. Given this assurance, relevant Council sections who provided comment on the PP were generally comfortable with it being submitted to the Department with this agreed approach.

The following table provides additional comment on certain aspects of the PP.

Item	Comment
Golf Course Expansion	a) It was suggested that the initial PP was silent on the expansion of the golf course, however, Council's support for the golf course expansion has been often noted in the initial Planning Proposal for Badgee URA and related Council reports. b) The proponent will need to clarify effluent requirements if they expect to use golf course extension for disposal
DCP and golf course design	The PP suggests that the Badgee URA DCP will include details of the golf course design and sensitive ecological areas to be retained. A DCP should not determine this level of environmental protection, it is anticipated that this will be determined through the rezoning investigations.
Future studies of the northern site to be carried out on the basis of attempting to reach a compromise on the social, economic and environmental needs of the area.	Studies will provide justification for appropriate zoning of the site. Once zoning is resolved, development potential can be determined.
The deferred part Village and Non-urban 1(b) is not rural land being rezoned for urban purposes and does not contravene the relevant S117 direction.	Non-urban 1(b) is essentially a rural zoning.
Badgee Lagoon SEPP 14 Wetland	It is noted that the PP does not put emphasis on the proximity of the Southern site to the Badgee Lagoon SEPP 14 Wetland and potential impacts that will need to be considered.
Part 5 - Community Consultation	The proponent has not provided any level of detail for community consultation.
Part 6 - Project timeline	This is required as per the departments <i>Guidelines to preparing Planning Proposals</i> and has not been provided.

CONCLUSION

Given the comments above, it is considered appropriate to support the PP at this stage and to submit it to the Department with the additional of the missing detail (eg. Community consultation, project timeline etc), requesting a 'gateway' determination.

FINANCIAL IMPLICATIONS:

The proponent Lucas Properties is aware of Councils 'fees and charges' for lodging planning proposals and to date has provided the required financial support towards this project. Therefore, at this stage the financial implications for Council include mainly reporting and administrative costs that are covered by fees. There may be additional resourcing requirements that will need to be considered and discussed with the proponent if necessary, depending on the 'gateway' determination.

