

JOINT REGIONAL PLANNING PANEL
(Northern Joint Regional Planning Panel)

JRPP No	2012NTH009
DA Number	DA2012/011
Local Government Area	Nambucca Shire Council
Proposed Development	Staged 346 Lot Residential Subdivision Plus Residue and Associated Works
Street Address	Lot 2, DP 1119830 Alexandra Drive, Nambucca Heads
Applicant/Owner	Joe Saliba Nambucca Gardens Estate c/o Geoff Smyth Consulting PO Box 1925 COFFS HARBOUR NSW 2450
Number of Submissions	29 individual letters (including LALC submissions but not including advice received in respect of agency referrals) 65 Form Letter 1 submissions 52 Form Letter 2 submissions
Regional Development Criteria (Schedule 4A of the Act)	9 Coastal subdivision: Development within the coastal zone for the purposes of subdivision of the following kind: (b) subdivision of land for residential purposes into more than 100 lots, if the land: (i) is not in the metropolitan coastal zone, or (ii) is wholly or partly in a sensitive coastal location.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Nambucca Local Environmental Plan 2010 • SEPP 71 Coastal Protection • SEPP 55 Contaminated Land • Nambucca Development Control Plan 2010
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Statement of Environmental Effects dated January 2012 • Addendum Statement of Environmental Effects, 1,2 & 3 dated July 2012 • Plans
Recommendation	That the JRPP approve DA2012/011 subject to the attached conditions of consent
Report by	Peter Chapman – Director, All About Planning Pty Ltd on behalf of Nambucca Shire Council including input from Paul Guy - Manager Development & Environment

Assessment Report and Recommendation Cover Sheet

SUMMARY:

The subject application is for a staged 346 lot subdivision in Alexandra Drive, Nambucca Heads. The subject site is an irregular shaped property with a rolling topography, an overall fall down to the south and east and an area of approximately 54.8ha.

The site is truncated by the existing end of Alexandra Drive running from the north and which includes around 20 existing residential properties all fronting the road. The site itself is currently a mixture of open grazing or grass land in its central and northern two thirds and open woodland to forests in its lower and wetter southern and eastern areas. The later include mapped area of SEPP 14 wetland and Swampy Creek.

The land uses surrounding the site include rural residential development off Alexandra Drive to the north, Bellwood Creek and the existing Pacific Highway to the east, existing residential development in Marshall Way to the south and NSW State Forest to the west.

The application as originally submitted in February 2012 was fundamentally inadequate and significant information and documentation was missing.

The application has been the subject of a number of different issues and requests for additional information which have delayed the processing of the application.

The proposal is for a residential subdivision which backs onto a reserve (to the south) across which is an established urban development including a shopping and commercial area.

The application (as submitted) relied upon a single access road to the north (Alexandra Dve) which currently only services rural residential development and which has a (comparatively) long travel route to Nambucca Heads & the nearby Bellwood commercial area to the south east.

The initial assessment of the subject DA found that the proposed 346 lot subdivision lacked planning merit without a road link connecting the subdivision to the south to Marshall Way. In addition the NSW Rural Fire Service who is an integrated agency for the DA refused to grant their general terms of approval (which are required for the DA to be supported) without a link road. In addition BUSWAYS advised that it would not provide public bus services to the proposed subdivision without a link road through to Marshall Way being provided.

As a consequence of the above, the applicants were asked to integrate the provision of the full length of the link road into their subdivision DA to provide adequate certainty of it proceeding but they were not willing to do so. After a site inspection and briefing with the Joint Regional Planning Panel (JRPP) on 18 October 2013, the applicants agreed to lodge a separate DA for the southern Council owned section of the road (DA 2013/183). DA 2013/183 was submitted on the basis that if the subject part link road DA is approved then a separate report on the 346 subdivision DA (No. 2012/011) could be prepared to the JRPP with a condition applied (if it is recommended for approval) requiring the construction of the northern and southern section of the link road as per (in this scenario) the 'approved' Council owned Link Road section DA (2013/183). There by achieving the required certainty of the Link Road being provided.

As outlined below DA 2013/183 for the Council owned section of the Link Road was approved by Council on 12 June 2014.

Over an extended period of time there have been significant community objections to the link road being constructed from existing residents (on traffic and safety grounds) and from the LALCs (and associated local community groups) on local Aboriginal cultural sensitivities due to the impact of the link road and the proposed subdivision on the significant Aboriginal Cultural Heritage of the area and specific Aboriginal sites. Many of these objections have been reiterated in respect of the subject subdivision application.

Of relevance to the subject DA 2012/011 and the approved DA 2013/183, Council has considered reports on matters associated with the developments. Of particular relevance are the following:

Council Meeting 15 July 2009

At its July 2009 meeting Council considered the 2009 Bellwood Traffic Contributions Plan. This included notification of the draft Contributions Plan to residents, an assessment of the submissions received which particularly focussed on the Link Road proposal, a discussion of detailed Council projections for expected traffic growth over 20 years, a consideration of social and economic considerations and impact on Aboriginal Cultural Heritage (Diamond Tree site).

Refer to the discussion of Access, Transport and Traffic in Section (b) and Cultural Heritage in Section (a) of this report for further information. **A copy of the 15 July 2009 report to Council is included as an attachment to this report.**

Council Meeting 16 October 2013

It was resolved :*'That the information concerning the status of DA2012/011 and the briefing of the Joint Regional Planning Panel on Friday 18 October 2013 be received and that a further report come to Council on the outcome of the Panel's briefing.'*

and

It was resolved *'That Council make a submission to the JRPP whereby if the Link Road is required by the development that all costs concerning the Road be paid for by the developer.'*

Council Meeting 12th June 2014

Resolved –

That Council approve Development Application DA2013/183 subject to the conditions of consent attached to the report.

In addition to the above, a site inspection and briefing on the subject DA was held with the Northern Joint Regional Planning Panel on Friday 31 October 2013.

All matters are considered to have been properly assessed.

Recommendation:

- 1. That the Northern Joint Region Planning Panel approve DA 2012/11 (with the exception of the 15 residential lots and associated roads 15 and 16, within Stage E) subject to the attached conditions of consent.**

OPTIONS:

1. Approve the entire application (including the 15 lots within Stage E and associated roads)
2. Approve application subject to additional or alternative conditions
3. Refuse the application

MATTERS FOR CONSIDERATION –SECTION 79C(1) EP&A ACT

In its assessment of a development application, the JRPP is required to take into consideration the following Section 79 C matters:

a The provisions of

i Any environmental planning instruments

Environmental Planning and Assessment Act 1979

Section 91 Integrated Development

Under Section 91 EPA Act 1979, the subject development is classified as 'Integrated Development' due to the need to obtain the approval of the NSW Office of Water and the NSW Rural Fire Service. Integrated development referrals to both of these agencies have been completed and responses received which have been discussed under Section (d) Submissions, later in this report.

Schedule 4A

Under Schedule 4A of the EPA Act 1979 and Part 4, State Environmental Planning Policy (State and Regional Development) 2011, the Northern Joint Regional Planning Panel is the consent authority for the subject application as it is for *"(9) Coastal Subdivision - Development within the coastal zone for the purposes of subdivision of the following kind: (b) subdivision of land for residential purposes into more than 100 lots, if the land: (ii) is wholly or partly in a sensitive coastal location."*

Nambucca Local Environmental Plan 2010

Under the Nambucca Local Environmental Plan 2010 (NLEP 2010) the subject site is partly zoned R1 General Residential, E3 Environmental Management and E2 Environmental Conservation. The proposed subdivision itself is only proposed within the R1 General Residential zoned land. The northern (privately owned) section of the Link Road, some partial sections of internal access roads and some proposed outdoor recreation reserves are proposed within the E3 Environmental Management zoned land. The subdivision is a permissible development with consent within the R1 zoning. The roads and outdoor recreation reserves are all permissible developments with consent within the E3 zoned land.

No part of the proposed development extends within the E2 zoned area of the site.

Clause 4.1 Minimum subdivision lot size

Clause 4.1 of the NLEP 2010 requires development to comply with the applicable minimum lot size indicated on Council's LEP minimum lot size maps the subject site being located within a 450m² minimum lot size area. The proposed development maintains compliance with the LEP having an approximate average lot size of just over 600m² and a minimum of 509m².

Clause 5.5 Development within the coastal zone

The subject land is located within the coastal zone and as such the provisions of this clause need to be addressed in the application. The provisions of this clause and those of SEPP 71 and the principles of the NSW Coastal Policy are closely related and as such these matters will be addressed in this section of the report.

Principles and objectives of Clause 5.5 specifically relevant to the proposal are listed below:

(a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,

(b) to implement the principles in the NSW Coastal Policy, and in particular to:

- (i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
- (ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
- (iv) recognise and accommodate coastal processes and climate change, and*
- (v) protect amenity and scenic quality, and*

- (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and

(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

- (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and
- (ii) the location, and
- (iii) the bulk, scale, size and overall built form design of any building or work involved, and

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

- (i) any significant overshadowing of the coastal foreshore, and
- (ii) any loss of views from a public place to the coastal foreshore, and

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

(e) how biodiversity and ecosystems, including:

- (i) native coastal vegetation and existing wildlife corridors, and
- (iii) water quality of coastal waterbodies, and
- (iv) native fauna and native flora, and their habitats, can be conserved, and

(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:

(d) the proposed development will not:

- (i) be significantly affected by coastal hazards, or
- (ii) have a significant impact on coastal hazards, or
- (iii) increase the risk of coastal hazards in relation to any other land.

Planning Comment:

The above matters have been addressed within the overall assessment of the application as contained in this report. In particular this assessment has found that the proposal is suitable given its relationship with the surrounding area and its impact on natural scenic quality. The proposal will not have an impact on the amenity of the coastal foreshore through any significant overshadowing or loss of views from a public place. The development will largely be screened by the existing adjoining vegetation, it is not located in a visually prominent area and will not detrimentally affect the visual amenity and scenic qualities of the coast. In addition the proposal will not affect the ecological values, biodiversity and ecosystems of the area as assessed in this report and outlined in the submitted ecological report.

