

PLANNING PROPOSAL

LOT 981 DP 862346

No. 40-60 NICLINS ROAD

MANGROVE MOUNTAIN

December, 2012.

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1 OVERVIEW

Our Client and Proprietor of the land is Doctor Christine Wade. Doctor Wade is the Principal of Mountain Medicine; a health care practice which provides a comprehensive range of medical services to a Client base extending from Gunderman on the Hawkesbury River in the Gosford LGA to areas surrounding Laguna in the Cessnock LGA.

The range of medical services provided includes general practice services in conjunction with physiotherapy, pathology and other necessary medical facilities; facilities necessary to fulfil the demands of the rural community in and about the area served.

The practice provides a range of activities from the site the subject of this application for a short period, commencing mid-2012. Doctor Wade had previously provided medical services from other premises, including two separate leased properties in Waratah Road, Mangrove Mountain; properties which are, as explained elsewhere in this submission, no longer available.

The need for this Planning Proposal arises from the commencement (without consent) of practice from the land as a consequence of insurmountable difficulties in finding suitable premises appropriately zoned in the locality.

These matters have been the subject of earlier submissions to Council via its Solicitors, PJ Donnellan & Co, by letter dated 18th October 2012, addressed to PJ Donnellan & Co, under the hand of Giles Finney, CBD Law (for the Proponent) – copy attached in the Annexures to this submission.

That letter was dispatched in response to earlier correspondence and subsequent meetings between Senior Council Staff, the Proprietor/Proponent/her legal representatives and the writer.

At the time of writing, it is the understanding of the writer that that information had been conveyed to the Elected Body of Council and that the Elected Body of Council is anticipating the receipt of this Planning Proposal so that it (the Council) might have before it a competent application upon which it might base a decision to provide finite adjustment to the land use controls as are proposed to facilitate the retention of the vital medical services provided.

2 THE LAND AND THE LOCALITY

The subject land is known as Lot 981 DP 862346 HN 40-60 Niclins Road, Mangrove Mountain.

The land has been the subject of previous submissions and investigations by others for and on behalf of the owner including:-

- (a) Investigations in relation to alternate land use options in and about the locality generally by Dr Helen Monks of Highlight Consulting; and
- (b) An application prepared under the hand of Tony Tuxworth of Coast Plan Consulting, being an application which sought the approval for the establishment of a second dwellinghouse for use as a rural workers cottage.

That application was supported by a Bushfire Report prepared by Travers Bushfire Ecology and a Wastewater Management Report prepared by Larry Cook & Associates and described the land as *"a regularly shaped allotment (comprising) a total area of approximately 14.9 Hectares... with a gentle slope.... at grades between 0-5 degrees for the most part"*.

Physical inspection of the land confirms that it has been established and managed primarily as a rural property for beef cattle production and currently supports the main residence and home of Doctor Wade, rural shed, on-farm water supply and the more recently installed demountable/transportable building currently used and occupied for and by Mountain Medicine.

Plans of the building, as existing, have been prepared and are attached to this submission in the Annexures.

The land is zoned 1(a) Rural (Agriculture) under the Deemed Environmental Planning Instrument, Interim Development Order No. 122; a zone which while permitting uses including Educational Establishments and Veterinary Hospitals, does not permit Medical Centres in spite of the zone objectives including under Item D uses which are complimentary to, and compatible with, the use of land for agriculture.

Note: The provision of medical services to a rural community would, in the opinion of the writer, be a use compatible with and complimentary to the use of land in the area generally for agricultural purposes in that it provides a level of service to the rural community that might not otherwise be available.

Again, and for completeness, a photocopy extract of Interim Development Order No. 122 is included in the Annexures; a photocopy extract which includes the table of uses and the definition of “Medical Centre” which, by this Planning Proposal is intended to be included in the Table to Clause 93 of Interim Development Order No 122 as a site specific additional land use permitted on this land only.

