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| JRPP No. | 2010HCC003 |
| DA No. | DA-16-2009-811-1 |
| Proposal | Eight (8) lot commercial subdivision and infrastructure associated works. |
| Property | 155 Salamander Way, Salamander Bay Lot 264, DP 806510 |
| Applicant | RPS Harper Somers O'Sullivan Pty Ltd (C/- Port Stephens Council) |
| Report By | GSA Planning (C/- Port Stephens Council) |
| Checked by | Port Stephens Council – David Broyd |

Assessment Report and Recommendation

Executive Summary

Proposed Development

The application proposes an eight (8) lot Torrens Title subdivision and associated infrastructure works for a u-shaped Council owned site with an area of 11.05ha (SEE 2009 p.4) at No.155 Salamander Way, Salamander Bay. This application includes the creation of seven (7) commercial allotments with the eighth allotment allocated for environmental and stormwater purposes. The proposed infrastructure includes a Circuit Road, two (2) internal minor roads, street lighting, services and landscaping.

The development will require the re-contouring of the site and clearing of vegetation and koala habitat to accommodate the proposed subdivision layout. A number of koala feed trees (Eucalyptus Robusta – Swamp Mahogany) will be removed from the site, which the applicant proposes to replace with 300 tube stock around the periphery of the Circuit Road. The applicant proposes to offset No.100 Salamander Way, Salamander Bay (being Lot 21, DP 1044009) to compensate for the loss of 3 hectares of Swamp Sclerophyll Forest, an Endangered Ecological Community (EEC).

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to clause 13C of State Environmental Planning Policy (Major Development) 2005, given it is a development with a Capital Investment Value of more than \$5 million.

Permissibility

The site is zoned 3(a) Business General 'A' pursuant to Port Stephens Local Environmental Plan (LEP) 2000. The proposal is categorised as a commercial subdivision and is permissible within the 3(a) Business General zone, subject to development consent. We are instructed that all required owner(s) consent has been provided.

Consultation

In accordance with Council's Notification Policy the application was notified from 5 November 2009 to 18 November 2009 and received twenty one (21) submissions.

On 19 November 2009, the application was referred to Department of Environment Climate Change and Water (DECCW). Subsequently on 8 December 2009 DECCW responded with General Terms of Approval (GTA).

Following from a determination by the JRPP, the application was re-notified between 18 November 2010 to 5 December 2010. During this time, 13 submissions were received.

On 19 January 2011, the application was referred to the Roads and Traffic Authority (RTA) for comment. At the time of preparing this report, no comments had been received.

Key Issues

The main issues identified in the assessment and raised in the submissions were as follows:

1. The potential impact of the proposed Circuit Road and subdivision on the adjoining SEPP 14 wetlands and koala habitat.
 - Whether the buffer between wetlands and proposed road is acceptable?
 - The loss of koala habitat
 - Impact on flora and fauna
 - Whether the proposals inconsistencies with the CKPoM performance criteria are acceptable in the circumstances?
2. The proposed offset of No.100 Salamander Way, Salamander Bay and the planting of 300 tube stock.
 - Whether the offset arrangement is fair and reasonable or whether it is double counting?
 - Whether the proposed 300 tube stock will provide an appropriate koala habitat in the short or medium term?
3. The potential impact of the proposed Circuit Road on adjoining residential properties to the north.
 - The earthworks and level differences at the interface of the site.
 - The privacy and amenity impacts.
4. The relationship of the proposed subdivision with the existing Salamander Bay Shopping Centre, Childcare Centre and the future end users of the allotments.
 - Whether there should be a plan for segregated and safe pedestrian access?
 - Whether the subdivision will impact on the Salamander Childcare Centre?
 - Whether future buildings will be located and designed to offer an attractive and functional shopping experience.
 - Whether the subdivision road network will cater for the future level of car parking.
 - Whether there should be a Development Control Plan to guide and co-ordinate future development of Council's land to ensure good urban design outcomes.

To consider the different environmental information, Travers Bushfire and Ecology (TBE) have been engaged to prepare a peer review of the development application documentation (see Appendix A).

Recommendation

That the Joint Regional Planning Panel refuse development consent to development application (DA 16-2009-811-1) for five (5) reasons outlined in this report.

1. Background

On **7 August 2009**, the applicant (Council's Property Section) and consultants met with Council's Development Advisory Panel (DAP) in relation to the proposal. In this meeting, a number of key issues were raised including, land constraints, traffic, access, car parking.

On **27 October 2009**, the DA was lodged with Port Stephens Council by RPS Harper Somers O'Sullivan on behalf of Council's Property Section.

On **29 October 2009**, the internal referrals were made to Council's traffic and stormwater engineers and environmental officers.

On **5 November 2009 to 18 November 2009**, the proposal (DA16-2009-811-1) for an eight (8) lot Torrens Title community subdivision at 155 Salamander Way, Salamander Way was publicly notified. During this time, 21 submissions were received.

On **19 November 2009**, the DA was referred to Department of Environment Climate Change and Water (DECCW). Subsequently on **8 December 2009** DECCW responded with General Terms of Approval (GTA).

On **11 December 2009**, Council requested additional information from the applicant in relation to the proposal.

On **4 January 2010**, the DA was referred to the JRPP. Subsequently on **11 February 2010**, a briefing session with the JRPP was held.

On **31 March 2010**, additional information was submitted by the applicant in response to Council's request for additional information, dated 11 December 2009. This information was referred to internal engineering and environmental officers for comment.

On **27 May 2010**, a further request for additional information was made following comments from internal referrals. On **6 June 2010**, additional information was submitted by the applicant.

On **28 July 2010**, the JRPP meeting was held in relation to the proposal (JRPP No.2010HCC003). The matter was unable to be determined due to issues surrounding the public notification process for the DA and other matters. As result, the JRPP made the recommendation that the determination be deferred to enable re-notification.

On **29 October 2010**, additional information was submitted by the applicant in response to the recommendations made by the JRPP. This included an Addendum Urban Design Response and a Social and Economic Impact Assessment.

On **18 November 2010 to 5 December 2010**, the DA and the additional information was re-notified. During this time, 13 submissions were received.

In **November 2010**, Port Stephens Council engaged GSA Planning to prepare an Independent Development Assessment Report to consider planning and urban design matters relating to the proposal.

On **13 January 2011**, a series of stakeholder meetings were held at Port Stephens Council and the Tomaree Library in Salamander Bay by GSA Planning. These are discussed further in Section 4.

On **31 January 2011**, Travers Bushfire and Ecology were engaged to undertake a peer review of the conflicting flora and fauna information.