The principles of ecologically sustainable development (ESD) are referred to in clause 5.5 of the NLEP 2010 (as well as the Local Government Act). Section 89 of the Local Government Act indicates that Council must take into consideration the principles of ESD. ESD incorporates the precautionary principle which indicates lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. It also includes inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

This assessment report demonstrates that the proposal will comply with ESD principles.

Clause 5.9 Preservation of Trees or Vegetation

Clause 5.9 (Preservation of trees or vegetation) of the Nambucca LEP seeks to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. Under subclause (3) a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by the Council. The subject DA (if approved) would constitute the required development consent.

An ecological assessment has been submitted with the subject DA; the findings of this are discussed later in section (b) The Likely Impacts of the Development of this report.

Clause 5.10 Heritage Conservation

Clause 5.10 of the Nambucca LEP seeks to conserve the environmental heritage of Nambucca, conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, conserve archaeological sites, and conserve Aboriginal objects and Aboriginal places of heritage significance.

Clause 5.10 requires development consent for the demolition or moving of a heritage item, an Aboriginal object or a building, work, relic or tree within a heritage conservation area. Consent is also required for disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed and disturbing or excavating an Aboriginal place of heritage significance.

The subject site does not include any Nambucca LEP listed heritage item, Aboriginal object, archaeological site or relic.

However it is common knowledge in the local community that the site includes the remains of an Aboriginal scar tree in its north western area and on its south western boundary adjoins the 'Diamond Tree' gazetted Nambucca Aboriginal Area. Both the Diamond Tree and Scar Tree are listed on the AHIMS (Aboriginal Heritage Information Management System).

The above mentioned scar tree remains are proposed to be retained and preserved on the site in an open reserve area. The gazetted Nambucca Aboriginal Area for the Diamond Tree is a designated allotment with a buffer in place.

In view of the Aboriginal significance of the area and site, the subject DA has been accompanied by a Heritage Archaeological assessment (and addendums) by Archaeological Surveys and Reports Pty Ltd (ASR).

The consultation with the Local Aboriginal community undertaken for the proposed subdivision of Lot 2 (and the Link Road) was undertaken by ASR acting on behalf of the developers in a number of phases since 2002 to accommodate the evolving requirements for such consultation. This has included a field survey with an Aboriginal Elder and Sites Officer for the Nambucca Heads LALC and the receipt of formal written advice from the LALC in 2002.

In 2009 the consultant wrote to Aboriginal Community stakeholders in the area regarding proposals to preserve the scarred tree location. Later in 2009 further advice from the Nambucca LALC was received and in response to new Government Guidelines at the time, two meetings with the LALC were arranged.

In 2012 and in response to another set of Government consultation guidelines, an updated list of local Aboriginal Community Stakeholders was obtained and newspaper advertisements were placed requesting registrations of interest in the project. Each of these was written to, provided with a copy of the consultants previous reports on the site to date, with a request for written comments – no responses were received.

In view of the above, the developer's archaeological consultant later in 2012 contacted the Nambucca Heads LALC to ask for a meeting to be arranged with Community Elders. A meeting was held 13th June 2012 which agreed that a site meeting and walkover was required and this was organised for 20th June 2012. The consultant's report advises that the proximity of the Link Road construction and the proposed subdivision to the Diamond Tree site/ reserve were the primary concerns of the Aboriginal Community.

Clause 5.10(8) of the Nambucca LEP 2010 includes the following requirements relevant to this discussion:

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Council's notification of the subject DA included the Nambucca LALC and other registered Aboriginal stakeholders in the area. The submitted consultant archaeological reports and consultation (discussed above) and the assessment of the subject DA in this report seek to collectively satisfy the above LEP provisions.

In response to Council's notification of the subject DA the Nambucca LALC made a submission to Council. The following is a summary of the submission made by the Nambucca LALC:

1. The subject site is within an area and landscape of significant cultural value and the Aboriginal Community do not want to see the area developed any further. The whole landscape of the area is significant due to the ceremonial activities that took place for up to 40,000 years. These values are not bounded by European traditional boundaries eg fences or roads but 'by creeks, rivers and natural landscapes'.
2. The above cultural values centre around The Diamond Tree being located outside of the subject site for the Link Road but approximately 120m to the north west. 'The Diamond Tree is the focal point of cultural belief on the entire Gumbaynggirr Nation'. The proposed Link Road and subdivision of Lot 2 in DP 1119830 is too close to the Diamond Tree and will significantly affect these cultural values.
3. The Local Aboriginal Community have been objecting to the increasing urban development in the area since the original Marshall Way area was first proposed.
4. The proposed landscape screening between the proposed road and the Diamond Tree site does not satisfy the Aboriginal people.
5. The above is not just an issue for the local Aboriginal community 'but is significant to the whole Nation'.
6. In a previous submission to Council the Nambucca LALC outlined that in 1979 a 0.4ha area for a Diamond Tree buffer or reserve was acquired and dedicated by NPWS with the intention that it would be located within a surrounding and continuing forest context that was not developed. At that time the Aboriginal Community were apparently calling for a 400m buffer to be provided assuming that the surrounding land to the south west remained forested. Since then most of this surrounding land has been purchased by developers and the forests cleared leaving the Diamond Tree inadequately protected.

Comment: The LALC has advised that the Diamond Tree is a significant Secret Men's Business ceremonial site and in traditional aboriginal culture, Aboriginal women and children are not permitted to be in the area within the distance that a Bull Roarer can be heard if sounded from the Diamond Tree site. Furthermore it is understood that there is an Aboriginal belief that Aboriginal people who live in proximity to the tree will get sick. It is clear from the advice of the LALC that the local Aboriginal elders consider that the Bull Roarer will be heard from the site of the proposed part Link Road relevant to this subject DA and at least part of the proposed new Bellwood subdivision (specifically the 15 lots within Stage E and associated roads), as is the case currently with the Farrington Playing Fields. It is further noted that due to proximity to the Diamond Tree, the local Aboriginal community does not currently use the Farrington Playing Fields as they are an area deemed to be within earshot of a Bull Roarer if sounded from the Diamond Tree.

The NSW Office of Environment and Heritage maintain a data base 'Atlas' of Declared NSW Aboriginal Places and a separate Aboriginal Heritage Information Management System (AHIMS) of recorded sites and other Aboriginal reports. As stated earlier both The Diamond Tree and the Scarred Tree are listed sites in the AHIMS database but are not listed as a declared place in the Atlas.

In April 2011, OEH produced a document titled: "Guide to investigating, assessing and reporting on Aboriginal Cultural Heritage in NSW". This guideline states in respect of assessing harm to Aboriginal objects and declared Aboriginal places that it is important to quantify both direct and indirect harm.

In respect of this particular subdivision DA and which includes a portion of the required Link Road, the key Aboriginal heritage issue is therefore the potential impact of the proposed subdivision and part Link Road adjoining the Diamond Tree and the impact on the significance of the Tree and this Tree's intrinsic and central cultural link to the surrounding landscape and the Gumbaynggirr Nation.

The preservation of the scar tree remains in the north western area of the site has not been raised as an outstanding issue either in the archaeological report (or the consultation undertaken for it) or in the submissions received from the LALC.

It is noted that the Aboriginal community's strong objection to any urban development in the area has remained largely unchanged since those same objections were raised, discussed and assessed in the past regarding what is now approved and constructed urban development in Marshall Way and Alexandra Drive.

Whilst it will be open to the local Aboriginal community to not use the Link Road or live in the subdivision area adjoining the Diamond Tree if any of this is constructed, a key question is whether such an outcome would be reasonable and whether approval of the subject subdivision and part Link Road would result in direct or indirect harm to the cultural value of the Diamond Tree ceremonial site.

Consideration of impacts on items of Aboriginal heritage is not dissimilar to assessments of items of European heritage. It is an accepted principle that development in the vicinity of an item of heritage can present a threat to the significance of that item. In the case of the Diamond Tree, the Aboriginal Community has confirmed that the Diamond Tree is of paramount significance to the Gumbaynggirr Nation. Further, the advice of the local Aboriginal elders is that Aboriginal women and children would be able to hear a Bull Roarer from at least the Stage E portion the subject subdivision and part Link Rd sites.

It is noted that the NSW Regional OEH office provided comment in September 2013 on the subject subdivision DA 2012/011. At that time no specific advice in respect of the acceptability or other of impacts on Aboriginal cultural heritage was provided, nor was any specific detail provided quantifying direct or indirect impacts. The OEH submission focussed on the inadequacy of the proponent's then Heritage Assessment and the significance of the Diamond Tree and surrounding area to the Gumbaynggirr Nation.

In addition to the above advice, a submission was also received in September 2012 from the NSW National Parks & Wildlife Service (NSW OEH) regarding the impact of the subdivision on the Diamond Tree Nambucca Aboriginal Area. The full summary of the points raised are provided in Section (d) *'Any submissions made in accordance with the Act or the Regulations – Agency Submissions'* later in this report. The National Parks comments advise that the *"Nambucca Aboriginal Area, gazetted in 1979, has outstanding Aboriginal Culture and heritage values"* and concludes with the statement that: *"On the basis of these recommendations to install a visual buffer of the reserve, improve fire asset protection zones and restrict public access to the reserve, any development within the Southern Precinct is not supported."*

In addition to the above Agency submissions on the Aboriginal cultural heritage issues, the Socio-Economic report submitted with the DA, prepared by Keily Hunter, recommends:

"On the basis of new information received following recent liaison with the Aboriginal community by Appleton, Stage E of the development (proposed Lots 334 to 352 and Roads 15 and 16) should be amended or deferred from the development until:

1. A compromise design is agreed upon with the Aboriginal community comprising a single row of lots along the southern extent of Alexandra Drive and buffer planting with suitable impervious fencing; and/or

2. Arrangements are made to acquire the land surrounding the Diamond Tree for cultural reserve purposes by the NSW Office of Environment & Heritage."

The Aboriginal Heritage Assessment prepared by John Appleton of Archaeological Surveys and Reports (most recently updated June 2012) considering the Bellwood Subdivision states that:

"As a consequence of the field investigation in respect of the proposed subdivision of Lot 2 and comprehensive consultation with the registered Aboriginal stakeholders and male elders of the Nambucca district Aboriginal community, there are no grounds of an Aboriginal cultural nature that present a constraint to the proposed subdivision in principle. Further it is recommended that the proponent should consider the preferred option of the Aboriginal stakeholders in future plans for the subdivision of Lot 2, being no subdivision around the slopes of the Diamond Tree and no Link Road."