3 THE PLANNING PURPOSE

The purpose of this Planning Proposal is clear; to seek finite adjustment to the range of uses permitted in the 1(a) zone as applies to the subject land via an “enabling clause” to facilitate the continued use and occupation of the property via the provision of medical services consistent with the definition which is for:-

“A building or place used for the purposes of providing professional health services including preventative care, diagnosis, medical, surgical or counselling to outpatients only”.

4 NEED FOR THE PROPOSED USE

The fact that something in the order of 2,500-3,000 individuals rely on the medical services provided by Mountain Medicine should be evidence enough to confirm that the need for the continued use and occupation of the premises for medical services.

Included in the Annexures to this submission are testimonials. It should also be noted that Mountain Medical is a practice which has approximately 2,500 clients; is provided with a location specific provider number under Federal and State Health Administrative arrangements and is unable to be located in any other property due to zone constraints and restrictions including those that were previously occupied given eviction notices served on the Proprietor of the property; an irreversible position from the perspective of Doctor Wade. This is more fully detailed in the advice under the hand of Giles Finney, Solicitor, CBD Law and is included in the Annexures.

5 INTRODUCTION

Located about 400 metres south of the intersection of Niclins Road with Wisemans Ferry Road, the site of the existing Mangrove Mountain Medical Practice has excellent vehicular access and sight distance of over 500 metres to the south and 400 metres to the north along the straight alignment of Niclins Road.

Having originally been selected for Farm Managers accommodation, the transportable building was installed without consent, but in anticipation of the issue of approval.

There were real family, financial and practical reasons for that decision to be made by the owner in advance of approval which subsequently facilitated the use and occupation of the building as a Medical Centre following the owners' receipt of a Notice to Quit premises occupied in Waratah Road, Mangrove Mountain.

The adaptable reuse of the asset that had been purchased for another purpose has enabled Doctor Wade and her associates to maintain the provision of medical services to the rural community; a community that would otherwise be denied the facilities, given the absence of available alternate accommodation.

By advancing this Planning Proposal, our Client seeks the imprimatur of the Council and the further approval of the Department of Planning to the modification of the Planning Controls to enable the continued use of the property in the provision of those medical services.

The justification for the proposal although self-evident is reinforced by the information contained in the attachment; an attachment which has been prepared and been kept consciously concise to facilitate prompt assessment, endorsement and referral by the "Gateway" process.

The proposal seeks either:-

- (a) The preparation of an enabling clause to the existing Deemed Environmental Planning Instrument (Interim Development Order No. 122), or
- (b) In the alternative (and only if of course the existing City Wide Local Environmental Plan gazetted in the interim) inclusion in Schedule 1 to that document of the specific provisions to enable the continued use and occupation as is outlined in the following pages.

A Gateway Determination under Section 56 of the Environmental Planning & Assessment Act is requested via this application being advanced in accordance with Section 55 of the Environmental Planning & Assessment Act.

The Planning Proposal applies to property known as Lot 981 DP 862346 40-60 Niclins Road, Mangrove Mountain; a rural property zoned 1(a) and currently supporting the rural residence of the owner, Doctor Christine Wade, and the enterprise known as Mountain Medicine in a transportable building installed and used without consent.

6 ALTERNATIVE SITES AND ALTERNATIVE APPROACH

Alternative sites investigated by the Proprietor and her agents/consultants included:-

- (a) The now decommissioned and disused Mangrove Mountain Bowling Club located north of the intersection of Wisemans Ferry Road and George Downes Drive;
- (b) The disused (previously Mobil/service station at Peats Ridge;
- (c) Together with numerous other properties referred to in the Annexures.

Common to all properties was the absence of any provision that would provide for or accommodate Medical Centre activities; a short coming of both the existing and proposed planning controls; controls which (adopted from the standard template) attract a “one size fits all” criticism, not only from the Proponent, but from multiple sources across the State of New South Wales.