2. Site and Locality Description

The subject site is located on the northern side of Salamander Way with a second frontage to Bagnall Beach Road, and is known as No.155 Salamander Way, Salamander Bay, described as Lot 264 in DP 806510 (see Figure 1). The site is an irregular u-shaped parcel of land, with a total site area of 11.05 hectares. The site surrounds the existing Salamander Bay Shopping Centre site, which comprises 22,300m² retail space and 1,100 car parking spaces around the periphery of the site (Colston Budd, 2009, p2).

Part of the site is occupied by the Tomaree Library and Community Centre and Salamander Child Care Centre, which are located on the south western corner of the site. These buildings have access from the existing Town Centre Circuit road from Salamander Way. The remainder of the site is vegetated to a varying degree with the more intense parts being identified as koala habitat, ecologically endangered community (EEC) and wetlands.



Figure 1: Aerial Photograph of the site
(Source:LPMA SixViewer,2010)

To the north are dwellings located in the suburb of Salamander Bay and comprise single storey brick dwellings, which are located in Plimsoll Close, Endeavour Place, Purser Street and Palm Grove. These dwellings are on land zoned 2(a) Residential under the Port Stephens LEP.

To the east is Bagnall Beach Road. To the north east of the site is the Rigby Centre, which comprises a number of retailers. Further to the east, on the opposite side of the road is The Oaks Resort. This land is zoned 2(a) Residential under the Port Stephens LEP.

To the south of the site is the Salamander Bay Shopping Centre and surrounding car parking areas, described above. Further to the south is more 3(a) Business zoned land which is occupied by a variety of commercial and retail uses, surrounding the centre.

To the west is land known as the Mambo Wanda Wetlands, which is land identified as SEPP 14 Wetlands. The boundary of the SEPP 14 wetlands is one of the issues in this matter. This land is owned by Council and is zoned 7(a) Environmental Protection under the Port Stephens LEP.

The site has frontage to both Salamander Way and Bagnall Beach Road, which are in close proximity to Nelson Bay Road. According to the Roads and Traffic Authority's (RTA) established road hierarchy, both Salamander Way and Bagnall Beach Road are classified as local roads. However, Nelson Bay Road is classified as a State road.

3. Project Description

The proposed development is for an eight (8) lot Torrens Title commercial subdivision at No.155 Salamander Way, Salamander Bay. It proposes the creation of seven (7) commercial allotments and one (1) allotment is to be dedicated as a reserve and will be occupied by a detention basin and related facilities (see Figure 2 and 3).

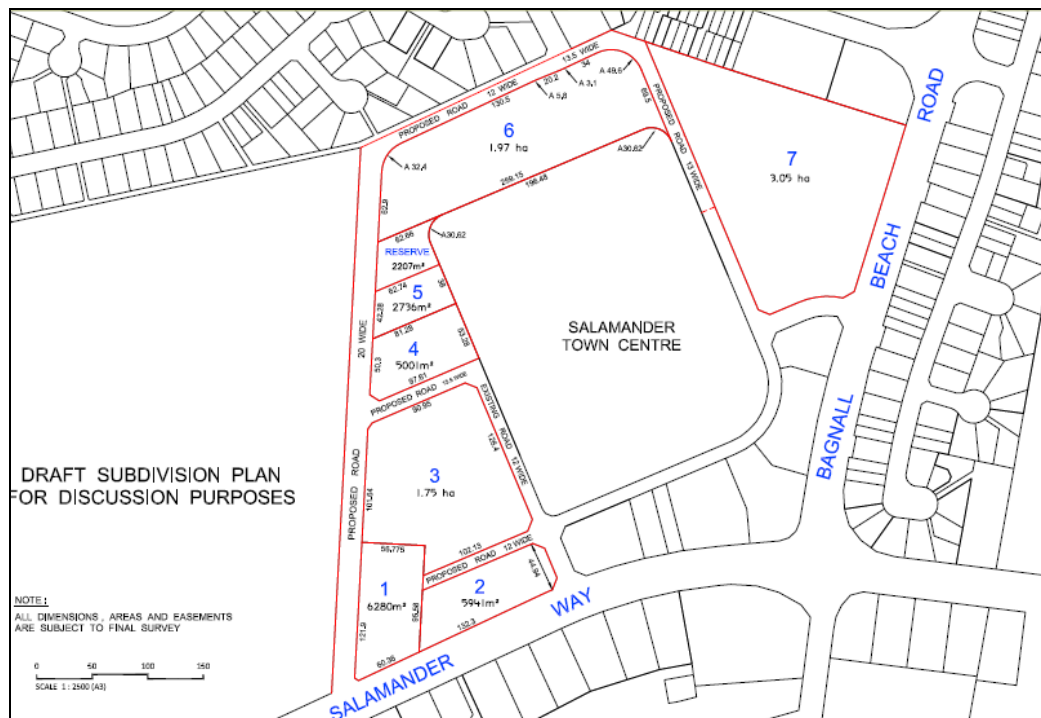


Figure 2: Proposed subdivision plan
(Source: RPS Harper Sommers O'Sullivan, 2009)

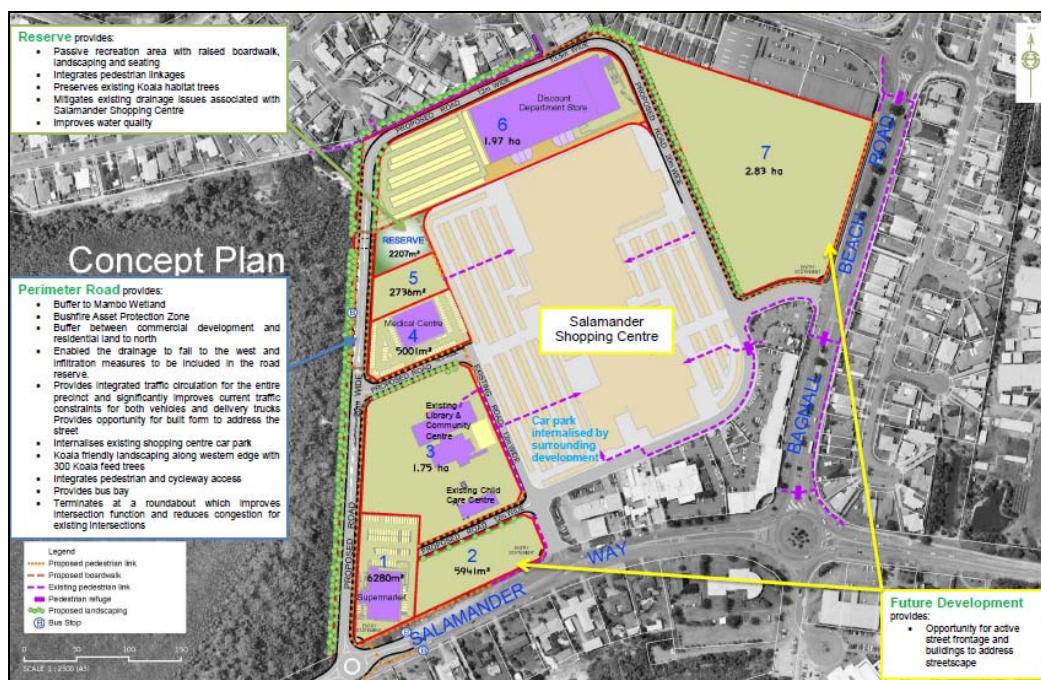


Figure 3: Proposed Concept Plan
(Source: RPS Harper Sommers O'Sullivan, 2009)