John Appleton further stated that: *"The Aboriginal or cultural significance of Aboriginal relics and sites can only be assessed by the Aboriginal community and in particular the elders."*

Whilst the now Council approved Link Road construction and associated part Link Road within Lot 2 (the subject application) in the vicinity of the Diamond Tree will increase vehicular and pedestrian access in the area, the use of the road will be optional for Aboriginal people who are keen to preserve cultural heritage. As such in this sense the new Link Road will not appreciably worsen the existing impact of urban development in Marshall Way and Alexandra Drive on the cultural heritage value of the Diamond Tree.

However it is considered that approval of 15 permanent privately owned residential lots and associated roads in close proximity to and backing onto the Diamond Tree Nambucca Aboriginal Area (the proposed last stage E of the development) is likely to result significant additional cultural heritage impacts on the Diamond Tree as outlined in the various submissions received from the local Aboriginal stakeholder groups to the subject DA. The Aboriginal community clearly considers that the surrounding landscape setting of the Diamond Tree would be significantly diminished by the proposed Stage E residential subdivision.

In addition (as outlined earlier) the National Parks and Wildlife Service who manages the Diamond Tree Reserve (in conjunction with the Aboriginal community) and the applicant's Social Planner have both expressed the view that the Stage E residential subdivision surrounding the Reserve should not proceed, should be significantly cut back or should be deferred.

Lastly, it is relevant to consider what weighting should be placed on one key assessment issue over another and what weighting is relevant in respect of intergenerational equity and in light of the precautionary principle. In the case of the proposed subdivision, there is clearly a tension between Aboriginal Heritage values and the applicant's desire for the proposed new residential community on Lot 2.

It is acknowledged that the land surrounding the Diamond Tree Nambucca Aboriginal Area is in private ownership and there is an inherent expectation to be able to develop or improve this land if it remains in private ownership. However the Aboriginal Heritage and Cultural significance of this area has been well known to all land owners in the community, including before the Diamond Tree Nambucca Aboriginal Area gazettal in 1979. It is also widely understood that such Aboriginal cultural heritage issues often do not fit neatly within property and legal boundaries.

In light of the above assessment of aboriginal heritage impacts, the submissions made and the above circumstances, it is recommended that the Stage E residential lots and associated residential roads 15 and 16 are not approved at this time. The submitted and consistent advice and concerns of the Aboriginal Community, the associated agencies and the proponent's social planner for the DA are acknowledged and accepted.

The Part of the Link Road the subject of Stage E is however recommended for approval as this section of the Link Road will result in a lesser impact on overall Aboriginal heritage of the area and is considered to be an essential social and traffic planning component of any new residential subdivision on the subject Lot 2.

As a consequence of the above findings, a condition is recommended which states “no approval is granted or implied by this consent to the 15 lots and the associated roads 15 and 16 proposed in Stage E of the development.”

In regard to the reasonableness of this proposed condition it is noted that the proposed condition to not proceed with the 15 lots does not represent a significant and unreasonable detrimental impost on the proponent of the development. The subject 15 Stage E residential lots comprise a relatively small proportion of the entire 346 lot proposed development. The remaining 331 residential lots recommended for approval will still ensure a significant site yield and staged financial benefit for the land owners.

It should also be noted that in addition to the above specific condition concerning Stage E, a standard condition is included in the recommendation of this report to address any potential situation where items of Aboriginal heritage are discovered within the work zone during future site construction works or processes.

One of the Aboriginal community submissions received suggested that Aboriginal names should be used for the development for the naming of streets. In view of the demonstrated Aboriginal interest in the area, a condition requiring incorporation of Aboriginal Street names is also recommended.

Clause 7.1 Acid Sulphate Soils

The proposed development extends within land classified as Class 5, Class 4 and Class 2 on Council's ASS LEP maps. Class 5 being land *within 500 metres of adjacent Class 1, 2, 3, or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.* Class 4 being *Works more than 2 metres below the natural ground surface, works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.* Class 2 being *Works below the natural ground surface, works by which the watertable is likely to be lowered.*

Clause 7.1 of the Nambucca LEP states that *Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the [Acid Sulfate Soils Map](#) as being of the class specified for those works.* However (under subclause 4) this consent is not required *if a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan need not be carried out for the works.*

The applicants have lodged a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual. The findings of this ASS assessment are accepted, being that an Acid Sulfate Soils Management Plan is not required for the proposed works. Nevertheless, a standard engineering condition is recommended to be applied to any approval issued for the proposal addressing any ASS soils that are encountered.

Clause 7.3 Flood Planning

Clause 7.3 of the Nambucca LEP 2010 requires the following:

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- (a) is compatible with the flood hazard of the land, and*
 - (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) incorporates appropriate measures to manage risk to life from flood, and*
 - (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The subject site includes Swampy Creek and the western shoreline of Bellwood Creek. These areas are flood prone being affected by both the 1 in 100 year flood line and the Probable Maximum Flood Level. A stormwater management report was submitted with the subject DA which included discussion of the above flood lines, the impact of climate change on these levels, the contribution of the likely stormwater flows from the subject development and likely impacts all this could have on surrounding properties.

Various types of Hydraulic Modelling and reference to other previous Hydraulic studies undertaken in the immediate area, was utilised in the report with the following findings resulting:

- The proposed subdivision will not be affected by the 1 in 100 year flood (including a maximum allowance for climate change).
- The hydraulic modelling undertaken indicates that the development will only result in a 3.9% increase in downstream stormwater flows which is insignificant in changing the overall height of the creek and will not cause flooding to existing dwellings and properties which are currently flood free.
- The effects of climate change on the site are also negligible with only minor flooding that doesn't affect dwellings occurring if the maximum theorised sea level rise is achieved. Increase in rainfall has little effect on the system due to how wide the system is during a flood or ARI event.

7.4 Public utility infrastructure

Clause 7.4 of the NLEP 2010 requires Council to be satisfied that all infrastructure required for development is available (or appropriate arrangements made) prior to approvals being issued. It is considered that all required infrastructure is available to the subject site.

SEPP 14 Coastal Wetlands

A discussion and assessment of the proposal under SEPP 14 in relation to wetland no. 362 located within the site is provided later in this report within section (b) The Likely Impacts of The Development – Ecological Impacts.

SEPP 44 - Koala Habitat Protection

A discussion and assessment of the proposal under SEPP 44 in relation to Koala Habitat is provided later in this report within section (b) The Likely Impacts of The Development – Ecological Impacts.

SEPP 71 Coastal Protection

The provisions of SEPP 71 Coastal Protection relate closely to the issues identified in clause 5.5 of the Nambucca LEP 2010. Please refer to the earlier discussion of Clause 5.5 of the Nambucca Local Environmental Plan 2010 (Development within the coastal zone) for further information.

SEPP 55 Contaminated Land

Clause 7 (1) (A) of this planning instrument requires Council to consider whether land is contaminated in its assessment of a development application.

The Engineering Issues Statement submitted with the subject proposal includes a Preliminary Site Investigation prepared in accordance with the SEPP 55 "Managing Land Contamination Planning Guidelines".

Based on this assessment and the information available regarding the site's history of use it is concluded that the subject site is unlikely to include any contaminated soil (or other contaminating agents) and that it is suitable for the construction of the proposed subdivision and associated works.

ii Any draft environmental planning instrument

There are no Draft Environmental Planning Instruments specifically relevant to the proposal.

iii Any development control plan (DCP)

Nambucca Development Control Plan 2010

A3.0 Notification and Public Participation

The subject DA was notified to all properties in the vicinity of the proposal. Notification extended to all properties fronting Marshall Way and Bellwood Road to the south, including all the owners of Farrington Village and all properties fronting Alexandra Drive and connecting streets up to the Old Coast Road. The application was also advertised in the Guardian News.

In addition to the above and in light of the significance of the proposal a community information meeting was held regarding the subject DA during the notification period on 31 August 2012 at the Nambucca Heads Entertainment Centre. Just over 40 residents attended this meeting.

External referrals on the application were sent to a large number of Government Agencies and other Stakeholders in light of the nature of the proposal including NSW Roads and Maritime Services, the NSW Rural Fire Service and the NSW Office of Water (both of the latter as Integrated Agencies under Section 91 Environmental Planning and Assessment Act 1979).

The agency responses and public submissions received are discussed under Section (d) Submissions, later in this report.

A3.5 Notification to Local Aboriginal Community

The Nambucca Heads LALC and other local Aboriginal stakeholder groups were specifically notified in accordance with Council's DCP requirements.

A5.0 Environmental Context

The sections of this part of the Nambucca DCP 2010 relevant to the subject DA have been considered elsewhere in this report.

B2.1 Design Principles

The proposed subdivision layout complies with the design principles of the DCP to maximise the ability to travel directly between any given origin and destination, by providing for a network of inter-connected roads, rather than a network of cul-de-sacs and no through roads.

B2.2 Lot Orientation

The proposal complies with the DCP requirement for lots to be orientated to allow for the erection of buildings that present a building front to the street whilst avoiding lots backing onto collector roads and presenting an undesirable streetscape. As much as possible the residential lots are orientated such that they have one street frontage only, to provide for adequate privacy and a sense of security.

In addition to the above (in line with the DCP) the residential lots are orientated and sized to facilitate the siting of dwellings to take advantage of solar access and breezes, taking into account likely dwelling size and the relationship of each lot to the street.

B2.3 Road Networks and Design

In accordance with the DCP the proposal has a distinctive road hierarchy, with clear physical differences proposed between each type of road, based on function, capacity, vehicle speeds and public safety. Acceptable levels of access, safety and convenience for all road users is provided, while ensuring acceptable levels of amenity, and protection from the impact of traffic.

The recommended conditions within this report include the implementation of traffic calming at appropriate places to mitigate traffic issues where necessary.