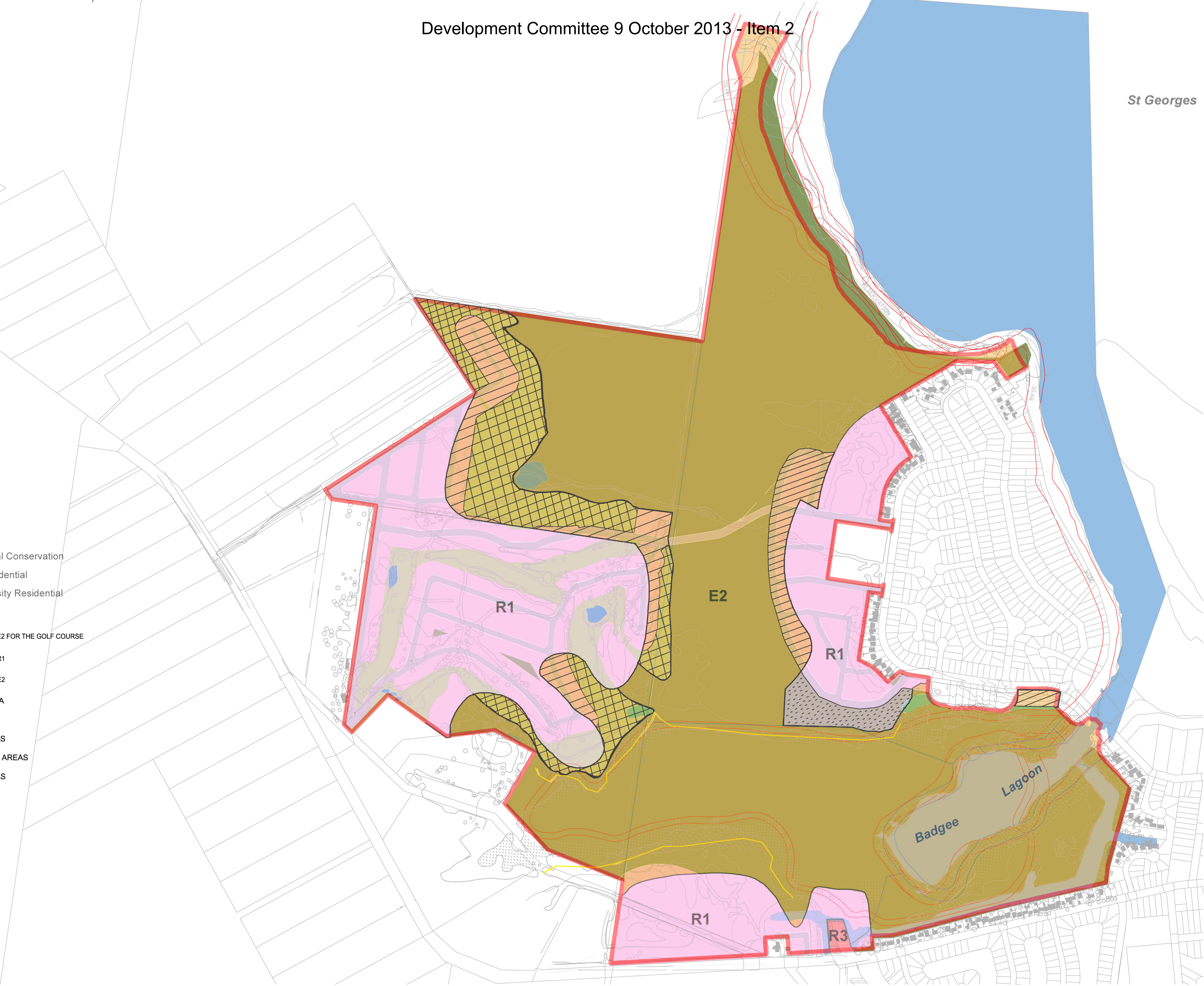
COMMUNITY ENGAGEMENT:

The engagement matrix in Council's Community Engagement Policy identifies Planning Proposals as being a Local Area High Impact process. Community consultation is proposed to be at level 1 and 2 to 'inform' and 'consult' the community as per the matrix key. This level is considered to be appropriate given the extensive community consultation that has already been undertaken through the initial LEP amendment and further, the community consultation involved in the preparation of the both the South Coast Regional Strategy and the Sussex Inlet Settlement Strategy where this site was identified as an area to be investigated for future urban development.

Further, Council and the landowner will carry out community consultation in the form of a public exhibition as per legislative requirements and the appropriate sections of the Council's Community Engagement Policy Handbook.

Legend

- Subject Land
- E2 Environmental Conservation
- R1 General Residential
- R3 Medium Density Residential
- E2 AREA TO BE ZONED RE2 FOR THE GOLF COURSE
- E2 AREAS TO BE ZONED R1
- R1 AREAS TO BE ZONED E2
- CONSERVATION AREA
- GOLF COURSE
- DEVELOPMENT AREAS
- STORMWATER POND AREAS
- BIORETENTION AREAS



MINUTES OF THE DEVELOPMENT COMMITTEE MEETING HELD ON MONDAY, 21 JANUARY 2013 IN COMMITTEE ROOMS 1, 2 & 3, CITY ADMINISTRATIVE CENTRE, BRIDGE ROAD, NOWRA COMMENCING AT 4.00 PM

1. Draft Local Environmental Plan No LP130 - Badgee Urban Release Area Rezoning Investigations, Sussex Inlet (Lucas Property Group) – Finalisation of Planning Proposal
File 36689E (PDR)
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Note: This matter was brought forward for consideration.

Note: Mr Ralph Lucas addressed the Committee, at the commencement of the meeting, in relation to this matter.