The applicant has advised that negotiations with the 'end users' of the proposed allotments is underway. The possible 'end users' are not part of this application. A summary of the proposed subdivision is described below (see Table 1).

| TABLE 1: DETAILS OF THE PROPOSAL | | |
|---|---|----------------------|
| Proposed Lot No. | Possible End Users | Lot Size |
| 1 | Development Lot – Aldi | 6,280m ² |
| 2 | Development Lot – Unknown | 5,941m ² |
| 3 | Development Lot – Childcare Centre and Library (existing) | 17,500m ² |
| 4 | Development Lot – Medical Centre | 5,001m ² |
| 5 | Development Lot – Unknown | 2,763m ² |
| 6 | Development Lot – Big W | 19,700m ² |
| 7 | Development Lot – Future Development | 28,300m ² |
| Reserve | Reserve (Stormwater/Drainage) | 2,207m ² |
| | | 8.99 hectares |

Roads

The proposal will incorporate new roads and upgrades to the existing access points from Salamander Way and Bagnall Beach Road. The roads include: a proposed Circuit Road around the periphery of the site's northern and western boundaries, providing a connection to the existing Town Centre Circuit in the eastern portion of the site. The western portion of the proposed Circuit Road will provide a 20 metre road reserve and a 2.4 metre cycleway path, accessible from Salamander Way. This portion of the road will adjoin the Mambo Wanda Wetlands and a considerable amount of cut and fill will be required. Along the northern boundary, the road width will reduce to 12 metres then widen to 13.5 metres adjoining the existing residential dwellings. The proposed Circuit Road at Chainage 600.00 will be excavated between approximately 3.0m and 5.0m below the existing ground level, approximately 5m from the existing cycleway path and approximately 7.5m from the rear property boundary of the dwellings along the northern boundary of the site. The proposed Circuit Road then increases to 20 metres wide in the eastern portion of the site, connecting with the existing Town Centre Circuit Road.

Two minor roads will also be provided, accessible from the existing Town Centre Circuit road located on either side of Lot 3 (existing Community Centre and Childcare Centre site). Proposed Minor Road 1 will be 15.5 metres wide with a 1.2 metre wide footpath and link the existing Town Centre Road to the proposed Circuit Road. Minor Road 2 adjoins the existing Child Care Centre site to the south and is proposed to be 12 metres wide with a 1.2 metre wide footpath.

Environmental Works and Landscaping

To enable the proposed subdivision, the site will be re-contoured, requiring considerable cutting and filling of the land. An indication of the proposed cut and fill is contained in the Preliminary Road Design Drawings. An extract from these drawings is contained in this report (see Appendix B). The applicant advises that a three (3) hectare portion of the site will be cleared, which contains Swamp Sclerophyll Forest. This clearing may be more extensive. The submitted Flora and Fauna Assessment, prepared by Garry Worth Project Consulting indicates that due to the species, this part of the site is classified as an Endangered Ecological Community (EEC). The applicant requests that Lot 21 DP 1044009 (No.100 Salamander Way, Salamander Bay) be provided as an offset for the loss of vegetation as part of the proposed development.

In addition, the applicant states that a total of six (6) koala feed trees (*Eucalyptus Robusta* – Swamp Mahogany) will be removed from the site, which will be replaced with 300 tube stock within the proposed landscaping strip adjoining the proposed Circuit Road. Some of these trees are to be planted off-site on Council's verge. The loss of koala feed trees may be more extensive. An extract of the proposed landscaping sections is provided in Appendix C of this report.

Infrastructure

The proposal will include a 1,200m³ detention basin and infiltration basin within the proposed reserve between Lots 5 and 6. The applicant has indicated that the proposed Lots 1, 2 and 7 which have frontage to either Salamander Way or Bagnall Beach Road have access to existing electricity, water and sewer connections. However, Lots 3, 4, 5, and 6 will require reticulated water, sewer, electricity and telecommunications services, which are proposed to be accommodated within the access road along the western boundary.

The proposed Circuit Road will require cut and fill. Accordingly, retaining walls and battered slopes will be required. There is also street lighting proposed on the preliminary road design drawings (see Appendix B).

4. Consultation

The proposal was advertised on two (2) occasions. Neighbouring property owners were notified via post by Council.

In accordance with Council's Notification Policy the application was available for inspection from 5 November 2009 to 18 November 2009 and received twenty one (21) submissions.

Following the determination by the JRPP, the application was re-notified with additional information between **18 November 2010** and **5 December 2010**. During this time, 13 submissions were received.

On 13 January 2010, an opportunity was provided to the key stakeholders to meet with Gary Shiels (GSA Planning) to discuss the proposal. Meetings were held with the representatives from the following:

- Council's Property Section and their consultant;
- Salamander Childcare Centre
- Mambo Wanda Wetlands Committee
- Tomaree Ratepayers and Residents Association

A telephone conference was also held with representatives from Colonial First State – Salamander Shopping Centre.

Summary of Key Objections

4.1 Mambo Wanda Wetlands Reserves and Landcare 355 (b) Committee

Two submissions were lodged on behalf of this committee, their concerns related to:

- Impacts on the SEPP 14 wetlands;
- The lack of a buffer zone to the wetlands;
- Loss of endangered ecological community (EEC);
- The bona fides of the compensatory offset; and
- The potential impacts from stormwater discharge into the wetlands.

This submission has been referred to the Peer Review being undertaken TBE for consideration.

4.2 Tomaree Ratepayers and Residents Association (TRRA)

The Tomaree Ratepayers and Residents Association (TRRA) calls on the decision makers to:

“Reject this proposal because it will create a poor quality town centre, at great environmental cost!”

The executive summary which forms part of this submission states, inter alia:

“The proposal will lead to a poor quality commercial centre which will exacerbate existing problems rather than reduce them. It will lead to an isolated bunker style development surrounded by a sea of carparks with poor aesthetics, poor pedestrian access and no public place and open spaces. This is far from best practice, town centre planning.”