B2.4 Pedestrian and Cycle Way Networks

The proposal, with its interconnected street network, will facilitate and encourage pedestrian and cycle access throughout the subdivision. In addition, the provision of the Link Road between Marshall Way and Alexandra Drive is considered essential to ensure a connected and sustainable new residential area is achieved on the subject Lot 2. In line with the requirements of the approved Council owned section of the Link Road a condition of consent is recommended to require provision of a dedicated shared pedestrian/ cycleway as part of the new Link Road, in order to further improve the connection of the proposed residential subdivision with the existing urban area and the Bellwood commercial area in particular.

B2.5 Bus Services

The design of the development has included planning for bus routes circuitous throughout the subdivision as part of the proposed road hierarchy. Bus stops and laybacks have been identified on the plans and appropriate engineering conditions are proposed to be applied to assist the final design of these facilities.

B2.6 Public Open Space for Residential Areas

In regard to public open space the SEE for the subject development notes that 39.3% of the site area will be dedicated reserve land/ public open space. Whilst this is a significant proportion of the site it is noted that more than half of that 39.3% reserve area is permanently or periodically inaccessible low lying, conservation area, including a SEPP 14 wetland, Swampy Creek and the western shoreline of Bellwood Creek. In addition, almost all of these reserve areas are located on flood prone land.

Aside from the above constrained reserve areas, the proposal includes 5 dedicated public open space areas within or adjoining the subdivision area itself, with a combined total area of 15,800m². The development is also in the near vicinity of the Farrington playing fields at the existing end of Marshall Way which has around 3.4ha of constructed active open space area.

Whilst the DCP contains a notional rate for the provision of public open space of 70m²/ new residential lot (which if applied would require 24,220m² for the subject development) it also contains flexibility to permit consideration of the proximity of the new residential area to existing parks and the need for additional open space in the area.

On the above basis the proposed provision of open space is considered reasonable on the proviso that proposed reserve No. 4 in the north western area of the site (and which includes the scarred tree remains) is increased to a minimum area of 2,000m² in line with the DCP minimum area requirement. Aside from maintaining compliance with the DCP this will enhance the preservation of the cultural significance of the scar tree, ensure that the space is useable with a good amenity for residents, can be achieved without unreasonable impact on the overall development and make it more efficient to maintain and service by Council staff. A condition requiring this amendment is proposed in the recommendations to this report.

Another condition is recommended to ensure that these 5 separate proposed open space areas on the subject site are adequately furnished and landscaped, including with footpaths and play equipment generally as per the landscaping plan.

Related to the above discussion (and as an alternative to the above approach), it is noted that consideration was given by Council staff to the alternative option of requiring provision of a consolidated and central single open space /park in the vicinity of proposed roads 3, 4 and 7. It is agreed that such a proposal would provide a larger and thus more flexible use, accessible, elevated and attractive area of the site and which is not constrained in the same manner as the majority of the proposed (non developable) conservation area along the creeks and wetlands.

This alternative, central, single larger park option has some merit and it could be argued to be a reasonable imposition on the proponent in view of the size and significance of the proposed works and which is more in keeping with the objectives, principles and standards for open space provision for large subdivisions of the DCP. However, in the circumstances, this assessment is supportive of the proposed multiple parks.

B2.7 Water and Sewerage

In compliance with the DCP, the proposal includes the construction of reticulated water and sewerage systems which are to be provided in accordance with Council's Water and Sewer Design Specification.

B2.8 Stormwater Drainage

A stormwater concept plan and design statement has been submitted with the subject DA. This design has adopted 'best management practices' and minimised runoff through accommodating runoff within the site. The proposed design includes techniques such as retention basins, detention ponds and reuse systems.

In particular the applicant's stormwater design statement provides for a treatment train approach utilising 10,000l water tanks on each allotment with overflows over filter strips on each block of land, then into a combination of bio-retention swales and swales to filter the remaining water and remove pollutants then piped to the receiving waters. The intention is to prevent the discharge of untreated stormwater in Swampy and Bellwood Creeks and comply with Government water quality standards. The proponents advise the bio-retention swales will remove pollutants from stormwater and will discharge water of a higher quality than which is currently being discharged pre-development.

As stated earlier in this report in the discussion of Clause 7.3 of the Nambucca LEP 2010, the proposed design statement also included discussion of the flood levels affecting the site, the impact of climate change on these levels, the contribution of the likely stormwater flows from the subject development and likely impacts all this could have on surrounding properties.

Various types of Hydraulic Modelling and reference to other previous Hydraulic studies undertaken in the immediate area were utilised in the report with the following findings being reported:

- The proposed residential lots will not be affected by the 1 in 100 year flood (including a maximum allowance for climate change).
- The hydraulic modelling undertaken indicates that the development will only result in a 3.9% increase in downstream stormwater flows which is insignificant in changing the overall height of the creek and will not cause flooding to existing dwellings and properties which are currently flood free.
- The effects of climate change on the site are also negligible with only minor flooding that doesn't affect dwellings occurring if the maximum theorised sea level rise is achieved. Increase in rainfall has little effect on the system due to how wide the system is during a flood or ARI event.

Council's Engineers have advised regarding the proposed street edge bio-swales that the disadvantages of incorporating such a measure outweigh the advantages, as highlighted in the following advice.

Pro's of Bio retention swales

- The proposed treatment train complies with legislative requirements, achieves water quality targets and this type of WSUD design is becoming more common throughout Australia
- Can look attractive and improve the streetscape, if maintained correctly
- Is inexpensive to construct compared to traditional kerbs or piping of stormwater

Con's of Bio retention swales

- Drainage swales will be considerably damaged by construction traffic
- Drainage swales require *culverts* to be constructed through driveway by owners, invert levels will be critical, previously they have been installed incorrectly
- Swales take up a large portion of the road verge leaving little room for services, particularly in this proposal where water mains and other services are competing for room in a narrow road reserve and in a number of locations sewer mains are proposed across the frontage of properties. Services need to be kept clear of the swale for maintenance purposes
- Swales can become a mosquito breeding ground where stormwater pools and stagnates.
- Slopes of the swale drains will be damaged by vehicles as edge beam sits flush with the road pavement
- The system requires a high level of maintenance and a commitment by Council to engage additional staff, machinery and a further commitment to a maintenance regime. i.e. weeding, watering, reseeding, reshaping and damage repair
- Filter material and geo textile fabric contained within the bio-swale needs replacement after 5 years, turf and plants will also need replacement

The proposed Bio retention swale concept is preferable if there were no significant ongoing maintenance requirements, however given the substantial additional cost that Council would incur with the swale proposal, it is considered unaffordable and impractical. If the bio retention swales are retained, the road x-sections will need to be changed to a one way cross fall, falling back to the drain, as per the Stormwater Management Report. In addition the proposed roads reserves may need to be widened to achieve all of its required functions.

Council's engineers have recommended that kerb and gutter and associated works be required by condition, in preference to the proposed road side swales. Furthermore, Council's engineers have advised their preference for piping of stormwater to a wetland or similar water quality treatment device instead of the proposed filter strips and bio-retention swales.

It is noted that the hydraulic modeling undertaken to date for the development relied on use of swales. There has been no engineering requirement however for a new hydraulic model at this stage, given the proposed condition which details that calculations are to be provided confirming that the stormwater system is adequately sized and designed to suit the entire development and will protect downstream water quality and satisfy Landcom standards.

In summary, the Bio retention swales are not recommended, being considered undesirable due to ongoing high maintenance, likely damage and safety concerns and due to insufficient room available in the road reserve.

The recommended conditions of this report include engineering conditions to address the above and to require the design of an amended stormwater system.

B2.9 Electricity and B2.10 Telecommunications

All allotments within the proposed subdivision will be connected to the reticulated electricity and telecommunication mains in accordance with the requirements of Essential Energy and telecommunications providers. A condition is included in the recommendation of this report to ensure that all electricity and telecommunications supplies are provided underground to improve visual amenity and comply with the DCP requirements.

B2.14 Wildlife Management and Landscape Ecology

In regard to wildlife management and landscape ecology the DCP seeks to maintain and enhance the ecological function of existing vegetation likely to provide landscape connectivity for locally occurring flora and fauna species. To this end an ecological assessment and report on the subject site has been submitted with the DA. In addition to this an addendum was requested and submitted to address the listing of new Endangered Ecological Communities under the Threatened Species Conservation Act 1995 since the original report was prepared.

Please refer to section (b) 'The Likely Impacts of the Development', later in this report for a discussion on the ecological impacts of the proposal and the findings of the submitted ecological reports.

B3.0 ZONE REQUIREMENTS

B3.1 RESIDENTIAL ZONES

As discussed earlier in this report (Section (a)(i)), the proposed subdivision complies with the minimum lot size provisions of the NLEP 2010. The proposal also (on the whole) complies with the minimum required street frontage of 12.0m for all but 10 of the proposed lots. Two of these ten lots are battle axe lots which are permitted to have a shared 5.0m access handle. The other 8 have frontages ranging from 8m to 11m and are located at the two proposed cul-de-sac heads or street bends. The dimensions of these 8 lots should be amended to comply with the 12m requirement by way of condition. This should not be an issue for such a large subdivision development especially as the SEE for the proposal advises that all lots comply with these standards.

All lots appear to comply with the dwelling envelope and private open space requirements of the DCP.

Part D Sediment and Erosion Control

Engineering conditions to ensure the implementation of adequate sedimentation and erosion measures complying with the DCP requirements have been included in the recommended conditions to this report.

b The Likely Impacts Of the Development

The body of this report includes consideration of many likely impacts of the proposed development. Following is a consideration of those matters which are not otherwise considered.

Context and Setting

The proposed subdivision will be consistent with the immediately adjoining and predominant urban land use in Marshall Way and will not make a significant change to the character and nature of the area.

Access, Transport and Traffic

As outlined earlier in the description of the proposed development, part of the proposal is the construction of the northern half of a link road which will run between Alexandra Drive and Marshall Way. This northern section of the road will be located within the subject site for the subdivision. The southern half of this road is proposed within a purpose created, Council owned allotment to Marshall Way. The southern road section was the subject of a separate DA2013/183 which was reported to Nambucca Shire Council and approved on 12th June 2014. This report on DA2013/183 addressed the issues of access, transport and traffic relating to the full Link Road proposal (southern and northern section). Consequently reference should be made to the copy of the report on DA2013/183 attached to this report for the proposed subdivision.