While cost in the provision of suitable accommodation on a suitable site was always a primary consideration, the urgency of maintaining a facility via the practice of Doctor Wade overwhelmed procedural requirements in terms of land use planning; procedural requirements which may be rectified by a positive response to this application; an application which will provide a remedy to Council, the Proponent and importantly, for the patients of Mangrove Mountain Medical Centre.

The purchase cost of alternate property and the cost of renovating existing assets was further compromised by the uncertainty as regards the making of the Draft Local Environmental Plan or otherwise that might or might not facilitate use of some or any of the properties that had been investigated (see Annexure 1), thus leading to the practical decision in light of the urgency in the provision and maintenance of medical services to deploy a part of the property owned by the Proprietor, in spite of the less than ideal circumstances in terms of “working from home”.

An alternative to the Planning Proposal, as suggested by Council’s Planning Staff, is that the use be accommodated as a “Home Occupation”.

“Home Occupation” as such is not an option. “Home Occupation” although permitted, does not accommodate the scale and range of services required by the residents and accordingly, adjustment to the Deemed Environmental Planning Scheme Controls and/or the proposed Draft City Wide Local Environmental Plan Controls are required.

7 TENSIONS BETWEEN RURAL AND EXTRACTIVE LANDUSES

Tensions between the planning controls in the Mangrove Mountain, Somersby, Peats Ridge, Kulnura plateau were identified and examined in the report of the Rural Lands Study Steering Committee published in January, 1999.

That report identified inter alia the interpretative difficulties associated with the application of Sydney Regional Environmental Plan No. 8 - Central Coast Plateau Areas and, in examining the current planning framework, spoke to, of and about the provisions of Interim Development Order No. 122 (which remain relevant); the aims and objectives of both Sydney Regional Environmental Plan No. 9 – Extractive Industries, Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River and as mentioned above, Sydney Regional Environmental Plan No. 8 – Central Coast Plateau Areas.

In examining land use opportunities, the Steering Committee identified the urban support activities as:-

“Frustrated due to the restrictions of the Regional Environmental Plan; speculation by owners for urbanisation for increased subdivision/development rights and lack of criteria to assess Local Environmental Plans on their merits (which all conflict with the Regional Environmental Plan)”.

The document also identified potential conflict with incoming residents adopting the area as a rural residential lifestyle location (without a full understanding of the potential impacts and operational requirements for farming).

In general, the commentaries, discussions, conclusions and recommendations within the rural plan study remain relevant to this application given:-

- (a) The remaining tensions between the relevant Regional Environmental Plans; and
- (b) The current statutory controls under Interim Development Order No. 122;
- (c) The almost identical range of uses under the RU1 Zone in the draft Local Environmental Plan

which all point to the need for finite modification to the existing and future land use controls to permit the development of this property as a Medical Centre.

8 STATUTORY CONTROLS – SYNOPSIS

The land is located within the Gosford LGA and is an area covered by several planning controls, namely:-

- Sydney Regional Environmental Plan No. 8;
- Sydney Regional Environmental Plan No. 9;
- Interim Development Order No. 122;
- Local Environmental Plan No. 2001; and
- The Gosford City Draft Local Environmental Plan.

Sydney Regional Environmental Plan No. 8 and Sydney Regional Environmental Plan No. 9 focus respectively on the agricultural and sand resources in the region.

A review of the maps which accompany Sydney Regional Environmental Plan No. 8 identifies the land the subject of this Planning Proposal as comprising prime agricultural land, while the site of the actual building installed on the property is within an area identified as Land Class 1B – yellow earth (upper profile) less than 2 metres thick which the table to Map 3 classifies agricultural land on the plateau of the New South Wales Central Coast (as prepared by the Department of Agriculture NSW) and places that land in an equivalent class of the Rural Land Evaluation Manual of 2, indicating suitability for fruit, vegetables, crops and pastures.

Sydney Regional Environmental Plan No. 9 does not identify this land as having sand resources within it and therefore there is no conflict between those two provisions.