Issues raised in the document include: the location of the proposed detention tank; the concern about the proposed ring road; a request for Lot 4 and 5 and the reserve to be excluded; assertion that the PSCCKPoM requirements should be satisfied; impacts on Koalas; SEPP 14 wetlands; impacts on the EEC; provisions of SEPP 71; proposed environmental offset and whether there are Aboriginal heritage issues.

A copy of the Executive Summary is included as part of this report (see Appendix D). Also, this submission was referred to TBE for assessment.

4.3 Environmental Defenders Office (EDO)

On 10 January 2010, the Environmental Defenders Office (EDO) wrote to the JRPP advising that they acted for TRRA and raised concerns about the proper assessment of SEPP No. 44 – Koala Habitat Protection and the PSCCKPoM in relation to waiver of that document the EDO letter concludes, inter alia:

“There is not sufficient information or application of these criteria to the waiver in this case. We are of the view therefore that no such waiver could be provided to Council in this case. Any failure to provide such analysis would leave the JRPP open to judicial review proceedings by any persons dissatisfied with any decision about the application of the PSCCKPoM in this case.”

This issue has also been referred to TBE for review.

4.4 Colonial First State

This objection argues that it is difficult to resolve the issues in the absence of a formal Masterplan. The submission concludes inter alia:

“We conclude that the proposed subdivision application should not be approved in the present form because:

- It proposes inadequate road widths,*
- It does not afford good pedestrian connectivity and the disposition of indicative land uses would make walking between different parts of the Centre uninviting,*
- The plan fails to properly plan for public transport, and*

The traffic report appears to have only considered winter conditions and therefore ignores the much busier and highly important summer holiday conditions.”

4.5 Residents Objections

During the exhibition period, 10 submissions were received from residents who raised the following issues: impact on adjoining residential properties to the north; lack of masterplan; impact of the proposal on traffic and parking, particularly during holiday peaks; impact on the koala habitat; impact on the adjoining Mambo Wetlands; validity of the offset and benefit to koala habitat; lack of connectivity between existing Childcare Centre and Library with future development; and, lack of consultation.

5 Referrals

On **19 November 2009**, the application was referred to Department of Environment Climate Change and Water (DECCW). Subsequently on 8 December 2009 DECCW responded with General Terms of Approval (GTA).

On **29 October 2009**, the internal referrals were made to Council's traffic and stormwater engineers and environmental officers.

While the application does not trigger the categories for Traffic Generating Development contained in Schedule 3 of SEPP Infrastructure, the application was referred to the Roads and Traffic Authority (RTA) for comment on **19 January 2011**.

Copies of the referrals and subsequent comments are contained in Appendix E – Referral Comments.

There were conflicting opinions contained in the Statement of Environmental Effects (SEE) prepared by RPS Harper Summers O'Sullivan Pty Ltd; the Statement of Effects on Threatened Flora and Fauna prepared by Garry Worth; and the submissions by the Mambo Wanda Wetlands Reserves and Landcare 355(b) Committee and the Tomaree Ratepayers and Residents Association. Also there has been a letter from the EDO. Accordingly, a Peer Review of the Flora and Fauna issues was authorised by Council and undertaken by TBE. The brief given to TBE included the following:

1. *“Undertake an ecological reconnaissance the koala habitat, potential tree loss and the position of the proposed road.*
2. *Consideration of the key points raised in the Mambo Wanda Wetlands Reserves & Landcare 355(b) Committee (Mambo Wetlands Committee) and the Tomaree Ratepayers and Residents Association (TRRA) submissions against the key points in the applicants Flora and Fauna Report.*
3. *In light of the above, the key points would be:*
 - a. *The value of proposed Lots 4,5,6 as koala habitat and part of the wetlands and/or SEPP 14 wetlands;*
 - b. *The likely loss of koala feed trees (whether 6 or more trees will be lost)*
 - c. *The value of the proposed 300 koala habitat tube stock as a food source around the periphery of the proposed road;*
 - d. *The impact of the proposed road and stormwater system on the koala habitat and wetlands.*
 - e. *Is the proposed offset provision of habitat on the opposite side of Salamander Way fair and reasonable or is it double counting?*
4. *Is a further seven (7) part test required or is the information available considered to be adequate?*
5. *Advise whether or not the concession to the Koala Plan of Management by Council's Coordinator of Natural Resources is well founded and should be supported.*
6. *Do any of the above ecological issues need to be resolved? If so, are they capable of minor design refinements or would they be fatal to the proposed subdivision application in its present form?”*

A response to these matters has been considered elsewhere in this report.

6. Section 79C Considerations

(a)(i) the provisions of any environmental planning instrument

The subject site is zoned 3(a) Business General “A” zone under Council’s LEP 2000, gazetted 29 December 2000 (see Figure 4). The proposed subdivision is permissible with consent.

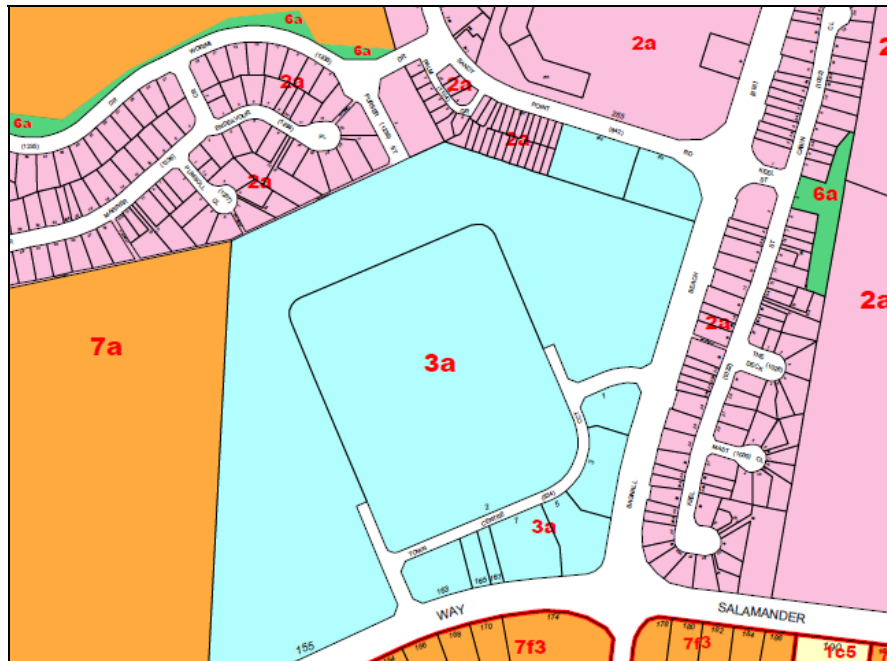


Figure 4: Zoning Map
(Source: Port Stephens Council)

Clause 21 of the LEP contains the objectives for the 3(a) Business General “A” Zone. The objectives are to encourage retail and commercial development; maintain and enhance the character and amenity; promote good urban design; and encourage safe pedestrian access and use of public transport. While the proposed subdivision would result in further retail and commercial development, there are no planning controls or guidelines to ensure that the zone objectives would be satisfied. Accordingly, in our opinion, these objectives cannot be properly assessed at this stage.