As noted in the assessment report on DA2013/183 a 2.5m wide pedestrian/cycleway is proposed in conjunction with the Link Road proposal. This pedestrian/cycleway is considered necessary and adequate for the desired purpose.

By way of providing background information for the subject assessment, the report to Council on the Council owned Link Road section (DA2013/183) outlined that the subject application (as submitted) relied upon a single access road to the north (Alexandra Drive) which currently only services rural residential development and which has a (comparatively) long travel route to Nambucca Heads & the nearby Bellwood commercial area to the south east.

The initial assessment of the subject DA found that the proposed 346 lot subdivision lacked planning merit without a road link connecting the subdivision to the south to Marshall Way. In addition the NSW Rural Fire Service who is an Integrated Agency for the DA refused to grant their general terms of approval (which are required for the DA to be supported) without the link road. In addition BUSWAYS advised that it would not provide public bus services to the proposed subdivision without a link road being provided.

In addition to the above the *NSW Health Mid North Coast Local Health District* in its comments on the subject DA (refer to discussion on Agency submissions in section (d) – (Any submissions made in accordance with the Act or the Regulations) advised that *access for residents and emergency services to and from health care services in Nambucca Heads will be heavily reliant upon good functional road infrastructure within the development*. In addition *provision should be made for public transport to service the development area*. The provision of the full Link Road is integral to the achievement of each of these specifications.

It is only on the basis that both the (currently) privately owned and Council owned sections the Link Road are constructed upfront prior to the release of any subdivision certificates for the proposed development that the subject DA is supported both from a planning merit perspective (as outlined in this report) and a legal/ legislative basis in relation to the requirement for general terms of approval (GTAs) being issued from the NSW Rural Fire Service (under Section 91 EPA Act 1979).

As a consequence of the above the recommended conditions attached to this report include a requirement that the prior to the release of any subdivision certificate for the proposed development both the northern section of the proposed Link Road located within the subject site and the southern section (including the shared pedestrian/ cycleway) within the Council owned land approved by the development consent issued for DA2013/183 shall be constructed and completed.

It should be noted that the above approach is permissible under *section 80A (Imposition of Conditions) (1)(f)*, Environmental Planning and Assessment Act 1979 which states: *“A condition of development consent may be imposed if: (f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent.”*

In regard to the public submissions received to the subject DA relating to the traffic impacts from the overall Link Road construction these issues will have already been addressed by Council in its assessment and determination of DA2013/183 this meeting. In summary, the proposal will connect Marshall Way with Alexandra Drive and will permit the flow of traffic over each road for both local residents and other users. This will no doubt result in an increase in traffic on each of these streets compared to the existing levels which are reflective of their existing dead end natures. This intended temporary situation is something that the existing residents of each street have understandably become used to and (in many cases) to expect. However Council's overall plans for the Marshall Way area have for an extended period of time, extending back to at least 1994, included the

construction of a Link Road between Marshall Way and Alexandra Drive. To this end Marshall Way was designed and constructed to a Collector Road standard on the basis that a through connection would be created.

As mentioned in the summary of this report Council also previously considered the potential traffic impacts of the proposed Link Road in July 2009 when it considered the 2009 Bellwood Traffic Contributions Plan. This draft Contributions Plan was notified to residents and an assessment of the submissions received particularly focussed on the Link Road proposal, a discussion of detailed Council projections for expected traffic growth over 20 years, a consideration of social and economic considerations and impact on Aboriginal Cultural Heritage (Diamond Tree site). Having weighed these considerations it was resolved "That Council retain the inclusion of a link road between Alexandra Drive and Marshall Way, Nambucca Heads in the Bellwood Traffic Contribution Plan on the basis that it is required for future traffic management and planned development of that precinct.

The Bellwood Local Roads and Traffic Infrastructure Developer Contributions Plan was adopted in August 2009 and continues to be in force. On the above basis it is considered that Council has already considered and signed off on the issue of Traffic Impacts of the Link Road and the proposal should continue to be supported on traffic grounds.

Heritage

Please refer to the discussion of Clause 5.10 (Heritage Conservation) under the consideration of Section 79C(1) EP&A Act and the Nambucca Local Environmental Plan 2010 earlier in this report for a discussion of Heritage impacts of the proposal.

Noise and Vibration

Aside from some short term higher noise and vibration levels during construction, the proposal will be in keeping with the established character and nature of the area. Standard conditions to address Noise and Vibration impacts during construction have been included in the recommendation of this report.

Social Impact in the Locality

The subject application was accompanied by a Socio-Economic Assessment of the proposal which was supplemented by the requested more detailed Addendum, received during the assessment of the DA. The submitted social assessments made the following comments:

Level of social change

As mentioned above, the development of Nambucca Gardens Estate will be gradual and the social structure of the area will change incrementally. Once the estate is fully developed, around 1,200 additional people will bring positive and negative social change. Currently the Palmwoods and nearby rural residential area are relatively isolated and interaction among neighbours is more difficult under this scenario. A 'critical mass' of like-minded households may introduce new opportunities for community building within the area, based around family values and/or environmental awareness as in 'landcare' or like groups with a common goal to conserve the Swampy Creek wetland area.

It is highly likely that the social mix within the Nambucca Gardens Estate will be similar to this social mix already present in the Palmwoods / Alexandra Drive area. This area has a much higher proportion of families with children than in the Bellwood area and also a higher proportion than the rest of the Nambucca local area. Family households are likely to continue to find this area suitable for lifestyle purposes.

Given the nature of the subdivision and the character of the existing surrounding neighbourhood, there is no reason to think that the social structure of the area will significantly change, however the neighbourhood will become busier and noisier.

Mitigation of Impacts

As mentioned above, the character and family values of the Palmwoods / Alexandra Driveneighbourhood will be reflected in the future social family mix of the proposed subdivision as it is designed for low density residential living.

In consideration of social issues already identified in the wider Nambucca area, such as lack of housing diversity and the lack of and high cost of rental / affordable housing, the release of this land onto the Nambucca housing market will increase supply and ultimately improve affordability.

The increase in local population will change the demand for community and social facilities, however, service providers have indicated that their organisations will expand to accommodate additional patronage.

Further to the above in regard to the demand for services the submitted report also states:

Given the higher than usual proportion of aged people and the generally low socioeconomic status of the local population, the eventual population of the Nambucca Gardens Estate catering for a high proportion of family households, will not significantly strain social resources; particularly in terms of social and medical support.

Increased demand for medical and community services as a result of population increase from the Nambucca Gardens Estate will be negligible in terms of additional burdens to already overloaded system.

New housing opportunities as a result of the proposed subdivision will stimulate economic development in the Bellwood area, perhaps leading to increased visitation from specialist service providers and additional private practitioners living and working in the area.

In regard to the Aboriginal Cultural Heritage issues surrounding the Diamond Tree and the submissions made by the local Aboriginal community the social report submitted with the DA recommends:

On the basis of new information received following recent liaison with the Aboriginal community by Appleton, Stage E of the development (proposed Lots 334 to 352 and Roads 15 and 16) should be amended or deferred from the development until:

- 1. A compromise design is agreed upon with the Aboriginal community comprising a single row of lots along the southern extent of Alexandra Drive and buffer planting with suitable impervious fencing; and/or*
- 2. Arrangements are made to acquire the land surrounding the Diamond Tree for cultural reserve purposes by the NSW Office of Environment & Heritage.*

This approach may alleviate the need to notify future purchasers by way of a notation on planning certificates of the presence of the Diamond Tree and the belief that anyone residing within a 'bull roarer' of the tree may experience sickness. Council planning staff have advised that this approach is difficult to implement through their usual processes as the cultural site is not listed on the heritage schedule of the Nambucca Local Environmental Plan 2010 by request of the Local Aboriginal Land Council.

In addition to the above (and as reported in the recent report to Council on DA 2013/183 for the Link Road proposal) when Council considered the 2009 Bellwood Traffic Contributions Plan in July 2009 the report included the following assessment of the social impact of the Link Road which is relevant to the subject subdivision DA:

"The "link" generates both positive and negative impacts. Local residents are concerned about the impact of higher traffic numbers on their safety and amenity.

On a larger scale the access is needed to improve the travel route to the commercial area, to allow through road for school bus and traffic generally to remove one way in access to Alexandra Drive and Marshall Way, to link growing local communities, to upgrade the roads for increases in traffic numbers relating to new housing and other developments (eg Aged Care and Education are possible) and to reduce the need to use the Pacific Highway.

The distance from the southern end to the Plaza via the proposed link is 1.3 km compared to 5.5 km via the Pacific Highway"

It is considered that the Link Road is essential to any further large scale residential development of the Bellwood area and will also be very valuable in improving connectivity between existing residential areas and the local shopping centre.

Crime Risk

The subject DA was referred to the NSW Police Mid North Coast Crime Management Unit in line with Council policy. The response received was that NSW Police had previously reviewed earlier plans for the proposal in 2009 when the proposal was initially being considered as a Part 3A application by (the then) Planning NSW. In particular they state: *"It is noted that the amended plans as provided by you appear to have addressed the issues identified by us and as such, NSW Police do not have any other issues in relation to this matter"*.

Aside from the above it is noted that the proposal will facilitate passive surveillance of both public and private spaces through the provision of an interlinked street network with a minimal number of dead end cul-de-sacs to encourage pedestrian and bicycle activity throughout the development; thereby making the area less attractive for criminal activity.

Economic Impact in the Locality

As mentioned above in the discussion of social impacts the subject DA was accompanied by a Socio-Economic Assessment. Whilst this report did not have any substantial comment or assessment on the economic impact of the proposal it did make the following conclusions: *"It is considered that the proposed Nambucca Gardens Estate will contribute a much needed population base to stimulate the economic development of the Bellwood commercial precinct. This relationship is largely dependent on the construction of the 'link road' between Marshalls Way and Alexandra Drive."*

and *"In consideration of social issues already identified in the wider Nambucca area, such as lack of housing diversity and the lack of and high cost of rental / affordable housing, the release of this land onto the Nambucca housing market will increase supply and ultimately improve affordability."*

In light of the overall assessment of this application as outlined in this report and the assessment included in the submitted socio-economic assessment it is concluded that the proposal will not have any appreciable economic impacts. Instead the development will have a positive impact on the economic conditions of the LGA.