Gosford/Wyong Local Environmental Plan 2001 introduced “Tourist Facilities” as a use permitted in this Zone and on this land.

Tourist Facilities, by definition, are uses that might provide for accommodation of tourists as an adjunct to provide additional revenue from a non-agricultural source in an agricultural/rural setting.

To the extent that this application involves a placement of a building on land identified as prime agricultural, but for a use able to be conducted within the context of maintenance of the existing and adjacent rural activities, then we submit that the building has similar contextual impact as would, for example, a tourist use activity on the site.

Given that the zoning regime might permit, for example, building investments in the form of tourist facilities that would by their very existence occupy in terms of footprint, small areas of any agricultural holding, then we submit that this application is and might be considered having similar and minimal impact consistent with what might be contemplated in the area for other uses providing a revenue source other than agriculture, but in this case, an enterprise that would be of benefit to the rural community of the locality.

Further discussion follows under each of the statutory controls below.

9 PART 1 – OBJECTIVES OR INTENDED OUTCOMES

“Section 55(2)(a) a statement of the objectives or intended outcomes of the proposed instrument”.

The objectives/intended outcomes of this proposal is to amend so much of the land use provisions that apply under the current Deemed Environmental Planning Instrument (Interim Development Order No. 122) by adjustment to Clause 93 of that Instrument or, in the event that the current City Wide Draft Local Environmental Plan gains momentum and is gazetted in the interim, adjustment to the schedule as might be required for inclusion of “Medical Centre” as a use permitted on this land.

10 PART 2 – EXPLANATION OF PROVISIONS

“Section 55(2)(b) an explanation of the provisions that are to be included in the proposed instrument”.

The objectives/intended outcome sought to be achieved by this Planning Proposal are to introduce the definition of “Medical Centre” to the existing Deemed Environmental Planning Instrument (Interim Development Order No. 122) and by way of an enabling clause, facilitate the use of the subject property as a Medical Centre as defined below:-

“A building or place used for the purposes of providing professional health services including preventative care, diagnosis, medical, surgical or counselling to outpatients only”.

The aim of the plan is to enable the use of the land to proceed in accordance with the definition of “Medical Centre” via Insertion of the definition of “Medical Centre” as contained within Clause 3 of Interim Development Order No. 122 and inclusion of the land in the Table to Clause 93.

COLUMN I

Lot 981 DP 862346 HN 40-60 Niclins Road, Mangrove Mountain

The land, as noted above, is Lot 981 DP 862346 HN 40-60 Niclins Road, Mangrove Mountain.

COLUMN II

Medical Centre

**11 AMENDMENT TO THE DEEMED ENVIRONMENTAL PLANNING INSTRUMENT –
INTERIM DEVELOPMENT ORDER No. 122**

PART 3 – JUSTIFICATION

Section A – Need for the Planning Proposal

“The justification for those objectives, outcomes and provisions and the process for the implementation (including whether the proposed Instrument will comply with the relevant directions under Section 117)”

Is the Planning Proposal a result of any strategic study or report?

No.

There is no amendment to the zone of the land proposed other than the inclusion of an enabling clause via identification of the land and the additional use as outlined above.

It is noted that Section 55(2)(D) refers to maps. There are no maps required in this instance, other than a map which identifies the land (see photocopy extract of the Council’s cadastral plans in the Annexures).

“is the planning proposal a best means of achieving the objectives of intended outcomes, or is there a better way”;

Yes. This Planning Proposal is the best means of achieving the objectives of intended outcomes.

“is there a nett community benefit?”;

The attachment provided demonstrates that this Planning Proposal will have a nett community benefit.

Section B – Relationship to Strategic Planning Framework

“Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies?”;

The Central Coast Regional Strategy 2006-2031 is applicable.

“Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?”;

The proposal is consistent with the identified aspirational objectives of the Gosford Strategic Plan, Gosford 2025; a “living document” which speaks generally and generically to society and culture, environment, economy, governance and leadership and identifying variously (and throughout the document) the need for a type of facility contemplated in this Planning Proposal as fulfilling the “community wellness” aspirations.