Clause 22 of Council’s LEP relates to subdivision in a business zone and required consent from the consent authority. The consent authority may grant consent if the proposed allotments are of a size and have a ratio depth to frontage that is appropriate having regard to the purpose for which the allotment is intended to be used; and, to facilitate commercial development. The proposal satisfies this clause.

Clause 44 of Council’s LEP relates to the appearance of land and buildings and requires the consent authority to take into consideration the aesthetic appearance of the proposed building or work, when viewed from a waterway, main or arterial road, public reserve or land zoned as open space. In determining whether to grant consent, the consent authority should consider the height and location of the building; the reflectivity of materials; the effect on the stability of land; any bushfire hazard and the likely extent and effect of development on vegetation. The Applicant is keen to maximise the viability of land in accordance with Objective (e). This subdivision will have an impact on the vegetation on the site and will be addressed further in the report.

Clause 47 of the LEP requires that a consent authority shall not grant consent unless there is provision for water supply facilities and removal and disposal of sewage and drainage on the land. The applicant has advised that there is access to water and sewer on the site.

Clause 51A of Council's LEP relates to land identified as being affected by Acid Sulphate Soils. The site is identified as Category 3 and requires that a person must not, without development consent, carry out works beyond 1m of natural ground surface. A Geotechnical Investigation, prepared by Barker Harle Consulting Engineers provides details on Acid Sulphate Soils. It advises that Soil Samples were collected as part of the investigations and analysed which determined that there was no actual or potential acid sulphate soils.

In summary, the proposed subdivision is permissible with consent in the 3(a) zone. However, at this stage, the objectives of the zone cannot be properly assessed in the absence of planning controls or guidelines for development. The design elements in various clauses can not be addressed at this stage.

State Environmental Policy (Major Development) 2005

State Environmental Planning Policy (Major Development) 2005 was gazetted on 25 May 2005. Part 3 of the SEPP relates to Regional Development, whereby Clause 13B nominates a number of categories.

The proposed development relates to Clause 13B (2)(b) for Crown development with a capital investment value of more than \$5 million. As the proposal has a capital investment value of \$5.5 million, the proposed development is deemed Regional Development and will be determined by the JRPP as the consent authority.

In summary, the consent authority is the JRPP, as the development is deemed regional development in accordance with SEPP (Major Development) 2005.

State Environmental Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 was gazetted on 21 December 2007 and outlines matters to be considered in the assessment of certain types of development.

Although the proposal does not meet the criteria listed in Schedule 3 of the SEPP, the subdivision, if approved, has the potential to generate substantially more than the level of traffic generation in the criteria. Accordingly, the application has been referred to the RTA for comment.

In summary, the application has been referred to the RTA, however at the time of preparing this assessment, no comments have been received.

State Environmental Planning Policy No.14 – Coastal Wetlands

State Environmental Planning Policy (SEPP) 2007 was gazetted on 12 December 1985 and applies to land which comprises coastal wetlands. In accordance with Clause 4 of SEPP 14, the policy applies to land outlined by the outer edge of the black line on the map. The boundary of the SEPP 14 wetlands is a matter for consideration.

The SEPP 14 mapping available on Council's website indicates that the wetlands adjoin the subject site. A Department of Planning plan attached to the TRRA submission indicated that the SEPP 14 wetlands partially overlaps the site boundary. Copies of the various maps are included in Appendix F. There is also the Port Stephens Wetlands Plan contained in the TBE Report (see Appendix A).

The applicant's Statement of Effect on Threatened Flora and Fauna, prepared by Garry Worth, states, inter alia:

The existing wetland boundary runs along part of the western boundary of Lot 284 and provision of a 50m buffer to the wetland would not allow the construction of the road along this boundary as proposed. The remapping of the edge of the wetland places its boundary 30m to 50m further to the west and a managed buffer of at least 40m would be possible. It is understood that an application will be made to adjust the wetland map to incorporate the revised boundary.

*Even if this wetland boundary is amended, precautions will have to be taken to avoid any disturbance to the wetland from the works on Lot 284 (the subject site). Any future construction within the site will need to follow strict sediment and erosion controls. A comprehensive weed management plan will be required to be implemented to avoid any impacts on the SEPP 14 wetland, such as thoroughly cleaning machinery down before being transported to the site to prevent outbreaks of noxious weeds such as *Alternanthera philoxeroides* (Alligator Weed) and *Lugwigia longifolia* (Long-leaf Willow Primrose). (Worth, 2009, p54).*

There does not appear to have been an application lodged with Council or the DoP to vary the wetlands boundary. On the basis that the site contains SEPP 14 wetlands, consent is required for any clearing, draining or filling of land. The consent authority must take into consideration a number of criteria in accordance with Clause 7(2) of the SEPP. As the applicant has maintained that there are no SEPP 14 wetlands on the site, they have not undertaken an assessment of the criteria has not been undertaken. In addition, a 50 metre ecological buffer is required between the SEPP 14 wetlands and the proposed development. The proposed Circuit Road and Lots 4, 5 and the reserve will encroach within this 50m buffer. The TBE assessment states, inter alia:

The western proposed road is acceptable in the southern half of the site with a boundary to Lots 1 and 3 however there may be a need to ensure the road bordering the north-western corner of Lot 3 does not protrude within the 50 metre buffer to Councils mapped SEPP 14 wetland (see Figure 3). We believe that this road would be detrimental if constructed within Lots 4 & 5 and the proposed reserve. (TBE, 2010, p5)

A minimum of 50 metres separation to a SEPP 14 wetland must be adhered to under the current legislation. Development within parts of proposed lots 3, 4, 5 & 6 could encroach on the buffer area (TBE, 2010, p7).

In summary, the proposal appears to encroach into the SEPP No. 14 50m buffer.

State Environmental Planning Policy No.44 – Koala Habitat Protection

State Environmental Planning Policy (SEPP) No.44 was gazetted on 6 January 1995 and applies to the Port Stephens LGA and aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The subject site is recognised as containing Core Koala Habitat and before consent can be granted, the application must be consistent with the plan of management.