Ecological Impact

An ecological report on the proposed Link Road was submitted with the subject DA along with a subsequent addendum to include updated lists of EEC's. This report outlines that a Vegetation Management Plan will be prepared for the residue land within the site that is outside of the development footprint including the conservation areas and proposed reserves.

The ecological report outlines that *"Development of the subject site will cause the loss of vegetation and habitat for the construction of buildings, access roads, driveways and associated infrastructure. The majority of this vegetation consists of scattered trees within the Tall open mixed sclerophyll woodland."*

The proposed development is likely to impact on native fauna in a number of ways. However, impacts are likely to be minor due to the disturbed nature and relatively low habitat values of the cleared/logged areas of the site.

SEPP 14 Wetland No. 362 occurs on the subject site. The proposed residential development is unlikely to have any significant direct impacts on the ecology of the wetland area. However, there is potential for indirect impacts such as changes in water quality, alteration of the local hydrological regime, sedimentation or a combination of these factors. The wetland will be protected from these impacts by the combination of a vegetated buffer ranging in widths from 25m to 100m and strategies to control water quality outlined in a Stormwater Management Plan (i.e. gross pollutant traps, vegetated swales, constructed wetlands, bio-retention swales and household water tanks).

Seven part tests were completed for twenty-two (22) threatened species which occur or are considered possible occurrences on the subject site. It was determined that a Species Impact statement is not required.

It was also determined that the proposed action is unlikely to result in a significant impact on any matter of National Environmental Significance. Therefore Commonwealth Assessment is not required for the proposed development of the subject site.

In regard to Koala habitat the report found that *“The proposed development has been designed to utilise the existing cleared and disturbed area. However, this area does contain scattered trees that represent potential Koala food trees (figure 9).*

Small areas of potential Koala habitat in addition to Koala food trees, within the disturbed Community 6, will be removed for the proposed development. However, over 98% (16.43ha) of suitable Koala habitat on the site will be retained. A fauna specialist should be in attendance when clearing of Koala food trees takes place.

The planting of Koala food trees should be included in the VMP and utilised, in any rehabilitation, where ever appropriate.”

In regard to the two EEC's (Endangered Ecological Communities - Swamp sclerophyll forest on coastal floodplain of NSW North Coast, Sydney Basin and South East Corner bioregions and Swamp oak floodplain forest of NSW North Coast, Sydney Basin and South East Corner bioregions) which it advises are on parts of the site, the report advises that: *“The proposed development has been designed to utilise existing cleared areas and avoid areas of intact native vegetation (i.e. EECs). With the exception of some minor incursions into the 7a vegetated land, not considered to be quality native vegetation, the development layout exists within land that has been previously cleared of the majority of timber.*

A VMP will be completed for the areas of retained vegetation (i.e. Land under Environmental Protection Zoning 7a and SEPP 14 Wetlands). This will enhance the site as a habitat for the Endangered Ecological Communities Swamp Sclerophyll Forest and Swamp Oak Forest.”

Hazards

Planning for Bushfire Protection – refer to discussion of *Section 91 Integrated Development*, Environmental Planning and Assessment Act 1979 earlier in this report and section (d) Any submissions made in accordance with the Act or the Regulations –Agency Submissions later in this report.

Flooding – ref to discussion of *Clause 7.3 Flood Planning, Nambucca LEP 2010* earlier in this report.

Cumulative Impacts

The primary potential cumulative impacts of the proposal are threefold – i) additional downstream stormwater flows, flooding, erosion and sedimentation, ii) change in the general character and nature of the area and iii) additional traffic creation in Alexandra Drive and Marshall Way.

In regard to downstream water flows, flooding and erosion/ sedimentation the assessment already provided in this report under the discussion of Part B2.8 Stormwater Drainage of the Nambucca DCP has established that the proposal will add minimal additional downstream waters to the local system without changing the behaviour of floods in the area and result if anything in runoff from the site which has less particulates and rubbish compared to existing pre-development flows.

In regard to character and nature of the area, the proposal is adjoined to the south and east (over Pacific Highway) by R1 Residentially zoned land and large lot residential zoned land to its immediate north. In addition the site itself is already primarily zoned R1 residential and will be directly connected to the above adjoining areas and the rest of Nambucca Heads. As a consequence of the above the proposal will be in keeping with the character and nature of the area and will not contribute to a cumulative negative change to the locality.

The cumulative impacts of the proposal in relation to traffic creation have been assessed under the discussion of Access, Transport and Traffic earlier in this section of the report and were also signed off by Council in its previous consideration of DA2013/183 for the Council owned Link Road section which was reported to Nambucca Shire Council and approved on 12th June 2014.

c The suitability of the site for the development

Having regard to its location and the overall assessment of the proposal as contained in this report, the site will adequately accommodate the proposed works in that:

- The proposed development, as amended by the recommended conditions, will not create any unreasonable detrimental impacts on adjoining or nearby properties;

- The proposal (as amended by the recommended conditions) is compatible with surrounding developments and adjacent developments do not pose any prohibitive constraints on the subdivision proposal,
- The proposed development complies with the relevant State and Council's local planning controls and objectives,
- The subject site is not subject to any natural hazards that would prohibit the construction and operation of the development in the proposed form.
- The proposal will result in positive social and economic benefits for the area by facilitating the ongoing urban development in the area and the provision of services to the community such as public transport, garbage services and improved access to commercial development.
- The form of development is appropriate for the site and is in keeping with the existing character and nature of the area (and will continue to do so as it evolves).

d Any submissions made in accordance with the Act or the Regulations

Public Submissions

29 individual letters (not including advice received in respect of agency referrals), 65 Form Letter 1 submissions and 52 Form Letter 2 submissions have been received with respect to the proposal including submissions from the Nambucca Heads Local Area Land Council, the Nyuginbiin Wajaarrgundi Sons of Earth Baga Baga Mens Group and the Coffs Harbour & District Local Aboriginal Land Council. Following is a summary of the issues raised in the submissions received with the full submission documents being circulated separately.(see closed report)

It should be noted that the issues relating to the Link Road have already been addressed by Nambucca Shire Council in its consideration and approval of DA2013/183 for the Council owned Link Road section –

ISSUE	COMMENT
<p>Link Road</p> <ul style="list-style-type: none"> • Objects to proposed link road as not shown on Council's maps. Purchases were based on these maps & verbal Council assurances. • Traffic Report does not consider alternative traffic arrangements which would prevent thoroughfare or traffic control measures. • Traffic Report does not address public health and safety of link road despite 3520 vehicles/day. Too high for a quiet residential neighbourhood, especially those who access the road directly. • Discrepancy between traffic flow figures in DA and 2009 Contributions Plan. • Traffic Report does not take into account movement from the north and west to Bellwood as a through road, increased traffic on Marshall Way, additional traffic from future approved DA for Coles or the use of link road. • Traffic counters required to fully assess present traffic volumes or hazards. • Road improvements and traffic calming measures need to be completed prior to or with the development. Road referred to as a rural lane in DA, which it is, not a highway as proposed by the link road. Current state, width and surface of Alexandra Drive and Marshall Way have not been considered and whether they are adequate for additional traffic including heavy vehicles. • Dual carriageway for the link road would increase movements further and existing road in Palmwood Gardens unsuitable for additional movements. • Peace and quiet area will change as link road will primarily be used as a thoroughfare from the north to the shopping plaza to the south with increased traffic on Marshall Way. • Dispute Traffic Report as it will be easier to access Nambucca Plaza directly via Marshall Way. 	<p>As noted above refer to the report to this meeting regarding the Link Road.</p>

<ul style="list-style-type: none"> • Could easily accommodate an entry to the Pacific Highway for the new development. • Increased traffic will add to the already congested roundabout at intersection of Marshall Way / entrance to Farringdon Village / Plaza Shopping Centre / Bawruna Medical Centre. Works required at this roundabout to ensure safety due to increased traffic from the proposal and link road. • Additional congestion along Bellwood Road adjacent to McDonalds and the intersection of Pacific Highway / Bellwood Roads due to link road. • Trucks accessing loading dock of supermarket likely to use new link road. • Planned Highway bypass will impact on the anticipated flow of traffic along Marshall Way and Alexandra Drive. • Parking at the Plaza already overflows onto the road and will increase due to the proposal. • A walkway bridge rather than link road would protect wetlands. Concern that link road cuts through a distinct nature corridor and no ecological study has been undertaken to ascertain impacts on wildlife • Requests all submissions (in their entirety) lodged in 2009 to the Bellwood Local Roads & Traffic Infrastructure Developer Contribution Plan 2009 be forwarded to JRPP. • Footpath / cycleway required along Marshall Way and Alexandra Drive, with a link to the playing fields. Pedestrian safety issues due to no established footpaths. • Loss of bus stop from link road construction works. • Financial, physical and emotional impacts on residents of Marshall Way as a result of the proposal. 	
Proposed Subdivision Itself	
Proposed road 16 is a bottleneck for residents of 9 homes.	No concern is held on traffic grounds
Long straight roads proposed will be used by skateboarders and encourages speeding which is already an issue.	Traffic Calming measures to be conditioned.
Twisting roads in Stages A1 and A2 are like a maze.	No concern is held on traffic grounds.
A roundabout is needed off Alexandra Drive as the road is currently dangerous and in need of repair. Alexandra Drive must be rebuilt.	Plans have been amended to include new roundabout in Alexandra Dve and reconstruction of road will be conditioned as a requirement.
No room for visitor parking outside 22 Alexandra Drive and difficult to reverse out of driveway if proposal proceeds.	Proposed design of Alexandra Drive upgrade only conceptual at this stage.
Impacts from dust, noise, pollution and heavy machinery movements, in particular on children and elderly residents. Includes associated health impacts.	Impacts during construction works will be mitigated by conditions of approval.
Concern regarding stormwater drainage from four homes on western side of Alexandra Drive which drains across 1A Cocos Court.	Stormwater from all roofs and hard stand areas of entire proposed subdivision will be collected and conveyed to the internal drainage system and will not be directed to any adjoining private property.
Additional hard surfaces will cause additional stormwater flowing into Swampy Creek which may rise into the backyards of properties on the lower side of Marshall Way. A 3.9% increase may exacerbate existing problems and soil quality must be considered.	Proposal has been assessed as acceptable in this regard (refer to discussion of Part B2.8 Stormwater Drainage of the Nambucca DCP and clause 7.3 Flooding of the Nambucca LEP earlier in this report.)
Concerns regarding adequate sewerage and rain water issues from the pumping station and potential impacts on surrounding properties including the childcare.	The proposed development will include the augmentation of existing and the installation of new sewerage facilities.
Additional information from applicant has not been considered by authorities (i.e. Police, RTA).	The additional information submitted has been forwarded to the relevant authorities.