MOTION:

Moved: Guile / Second: Watson

RESOLVED that in accordance with the Committee's delegated authority from Council:

- a) Council support the change sought by the landowner in relation to the zoning in the Southern Precinct (ie. re-instate the exhibited R1 Residential Zone line) and approach the Department of Planning & Infrastructure to determine if they will support the change via an amendment to the Planning Proposal, prior to finalisation of the required draft LEP;
- b) Should the Department of Planning & Infrastructure not support the change sought by the landowner in relation to the zoning in the Southern Precinct, defer the subject area from the Planning Proposal to enable finalisation of the required draft LEP and commence discussions/negotiations with relevant state agencies to determine an acceptable zoning in this location.

CARRIED

FOR: Robertson, Kearney, Baptist, White, Wells, Anstiss, Findley, Guile, Watson, Kitchener, Gash and Russ Pigg.

AGAINST: Nil

Badgee Urban Release Area Sussex Inlet - "Deferred" Matters - Possible Planning Proposal

Meeting Minutes –
Wednesday, 3 July 2013 – Wollongong DP&I Office

11AM – Meeting commenced

Attendance – Ralph Lucas, Mark Lucas, Janet Thomson, Brett Whitworth (DP&I), George Curtis (DP&I), Gordon Clark (SCC) and Bernadette Sharpe (SCC)

Purpose of the meeting was for all parties to discuss and come to an agreement/understanding on the best way to resolve the Badgee URA “Deferred Matters” and the level of detail required for subsequent Planning Proposal.

It was agreed that one (1) Planning Proposal will be prepared by Lucas Property Group which will address and enable consideration of both deferred matters being:

- a. “Deferred Matter” 1 – North/Western area of Badgee URA and;
- b. “Deferred Matter” 2 – Southern Area of Badgee URA

By addressing both matters in one Planning Proposal will ensure that if there are any issues holding up one of the deferred matters the other can continue to proceed.

It was also noted that the Planning Proposal will need to not only focus on the specific Deferred areas but also look at the areas in context with the Badgee Lagoon URA site and any relevant surrounding lands.

Once Council receives the Planning Proposal, it will be reported to Council with the recommendation it proceeds to the Department of Planning and Infrastructure for Gateway determination.

In addition to addressing the Planning Proposal requirements outlined in the *NSW DP&I A guide to preparing planning proposals*, the PP will address the specific environmental issues affecting the 2 deferred areas, and their relationship within the broader context of the recently rezoned Badgee URA site and surrounding land.

The Gateway determination will identify the additional work that will be required to support the Planning Proposal such as but not limited to additional biodiversity studies, and flooding information and the Government Agency submissions in this regard.

“Deferred Matter” 1 – North/Western area of Badgee – PP considerations / notes

- Existence of High Conservation Value Lands – It was agreed that the best way to approach this issue will be for an independent consultant to be commissioned to review previous reports/surveys and use a methodology agreed to by the Office of Environment and Heritage to conduct further biodiversity surveys. This should occur once the gateway determination is issued.
- The option of “off sets” – if achievable depending on biodiversity studies.

Badgee URA Deferred Matters Meeting Minutes – Wollongong DP&I offices 03/07/2013

“Deferred Matter” 2 – Southern area of Badgee – PP considerations / notes

- Part of site which is below the flood line
- Issue of filling and potential impacts
- Consistency with 117 Directions and relevant other legislation
- Relevance of SEPP No. 50 Prohibition of Canal Estate Development – need to check the relevance of this or otherwise to the rezoning.
- St Georges Basin Flood Study Report, Floodplain Risk Management Report , Floodplain Risk Management Plan and recent Floodplain Risk Management Study & Plan – Climate Change Assessment.
- Previous report on flood impacts

Actions from meeting

- Bernadette will provide email to Ralph Lucas with meeting minutes and copies of relevant government submissions to the initial Planning Proposal and information on the Planning Proposal process.

12PM – Meeting concluded