Council has a specific plan of management, known as the Port Stephens Council Comprehensive Koala Plan of Management (PSCCKPoM) which applies to the site. Appendix 4 of the CKPoM contains a performance criteria that a development application needs to satisfy. The CKPoM also contains provisions which allows the performance criteria (a), (b) and (c) to be waived if those provisions are satisfied. The relevant waiver provisions relating to subdivision include, inter alia:

3. *That, in the case of subdivisions, they are designed in such a way as to retain and enhance koala habitat on the site and are consistent with the objectives of this appendix; and*

4. *That koala survey methods (as per the Guidelines for Koala Habitat Assessment in Appendix 6) have been used to determine the most appropriate location for the building envelope and associated works (so as to minimise the impact on koala habitat and any koala populations that might occur on the site) (PSC, 2002, p 68).*

A full copy of the performance criteria and waiver provisions are contained in Appendix G.

The applicants Statement of Effects on Threatened Flora and Fauna states, inter alia:

As proposed, this development does not comply with the performance criteria for development assessment in the CKPoM. A discussion of the relative benefits to the human community of the proposed development over the benefit of retaining all of the Koala habitat present is more appropriately undertaken within the Statement of Environmental Effects accompanying the Development Application. Consequently this assessment has addressed the amount of Koala habitat that can reasonably be retained within the development. (Worth, 2009, p53)

The Statement of Environmental Effects, states inter alia:

Although habitat offsets and tree planting are not specifically identified within the PSC Comprehensive Koala Plan of Management (CKPoM) as mitigation options for the removal of preferred koala habitat, it is considered that these measures will mitigate the impact of the development. As the proposal does not comply with the performance criteria of the CKPoM, approval for the development is sought under the 'waiver provisions'. These provisions allow for the approval of works that cannot be located in such a way as to avoid the removal of native vegetation within Preferred or Supplementary Koala Habitat, Habitat Buffers, Habitat Linking Areas or the removal of preferred Koala food trees.

Given the ameliorative measures proposed and the provision of future koala habitat, the assessment of this proposal under Section 5A of the EP & A Act has found that it would not have a significant impact upon a viable local population of a Threatened Species, Endangered Population or Endangered Ecological Community such that there may be a risk of extinction. Under Commonwealth legislation, the proposal was not found to have a significant impact upon any matter of National Environmental Significance. Therefore, there is no reason for the subdivision not to proceed from an ecological perspective.

The TBE assessment states, inter alia:

Given the development is a subdivision, Criteria 3 requires that subdivisions be designed 'in such a way as to retain and enhance koala habitat on the site and are consistent with the objectives of this appendix'.

This has not been done as habitat will be lost, other habitat will be fragmented and proposed retained habitat in the form of planted trees will not offer 'patch' protection. In addition habitat on site will not be enhanced. The planting of Koala feeds trees in a linear line could not be regarded as being an enhancement of koala habitat.

The provision of Koala habitat on the other side of Salamander Way should not be regarded as enhancing habitat as it exists already notwithstanding it is probably the best opportunity to access more extensive local to regional habitat. However the busy Salamander Way makes the proposal a poor solution given the lack of scientific rigor applied to the Koala population understanding within the Mambo Wetland.

In regards to the performance criteria identified within the KPOM the assessment does not adequately address those detailed requirements. (TBE, 2011, 13)

The TBE Assessment also states, inter alia:

The impact of development and loss of feed trees will be detrimental to the Koala(s) utilising the site as the preferred koala habitat will be severely fragmented and further isolated to a very tiny remnant, possibly not suitable for future use given the humanised landscape surrounding (increased human visitation and infrastructure). Retention of trees within Lots 4, 5 and the reserve, along with suitable mitigation measures is deemed appropriate. Council should not waive the provisions of the PSCKPOM for this development. Suggested landscaping to plant 300 tube-stock feed trees is not a suitable mitigation measure as these trees would take in the order of 10 years to reach a certain maturity for use by the Koala. Most importantly these trees would be a strip along the road edge and therefore form a narrow lineage. This approach does not provide a vegetated 'patch' with its inherent protection from passing vehicles, noise and predatory animals such as dogs. The area proposed for planting being adjacent to a proposed road and therefore luring the Koala to this planted landscape could be detrimental to its safety and well-being (TBE, 2011,p8).

The applicant submits that No.100 Salamander Bay, Salamander Bay be provided to offset the loss of habitat. An independent review of the application states, inter alia:

In respect to Koala, the proposed offset provision will lock-up a higher area of suitable Koala habitat likely containing much more Swamp Mahogany than exists within the subject site. This would however need to be verified by ground truthing. The offset area also has higher connective values for local movement. Whether this area is currently utilised by Koala would also require further investigation; current desktop analysis assumes this to be of value to the local Koala population.

Should the offset be considered for the individuals using Mambo wetlands then it is the case that the offset is located in a spot whereby Koala movement is significantly hindered due to vehicle traffic along Salamander Way.

Notwithstanding that the habitat within the offset area is currently available to Koala. Therefore the proposal would result in a net loss of local Koala habitat.

Thus the offset calculation should be regarded as double counting (TBE, 2011, 11).

The TBE Assessment also states, inter alia:

Travers bushfire & ecology agrees that the compensatory offset would not comply with all 13 points on the checklist of the principle of the use of biodiversity offsetting in NSW (see Appendix 1 attached). Whilst the proposed offset contains similar habitat attributes, is of a good size ratio for offsetting, it does not meet all criteria. (TBE, 2011, 7)

In summary, on the basis of the facts and opinions, the proposal fails to satisfy the SEPP No. 14 and PSCKPoM.

State Environmental Planning Policy No.55 – Remediation of Contaminated Land

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land was gazetted on 28 August 2005 and applies to the whole of the State. Clause 7(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land.

State Environmental Planning Policy No.62 – Aquaculture

State Environmental Planning Policy (SEPP) No.62 was gazetted on 25 October 2000 and applies to all development and land, pursuant to Clause 15A of the SEPP. A consent authority must consider whether a development application would have adverse effect on oyster aquaculture development, or, a priority aquaculture area, and, if so, it must be referred to the Director General of the Department of Primary Industries (DPI).

According to the NSW Department of Primary Industries Oyster Industry Sustainable Aquaculture Strategy, the site is located approximately 1.5km from an oyster aquaculture area. On this basis, no further assessment of SEPP 62 is required, nor is referral to the Department of Primary Industries required.

State Environmental Planning Policy No.71 – Coastal Protection

State Environmental Planning Policy (SEPP) No.71 was gazetted on 1 November 2002 and applies to land within the coastal zone. As the subject site is located within this zone, consideration of the matters for consideration contained in Clause 8 is required (see Appendix H).