Referral required to Local Traffic Committee and Chamber of Commerce.	The proposed DA was referred to NSW Roads and Maritime as required under State Environmental Planning Policy (Infrastructure). There is no provision for referrals of DA's to the Chamber of Commerce.
Lots too small, inconsistent with the visual appearance of the area which are generally >800m ² . Developer's argument for urban sprawl not relevant for Nambucca. High density, low cost housing is proposed contrary to existing area.	With an average lot size in excess of 600m ² the proposal complies with Council's minimum lot size of 450m ² for R1 General Residential zoned land.
Overall planning of block layout is congested and no usable parks, only small parks and unused playing fields. Surrounding "reserve" around the site is not usable for playing or walking the dog.	Refer to above comment. Proposal has been assessed as acceptable regarding public open space provision.
Accept growth in the area but need to consider the existing residents rather than exploit the nice relaxing lifestyle.	Refer to above comment regarding lot sizes, overall assessment of this report and discussion of cumulative impacts in section (b) The Likely Impacts Of The Development.
Loss of property values as a result of the proposal.	No information is available to substantiate this claim.
Inadequate services such as Doctors, Ambulances and Hospitals to service the new population.	Refer to discussion of Social Impact in the Locality earlier in this report in section (b) The Likely Impacts Of The Development.
Development does not create employment opportunities or bring industry to the area.	There is no requirement for a residential development of this nature to include employment generating landuses notwithstanding the fact that it will support the local construction industry during construction.
DA incorrectly states that the area had been farmed as the area was not cleared to any extent until late 1990's.	Accepted. This assessment has been undertaken on the understanding that the site was not cleared until the 1990's
Aboriginal Issues	
Important Aboriginal cultural issues with the development, in particular Stage E and link road, and it should not impinge on custodial land rights. Development should not be near very significant Aboriginal sites.	Refer to the discussion and assessment earlier in this report under <i>Clause 5.10 Heritage Conservation</i> of the Nambucca LEP 2010.
Aboriginal surveys undertaken in the past were not done by members of the Baga Baga Clan and should not have occurred.	
Proposed development is detrimental to the spiritual, cultural and physical wellbeing of the Baga Baga Clan.	
Nambucca LALC and its male members have been ignored regarding historical significance of the area and the modified tree. Aboriginal people of the Gumbaynggirr Nation consider the entire area a place of significance for the nation as a whole. Aboriginal markings on trees were acknowledged back in 1917 and 0.4ha around the diamond tree was acquired by NPWS in 1979 and dedicated as an Aboriginal Area under S.62 of the NPWS Act 1979. In 1990, a developer burned off an area where the Aboriginals believed their site to be. In 1992, an 0.8 of an acre around the Diamond Tree was reserved and the adjoining land was purchased by a developer and a path cleared right up to the tree and fence removed. Only a small area of the development of Nambucca Gardens Estate was surveyed by Aboriginals.	
The Diamond Tree is the focal point of cultural belief of the entire Gumbaynggirr Nation. Under Aboriginal law, the Diamond Tree may only be viewed by initiated Aboriginal males and must be protected from public view.	

Aboriginal community had despair over original building of Marshall Way.	
Diamond Tree and Scarred Tree do not act in isolation and are used together and relate to each other.	
Other sites and landscapes than those listed on AHIMS may be present as local people have no confidence in the confidentiality of the registers due to potential damage, such as occurred with the burning of the scarred tree and removal of second scar tree in 1999.	
Aboriginal report shows no respect for who speaks for country or in fact knows who speaks for country.	
Aboriginal report is lacking in detail and areas of significance, in part due to the small area that the sites officer was asked to comment on initially and the type of information he was asked to provide.	
The spur section to the end of Marshall Way should not be developed as it is used for ceremony and other places are occupational sites which are significant. Request the entire west section of the development not be included and signage placed at the mouth of the creek on the highway and in Alexandra Drive area.	
Aboriginal men did not agree to a compromise to have additional lots on western side of Alexandra Drive, as mentioned in the report.	
Recommended by NHLALC and the Gumbaynggirr Nation that the Scarred Tree be dealt with in a ceremony and the remains be taken to a place of keeping and a bolder be put in place with a brass plaque should the development encroach of this area.	
Names in the development should be Gumbaynggirr named.	

Agency Submissions:

External referrals on the application were sent to a large number of Government Agencies and other Stakeholders in light of the nature of the proposal. The following is a summary of the submissions received in reply to these referrals with appropriate comments provided.

Agency and Issues Raised	Comments
NSW Rural Fire Service Integrated Agency - Bushfire Safety Authority: subdivision of bushfire prone land - RFS originally refused to issue GTA's for proposal as it didn't have a second alternative public means of vehicular access out of area	GTA's issued & included in conditions of consent to this report, noting that GTA's are conditional upon provision of Link Road prior to subdivision.
NSW Office of Water Integrated Agency - works on waterfront land requiring a controlled activity approval	GTA's issued & included in conditions of consent to this report.
NSW Roads and Maritime - <i>Referral to the RMS in accordance with CI 104 SEPP Infrastructure 2007 as the subdivision of more than 200 allotments includes the opening of a public road.</i> - <i>RMS notes that the traffic study addresses only the immediate impacts upon The Old Coast Road. The application has not considered the potential impacts on connections to the Pacific Hwy i.e.</i> <i>a) the proposed staging of the subdivision will introduce a significant volume of traffic onto the Old Coast Rd during the initial 8 stages (331 lots) directly to its connection with the Pacific Hwy, the traffic assessment not considering the existing traffic conditions or its capacity to safely accommodate the volumes of traffic generated by the proposal and</i>	The initial development proposal was for a staged subdivision which resulted in traffic from most of the proposed subdivision being directed to the Old Coast Rd and its connection with the Pacific Hwy. The proponent was not agreeable at the time to carry out a traffic study of the Link Rd (Old Coast Rd) / Pacific Highway intersection relying on an analysis of the incremental increase of traffic from the subdivision as it was developed and the timing of the proposed Highway upgrade

<p><i>b) similarly the potential for impacts on the Bellwood/Pacific Hwy intersection should the north south connection of Marshall Way be established on completion of stage 'E'.</i></p> <p><i>- RMS recommends that council consider the potential for impacts upon the highway intersections and investigate bringing forward the connection of Marshal Way to Alexandra Dr to achieve an improved local road 'network' minimising the necessity for local traffic to use the Pacific Hwy. Additionally council may wish to consider deferring the latter stages of the subdivision until completion of the Highway upgrade as the existing Pacific Hwy, Link Rd (off Old Coast Rd) and Bellwood Rd intersections will likely become part of the local road network with consequential changes to through traffic volumes and intersection function</i></p>	<p>The determination that the connection with Marshal Way was an integral part of the subdivision and that the subdivision could not proceed without it realised the recommendations of RMS highlighted by the fact of the imminent completion of the Warrell Creek to Urunga Highway upgrade</p> <p>The impact of the Marshall Way/Bellwood connection to the existing highway had already been dealt with in the formulation of the Bellwood contribution Plan – Link Rd (as is reported to this meeting of council DA 2013/183)</p>
<p>NSW Police</p>	<p>See discussion of Crime Risk under (b) The Likely Impacts Of The Development, earlier in this report.</p>
<p>Busways</p> <p>- Provision of public transport and poor accessibility and efficiencies without Link Road resulting in Busways not servicing development.</p>	<p>Issues addressed via provision of Link Road through the subject DA and the separate DA 2013/183 for the Council owned section of the Road approved by Council on 12th June 2014.</p>
<p>NSW Office Environment & Heritage</p> <p>- initially advised they were an integrated agency under section 91 EPA Act 1979 but subsequently agreed with legal advice from applicant that they were not in the circumstances</p> <p>- As the applicant has not elected to lodge the development application under these provisions of the EP&A Act, OEH does not have a role in the development assessment process to issue General Terms of Approval for Aboriginal cultural heritage.</p> <p>- OEH notes that if a development being assessed in accordance with the requirements of Part 4 of the EP&A Act is not likely to impact or harm Aboriginal objects or declared Aboriginal Places then an Aboriginal Heritage Impact Permit issued in accordance with Section 90 of the NPW Act is not required. However, in these current circumstances OEH is aware of at least two additional Aboriginal sites which have been recorded within the project area and registered on AHIMS. OEH further states that the DA has not included these additional sites in its archaeological assessment and has not addressed the previous identified inadequacies with their reports.</p> <p>- OEH would once again welcome an opportunity to provide further documentation concerning the nature of these two sites in order for the applicant to consider whether the current development proposal is likely to impact or harm these sites. In the event that impact or harm is likely, the applicant would also be expected to justify any impact in support of the development application. Further, if impact is likely then the applicant would be required to manage any likely impact in compliance with the requirements of the NPW Act and in consultation with the local Aboriginal community.</p> <p>- The long term protection of identified Aboriginal sites both within and adjoining the development area have not been adequately addressed. OEH accordingly recommends that a long term management strategy is developed for each site proposed to be conserved to ensure there are adequate protective measures in place prior to any construction activities occurring (suggested measures included in submission)</p>	<p>Correspondence has been referred to OEH and has been ongoing with final concerns relating to the protection of sites further mentioned</p> <p>- .The applicant in legal and archaeological submissions to council has demonstrated that;</p> <p>a) Because no aboriginal artefact or place is proposed to be harmed and accordingly an Aboriginal Heritage Permit not being required then the proposal is not 'integrated' development. OEH confirms that they do not have a role in the development assessment process to issue GTA's for Aboriginal cultural heritage.</p> <p>b) The developer has carried out extensive consultation with all affected Aboriginal stakeholders</p> <p>c) The Aboriginal Heritage assessment by John Appleton of Archaeological Surveys has identified all existing sites and proposes to protect them in reserves, untouched areas and on a site on which no artefact was found, the site will be protected by covenant over a portion of the residential rear yard. This should appear on an 88b instrument attached to the land</p>