“Is the planning proposal consistent with state environmental planning policies?”;

While a number of State Environmental Planning Policies (SEPPs) remain applicable to the land, none are compromised nor relied on in this Planning Proposal.

“Is the planning proposal consistent with applicable Ministerial Directions (Section 117 Directions)?”;

It is considered that the proposal is consistent with applicable Ministerial Directions, and for completeness, we provide the following commentary.

1.1 – Business and Industrial Zones

“The objectives of this direction are to:

- (a) encourage employment growth in suitable locations;
- (b) protect employment land in business and industrial zones; and
- (c) support the viability of identified strategic centres”.

This Planning Proposal is for a specific use on a specific parcel of land well suited to the Proposals requirements.

1.2 – Rural Zones

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

While the land is zoned 1(a); there are no impacts in terms of local agricultural production arising.

1.3 – Mining, Petroleum, Production and Extractive Industries

The proposal does not compromise the ultimate extraction or commercial capitalisation on subterranean resources that might exist.

2.1 - Environment Protection Zones

The Planning Proposal does not diminish the scenic (environmental) values of the land.

2.2 – Coastal Protection

“The objective of this direction is to implement the principles in the NSW Coastal Policy”;

This Planning Proposal does not compromise any of the objectives in relation to the implementation of the Principles of the NSW Coastal Policy.

3.4 – Integrating Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) improving access to housing, jobs and services by walking, cycling and public transport; and
- (b) increasing the choice of available transport and reducing dependence on cars; and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car; and
- (d) supporting the efficient and viable operation of public transport services; and
- (e) providing for efficient movement of freight”.

The objectives of this Direction are fulfilled in that the site selected and the subject of this Planning Proposal, is in a location that facilitates reduced demand for travel for Clients within its broader catchment using the existing road network.

4.4 - Planning for Bushfire Protection

This Planning Proposal does relate to land within an area which has been the subject of Bushfire Threat Assessment. The objectives of the policy, in terms of protection of life, property and the environment and, sound management of bushfire prone lands, are able to be fulfilled given that there are no additional building works proposed, nor required and adequate and appropriate protection of the existing assets is able to be demonstrated.

5.1 – Implementation of Regional Strategies

“The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies”.

This Planning Proposal is considered to be consistent with and satisfy the Gosford Vision 2025 Objectives in relation to “community wellness” and to that extent, further satisfies the Central Coast Regional Strategy 2006-2031.

6.1 – Approval and Referral Requirements

“The objectives of this direction is to ensure that Local Environmental Plan provisions encourage the efficient and appropriate assessment of development”.

Clause 4 of this Direction, requires that a Planning Proposal must:-

- (a) minimise inclusions and provisions that require concurrence/consultation;
- (b) not identify development as “designated development”.

This Planning Proposal is consistent with that Direction.

6.3 – Site Specific Provisions

“The objective of this direction is to discourage unnecessarily restrictive site specific planning controls”.

This Planning Proposal seeks site specific inclusion of the land in the schedule to Clause 93 of Interim Development Order No. 122 to facilitate the property’s use as a “Medical Centre” as defined.

Section C – Environmental, Social and Economic Impact

“Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?”;

No.

The property has been used for rural purposes for many years. Investigations associated with the lodgement and assessment of the application for use as a Medical Centre, clearly established that there are no flora or fauna populations or communities or habitats that would be likely to be affected by the continued use of the property.

“Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?”;

The making of an enabling clause will enable the Council to formally consider and approve an application for use and occupation of the premises as a Medical Centre.

On-site sewer management investigations have been conducted and demonstrate that the site is capable of accommodating, on an on-going basis, the satisfactory disposal of wastewater on-site.

Vehicular access and traffic arrangements have been investigated confirm that vehicular access/egress, traffic and parking are able to be accommodated.