The relevant matters for consideration are stated inter alia:

- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*
....
- (g) *measures to conserve animals (within the meaning of the [Threatened Species Conservation Act 1995](#)) and plants (within the meaning of that Act), and their habitats,*
....
- (i) *existing wildlife corridors and the impact of development on these corridors,*
....
- (p) *only in cases in which a development application in relation to proposed development is determined:*
 - (i) *the cumulative impacts of the proposed development on the environment, and*
 - (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

Note. Clause 92 of the [Environmental Planning and Assessment Regulation 2000](#) requires the Government Coastal Policy (as defined in that clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that clause or on land to which the Government Coastal Policy applies.

The assessment by TBE states, inter alia:

Lots 4 & 5 are clearly within a depressional area of the site with natural soil moisture levels. The western area of Lots 1, 2 & 3 appear to be relatively natural however the eastern portion may have some fill (development location of the library and childcare centre). Lot 6 and Lot 7 have been filled due to the development of the Town Centre.

Development of in particular Lots 4 & 5 would reduce the functioning of the bushland as a wildlife corridor by restricting the width outside of the SEPP 14 wetland that some animals cannot utilise (given the presence of water).

The levels of Lot 4, 5 & reserve are around the elevation of 5m. Council typically map flood prone areas to 2.5m with an extension to 3.6m given sea level rise. Notwithstanding this, both lots are clearly waterlogged on occasion given the high presence of fern and typical wetland species indicating either the presence of water or an extremely high water table.

The proposal will exacerbate stormwater issues to the SEPP 14 wetland adjacent should Lots 4 & 5 be filled and developed (and reserve for drainage purposes), therefore would be inconsistent with the matters of consideration under SEPP 71. (TBE, 2011,p9)

In summary, in our opinion, the proposal does not satisfy the relevant matters for consideration in SEPP No. 71 Coastal Protection.

(a)(ii) the provisions of any draft environmental planning instrument

Not applicable.

(a)(iii) any development control plans

Port Stephens Development Control Plan (DCP) 2007

The Port Stephens DCP 2007 was adopted on 22 May 2007 and came into effect on Thursday 31 May 2007. The DCP applies to the site and the proposed development.

The DCP has a number of sections which include: B1 Subdivisions and Streets; B2 Environmental and Construction Management; B3 Parking Traffic and Transport; and, B4 Commercial Development. The DCP also contains a number of design principles and controls for each of these identified sections. As the proposal is primarily for a subdivision, there are only a limited number of matters that are relevant to the current application. Matters of character settings, mixed use and residential accommodation are not part of the present proposal.

However, the principles and development controls relating to B2 Environmental and Construction Management, which relate to minimising impacts on ecosystems, retaining native vegetation and minimising impacts on fauna habitat, are relevant. Also, there is a control for development to provide buffer zones as screening to roads or for the protection of identified core habitat, koala habitat and endangered ecological communities. In our opinion, the proposal does not satisfy the principles and development controls relating to this section in the Port Stephens DCP.

In summary, as the proposal is for a subdivision, it is difficult to review all of the sections of the DCP. Notwithstanding this, in our opinion, the proposal does not satisfy the principles and development controls in B2 Environmental and Construction Management Section of the Port Stephens DCP 2007.

(a)(iiia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable

(a)(iv) any matters prescribed by the regulations

(1) For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

(a) in the case of a development application for the carrying out of development:

(i) in a local government area referred to in the Table to this clause, and

(ii) on land to which the Government Coastal Policy applies, the provisions of that Policy,

(b) in the case of a development application for the demolition of a building, the provisions of AS 2601.

(2) In this clause:

AS 2601 means the document entitled Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Government Coastal Policy means the publication entitled NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast, as published by the Government (and including any maps accompanying that publication and any amendments to those maps that are publicly notified), a copy of which may be inspected during ordinary office hours:

(a) at any of the offices of the Department, or

(b) at the offices of any of the councils of the local government areas listed in the Table to this clause

The proposal has been considered in relation to the Government Coastal Policy and is not considered to be contrary to this policy.

(b) the likely impacts of the development

Natural Environmental Impacts

The submissions by the Mambo Committee, TRRA and the Peer Review Consultant TBE conclude that there will be unreasonable natural environmental impacts. These impacts include a loss of koala habitat, impacts on the SEPP No. 14 wetlands and the removal of EEC. Importantly, the proposal will encroach the 50m buffer for the SEPP No. 14 wetlands. The extent of vegetation to be removed and the proposed cut and fill is likely to have serious impacts on the koala habitat and adjoining wetlands.

There is a waiver provision contained in the PSCCKPoM that potentially would permit the development to proceed, if the relevant performance criteria could be satisfied. The assessment by TBE is that this criteria is not satisfied and therefore the waiver is not appropriate.

There are two (2) proposed mitigation measures for the loss of koala habitat as part of this development application. The first includes the planting of 300 tube stock koala feeding trees around the periphery of the Circuit Road both on the site and Council's adjoining verge. These tube stocks would not offer food for koalas for approximately 10 years. Also, the proposed koala habitat is not, ideally, located along a road in a linear form, as it creates safety and other issues for the koalas.

The offset provision, for the land on the southern side of Salamander Way, would not resolve the loss in koala habitat in the vicinity of the subject site. Salamander Way acts as a buffer between the two locations and No. 100 Salamander Way is presently an environmental zoning.

The Peer Review by TBE concludes that the proposal would result in the loss of approximately sixty five (65) koala feed trees as distinct from the six (6) trees suggested in the applicant's documentation. It would appear that the koala habitat and designated wetlands will be unreasonably impacted by the development. Indeed, it is recommended by TBE that the lots 4, 5 and the reserve lot, together with the Circuit Road should not form part of the application.

The conclusion contained in the TBE Assessment Report states, inter alia:

"In view of the above we believe the site requires further ecological assessment to satisfy the Environmental Planning & Assessment Act Section 5A. Should the development continue without mitigation measures as we propose above then a Species Impact Statement would be necessary.

However an SIS and assessing authority may not be able to resolve the ecological significance arising from the development as it currently stands. This being the ecological impact arising from;

- *Extensive land filling and the removal of the wetland environment within Lots 4 & 5.*
- *Clearing vegetation within the proposed public reserve in order to facilitate stormwater control and water quality.*
- *Vegetation removal within the proposed road alignment/s.*

In conclusion the proposed development intended for lots 4 & 5, the proposed reserve and the road alignment west of lots 4 and 5 should not be approved."

Built Environmental Impacts

Although the proposal is primarily for a subdivision, it also includes a Circuit Road, two minor roads, street lighting, a detention basin and various related infrastructure. The proposal has also indicated that there are potential end users for these subdivided lots, although the uses do not form part of this application.

The proposed Circuit Road also has a number of identified potential impacts on the built environment. The managers of the Salamander Shopping Centre maintain that the proposed Circuit Road may not cater for future traffic generation, depending on the development that takes place. Council Traffic Engineer initially raised concerns that the width of the Circuit Road did not meet Council's DCP provision. However, subsequently, there seemed to be acceptance of the applicant's argument that the existing network would reasonably compliment the traffic demands of the Circuit Road.

Council's traffic department suggests a need for traffic lights at the intersection of Town Centre Circuit and Bagnall Beach Road based on the likely extent of development that could occur on the site. This was part of the motivation to refer the application to the RTA. There is currently in the order of 1,100 onsite car parking spaces. There is potential for this level of car parking to more than double as a result of the uses that might occupy the various lots if the subdivision were approved. A Traffic Plan indicating the interrelationship of these sites with the existing centre and the proposed treatment of the intersections requires further refinement.

Also, in our opinion, pedestrian connectivity is a critical issue. Linkage between end users of the subdivision and the existing centre is critical to the connectivity and safety of pedestrians in the future. The likely location of buildings is critical for this exercise.

The child care centre has raised concerns about the proposed minor road, which will have impacts on the operation of their use. On inspection, it appears that the proposed road would be quite close to the child care centre and may unreasonably disrupt the operations of that centre. The Centre would be surrounded by roads as a result of the proposal.

In our opinion, the location of the detention basin in the koala habitat is unfortunate. The fact that it will remove koala habitat and facilitate considerable stormwater flows in to the wetlands is also a point of concern. It is noted that filtration mechanisms are proposed as part of the application. However, the extent of water runoff into the wetlands during heavy rains is considered a matter requiring further resolution.

Impacts on the Adjoining Residential Properties

The proposed Circuit Road would be in close proximity to the existing pedestrian path and nearby residential dwellings. Although there are only a limited number of cross sections in the Preliminary Road Design Drawings and Landscape Drawings, it seems that the majority of the road in the vicinity of the dwellings will be excavated below existing ground level and below the ground floor of the nearby dwellings. There will be a requirement for retaining walls and/or batter to facilitate these changes in levels. There will also be a need for street lights to provide safety for the road, which will also potentially cause amenity problems to these dwellings. In some instances, the road carriageway, batter, and structural retaining walls are in close proximity to the boundary of the site. Accordingly, the proposed landscaping can not be provided within the site and will need to be accommodated on the Council's verge.

While the Council may have some license in using its verge for landscape purposes, in our opinion, the site should be considered at “arms length” and on the basis of that part of the proposal, which is included within the site boundaries.

In our opinion, the close proximity of the proposed Circuit Road, the lack of a reasonable physical and landscape buffer, together with the proposed street lighting will have unreasonable impacts on the adjoining residential area.

In addition, the design of the Circuit Road in its u-shape form may make it attractive for night time excursions by motor vehicles at speeds greater than the normal limit.

(c) the suitability of the site for development

Based on the information available to us at the time of preparing this report, our opinion is that there are parts of the site are not suited for the proposed development. For natural and built and environment reasons we are of the opinion that the proposed Circuit Road on the north-western and northern part of the site will have unreasonable impacts. We also concur with TBE that Lots 4, 5 and the reserve should be retained as koala habitat and part of the wetlands, notwithstanding the existing zoning.

In addition, the Minor Road No. 2 is likely to have an unreasonable impact on the child care centre and the amenity of children using that centre. There may also be safety implications if high levels of traffic are generated to Lot 1.

In our opinion, there are alternate designs that would facilitate development of Council’s land albeit with a smaller lot yield.

(d) any submissions made in accordance with this Act or the Regulations

There have been a number of submissions made in respect of this application and they have been discussed previously. In addition, a stakeholders meeting was held and the applicants and various stakeholders presented additional comments for consideration. These comments were reviewed as part of this assessment.

(e) the public interest

Council is in a difficult position as land owner, applicant and the authority charged with the responsibility of looking after the public interest. Clearly, it is in the public interest to maximise the return for the sale of Council owned properties. Also, it is in the public interest to retain koala habitat, endangered ecological communities, and preserve the wetlands. In our opinion, the public interest is not served by the approval of the current application.

7. Conclusion

In our opinion, the subdivision is unacceptable in its present form. From the information available it appears that the proposed Circuit Road west of Lots 4 and 5, together with lots 4, 5 and the proposed reserve should not be approved. This opinion is also expressed in the Peer Review Report prepared by TBE. In our opinion, the land occupied by this part of the proposal should be excluded from development. There should be an appropriate buffer set aside from the wetlands and the residential land to the north. We seriously question the need of the northern part of the Circuit Road.

In our opinion, any extension of the road network should be located around the existing shopping centre car park and a future proposal could reasonably be developed in consultation with the shopping centre managers. In our discussions with those representatives, they indicated a preparedness to be involved in such discussions. Even with the removal of the land suggested above, in our opinion, this site offers considerable development potential. However, our respectful opinion is that this site has a number of development constraints that need to be carefully considered and should form part of a Development Control Plan (DCP) that provides urban design guidelines for the centre as a whole. The site has potential to have additional major retailers, residential or seniors living accommodation, integrated pedestrian access which could provide an internal public space for various forms of activity.

In our opinion, a future DCP should look at pedestrian connectivity, integration of future buildings, buffers and building setbacks, and minimising impacts on the surrounding area. Although the site is zoned Business General 3(a) there is still an obligation on Council in the various forms of legislation to have regard to the natural and built environmental factors. Indeed, the site offers an opportunity for Council to lead by example for other developers to follow in the Port Stephens LGA.

8. Recommendation

That the Joint Regional Planning Panel refuse development consent to development application (DA16-2009-811-1) for the following reasons:

1. The development application would result in the unacceptable loss of vegetation within an endangered ecological community and koala habitat that has the potential to impact on koalas and other threatened species;
2. The proposal does not comply with the statutory provision contained in SEPP No. 14 Wetlands, SEPP No. 44 Koala Habitat Protection, SEPP No. 71 Coastal Protection and the performance criteria contained in the Port Stephens Council Comprehensive Koala Plan of Management;
3. The proposal will have an unreasonable impact on the adjoining residential lands to the north;
4. The Circuit Road to the north and west of Lots 4, 5 and the reserve and those lots should not be included in the development application as the impacts are considered to be unacceptable.
5. The proposed Plan of Subdivision does not provide design guidelines that might include: buffer areas; pedestrian connectivity and safety; setbacks; building articulation; landscaping; and, other key considerations that would result in good design. A comprehensive DCP prepared in consultation with key stakeholders could provide assurance to the community that good design will occur.