Character impacts are consistent with the Development Control Plan No. 159 requirements in terms of the local desired character being maintained and amenity impacts are able to be controlled and managed, particularly with vehicular access issues and ensure that no impacts off-site occur in relation to aural or visual privacy/amenity considerations.

“How has the planning proposal adequately addressed any social and economic effects?”;

The Planning Proposal will facilitate the on-going provision of infrastructure and services satisfying desperately required medical services.

Section D – State and Commonwealth Interests

“Is there adequate public infrastructure for the planning proposal?”;

Power and telephone facilities are available to the land and will not require augmentation beyond that previously relied on in terms of rural residential use and occupation.

The facility is in effect an additional element of infrastructure servicing and facilitating the welfare and “wellness” of the community.

“What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the Planning Proposal?”;

No consultations have yet been undertaken.

Part 4 – Community Consultation that is to be Undertaken

S55(2)(e) Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

In anticipation of the gateway support, community consultation will involve the usual exhibition process via exhibition of the proposal for not less than 28 days with advertisements in the local newspapers.

Council's policy also requires it to provide adjoining, adjacent and any other likely affected landowner or occupier with a written notice giving a description of the proposal and inviting review of documentation lodged and a time within which submissions can be received.

Typically a 28 day exhibition period for community consultation is required consistent with statutory requirements and Gosford City Council's Policies.

Notice of the public exhibition is usually given by notification in the local newspaper (Central Coast Express Advocate), via publication on Council's website and via direct letters notifying adjoining and adjoining landowners.

12 CONCLUSION

Adoption of this Planning Proposal will facilitate the continued use and occupation of the property as a Medical Centre, as described in this Planning Proposal; an asset which will continue to contribute to the wellness of the community.

There is no other available alternative. Doctor Wade was evicted (without reason) from her previous location meaning that location is no longer an alternative. The conduct of Mountain Medicine as a “home occupation” cannot occur.

Planning accommodation was previously made for what was conducted as a comparable practice to that now being conducted by Doctor Wade. In that regard, reference is made to Gosford Local Environmental Plan No. 324 which provided consent to a Medical Centre at Lot 2 DP 613712. Those premises were operated by the previous “Kemp/Dilger” practice which involved two medical practitioners and employed staff operating from residential type premises.

The use and occupation of the property as a Medical Centre is in keeping with other permissible uses, including the present permissible use of veterinary surgeries and tourist facilities.

Making the refinements to the Deemed Environmental Planning Instrument that are sought will not result in a manifestation of land use activity that conflict with the objectives of the Rural 1(a) Zone.

Micro matters associated with the continued use and occupation of the property are matters that are capable of being addressed appropriately via the formal aspects of Development Approval, application of appropriate Conditions and certification.

13 RECOMMENDATION

It is recommended that the Council adopt the “gateway” process pursuant to Section 55 of the Environmental Planning & Assessment Act, 1979, by:-

- 1 Endorsing the preparation of this Planning Proposal for Lot 981 DP 862364 No. 40-60 Niclins Road, Mangrove Mountain.
- 2 Adopt and install a definition for “Medical Centre” as outlined in Part 2 of this Planning Report; and
- 3 Identify the land in the Table to Clause 3 of Interim Development Order No 122 to permit use of the and as a Medical Centre.

ANNEXURE 1

Zoning Map

ANNEXURE 2

Aerial Photograph

ANNEXURE 3

Copy of
“A Guide to Planning Proposals”

ANNEXURE 4

Copy of
“LEP Practice Note”

ANNEXURE 5

Copy of CBD Law's Correspondence

Dated 18th October, 2012

To PJ Donnellan & Co

ANNEXURE 6

Photocopy Extract of Interim Development Order No. 122

ANNEXURE 7

Testimonials and Petition in Support

ANNEXURE 8

Plans Prepared by Karen Burke

ANNEXURE 9

Schedule of Reasons

“Why Mountain Medicine Cannot Be Considered as a Home Occupation”