	d) The applicant notified OEH with respect to © above on 14 th November 2013. To date council is not aware of any further response
<p>NSW Office Environment & Heritage NSW National Parks & Wildlife Service Coffs Harbour</p> <p>- "The Nambucca Aboriginal Area, gazetted in 1979, has outstanding Aboriginal Culture and heritage values".</p> <p>- "On the basis of these recommendations to install a visual buffer of the reserve, improve fire asset protection zones and restrict public access to the reserve, any development within the Southern Precinct is not supported."</p> <p>-To protect the Aboriginal culture and heritage values of the (Nambucca Aboriginal Area - Diamond Tree) reserve, NPWS recommends that the following objectives are met through the design process:</p> <ol style="list-style-type: none"> 1. The visual exposure of the area to people not holding appropriate Cultural knowledge or authority is not increased. 2. Bushfire risks are effectively mitigated within the development therefore eliminating any requirement for mitigation works to be undertaken within the reserve. The asset protection zones proposed in the Southern Precinct component of the development adjacent to the reserve are inadequate; 3. Efforts to restrict public access to the reserve are not made more difficult by the subdivision design. <p>To assist in meeting these objectives it is recommended that:</p> <ol style="list-style-type: none"> 1. Consultation be undertaken with the Aboriginal Cultural Knowledge Holders regarding the determination of an appropriate approach to screening the reserve; 2. The design of the subdivision should ensure the general public cannot view the site from any publically accessible infrastructure, such as roads or houses. 3. A visual buffer be required in addition to any fire protection zones. 4. The widths for Asset Protection Zones to be allocated within the development adjacent to the reserve are to comply with the specifications within <i>Planning for Bush Fire Protection 2006</i>. 5. There is limited development or embellishment within Asset Protection Zones and areas within the vicinity of the reserve boundary are not accessible to the public. 	Agreed – recommendations adopted.
<p><i>Transgrid</i></p> <p>- Site is clear of any existing or proposed Transgrid interests.</p>	Noted
<p>NSW Department of Education & Communities</p> <p>- Subject site is located within the catchments of Nambucca Heads and Frank Patridge Public Schools and Nambucca Heads High School and student numbers are expected to remain stable in the short term. These schools will be able to accommodate any additional demand resulting from proposal.</p>	Noted
<p><i>Forests NSW (now Forestry Corporation NSW)</i></p> <p>- all fire protection measures required are to be wholly within the proposed subdivision and not impact the adjoining State forest.</p>	Noted – all issues have been addressed in assessment.

<ul style="list-style-type: none"> - the subdivision should not affect or impact any forest management or business activities - any construction within the subdivision should not affect the flow of any drainage lines 	
<p><i>Federal Department of Broadband, Communications and the Digital Economy</i></p> <ul style="list-style-type: none"> - In accordance with Part 20A, Telecommunications Act 1997, the subject development shall include 'fibre-ready' pit and pipe utilities; and arrangements shall be made with a telecommunications carrier of the proponents choice to provide telecommunications infrastructure throughout the development. Discussions should be held with the preferred carrier on their pit and pipe requirements to facilitate deployment. Details, plans and specifications for the above (along with appropriate certification from the selected carrier) shall be submitted with all relevant construction certificates for the development. 	<p>Noted – the stated requirement has been included in the conditions to this report.</p>
<p><i>NSW Health Mid North Coast Local Health District</i></p> <ol style="list-style-type: none"> 1. Access for residents and emergency services to and from health care services in Nambucca Heads will be heavily reliant upon good functional road infrastructure within the development; 2. Provision should be made for public transport to service the development area. The development should incorporate bus shelters in suitable numbers and locations for residents to utilise. There should also be walking pathways that provide a safe and secure passage for people accessing public transport options; 3. It is strongly encouraged that the residential subdivision has provision for footpaths and cycle lanes inter-linking the various residential and open space areas, to encourage physical activity by the community; . 4. The plans indicate that there will be several reserves located around the outskirts of the development. These reserves should be formalised to provide residents with suitable open space exercise and recreational opportunities ; 5. If the reuse of waste water is considered as part of this development, it should be done in consideration of the appropriate state and national standards for treated waste water; 6. The potential for the surround water bodies to become mosquito breeding site should be minimised. It is strongly encouraged that the design of all drains is for enclosed, piped drains rather than open swales or spoon drains (The Department of Medical Entomology, Westmead Hospital has reference material related to water body construction). 7. The provision of housing should be considered in detail. There is great need for the provision of housing for youth, housing for older persons, and housing for persons with disabilities and for supported accommodation houses. The design of single storey house with appropriate design features to enable ease of mobility for aged persons should be considered; 8. It is recommended that sufficient and secure street lighting be provided for the safety and security of residents. To reduce the impact of climate change the suitability of solar powered street lighting should be considered; 9. A sufficient supply of potable water should be provided to all residential premises by Nambucca Shire Council; 	<p>The proposed development including the Link Road as currently envisaged in the subject application and as required in the proposed conditions will comply with the Department of Health's requirements for functional road infrastructure and public transport provision.</p> <p>The remaining points have been addressed as relevant in the proposal, in the subject assessment of the proposal or the proposed conditions.</p>

10. To assist with sustainable development, requirements for the design of residential developments to include energy efficient features should be included;	
11. On-site sewage disposal in and around the Alexandra Drive development <u>would not</u> be supported by the NSW Ministry of Health.	

e The public interest

There are no known Federal and/or State Government policy statements and/or strategies other than those discussed in this report that are of relevance to this particular case. There are no other circumstances that are relevant to the consideration of this development application.

The proposed development is in the public interest.

SUSTAINABILITY ASSESSMENT:

For an assessment of Sustainability of the proposal please refer to the discussion earlier in this report under Section 79C EPA Act 1979 of the Nambucca LEP 2010 (particularly Clause 5.5 Development within the coastal zone), the earlier under (b) (The Likely Impacts of the Development) and the July 2009 report to Council on the 2009 Bellwood Traffic Contributions Plan (as also referenced earlier and) as attached to this report.

FINANCIAL IMPLICATIONS:

Direct and indirect impact on current and future budgets

Additional rate base

Source of fund and any variance to working funds

As above.

Service level changes and resourcing/staff implications

Council has not been nominated as the Prescribed Certifying Authority at this stage.

NON-STANDARD CONDITIONS OF CONSENT

1. No approval is granted or implied by this consent to the 15 lots and the associated road numbers 15 and 16 that are proposed in Stage E of the development.
2. Prior to the release of the first subdivision certificate for the proposed development both the northern section of the proposed Link Road located within the subject site and the southern section (including the shared pedestrian/ cycleway) within the Council owned land approved by the development consent issued for DA2013/183 shall be constructed and completed.
3. That part of the required Link Road which is located within the subject Lot 2 is to be dedicated to Council upon satisfactory completion of the Link Road.
4. A dedicated shared pedestrian/ cycleway is to be provided as part of the new Link Road, in order to further improve the connection of the proposed residential subdivision with the existing urban area and the Bellwood commercial area in particular.
5. Aboriginal names should be used for streets within the new subdivision on Lot 2, in view of the demonstrated long term Aboriginal interest in the area.

6. Reserve No. 4 in the north western area of the site (and which includes the scarred tree remains) is to be increased to a minimum area of 2,000m² in line with Council's DCP minimum area requirement. Aside from maintaining compliance with the DCP this will enhance the preservation of the cultural significance of the scar tree, ensure that the space is useable with a good amenity for residents, can be achieved without unreasonable impact on the overall development and make it more efficient to maintain and service by Council staff.
7. The proposed open space areas are to be adequately furnished and landscaped, including with footpaths and play equipment, generally as per the amended landscaping plan. OR the plan of subdivision is to be amended to provide for a consolidated and central single open space /park in the vicinity of proposed roads 3, 4 and 7. The 5 smaller edge parks can be used for purposes of additional housing lots if they are considered viable.
8. Kerb and gutter and associated works is to be utilised over the proposed swale drains. Furthermore, all stormwater is to be piped to a wetland or similar water quality treatment device instead of utilising the proposed filter strips and bio-retention swales. A revised stormwater treatment and disposal plan is to be submitted with the Construction Certificate reflecting the above requirements. Calculations are to be provided in the revised plan confirming that the modified stormwater system has been adequately sized and designed to suit the entire development and will protect downstream water quality and satisfy Landcom standards.
9. All lots (except for the battle axe lots) are to achieve compliance with Council's 12m street frontage. Compliance with this condition is to be detailed in the Construction Certificate documentation.

GENERAL CONDITIONS OF THIS CONSENT

Integrated Approvals

- 1 The following approvals are granted under Section 78A of Environmental Planning and Assessment Act 1979 as part of this development consent:

Water supply, sewerage and stormwater drainage work

- B1 Carry out water supply work
- B4 Carry out sewerage work
- B5 Carry out stormwater drainage work
- B6 Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer

THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH DURING CONSTRUCTION

Construction dust suppression

- 2 All necessary works are to be undertaken to control dust pollution from the site.

These works must include, but not are limited to:

- a restricting topsoil removal;
- b regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion;
- c alter or cease construction work during periods of high wind;
- d erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

Burning of felled trees prohibited

- 3 The burning of trees and associated vegetation felled during clearing operations is not permitted. Where possible, vegetation is to be mulched and reused on the site.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE (SUBDIVISION)

Sewerage and Water Mains

- 4 An approval is to be obtained under Section 68 of the Local Government Act 1993 to carry out water supply and sewerage works involving connections to Council's existing water and sewer infrastructure. Sewerage and water mains are to be extended to service all residential allotments in the subdivision.

Engineering plans of the proposed water and sewer works shall be submitted for Council's approval prior to the issue of the Construction Certificate. All designs shall be approved by Council's Manager Water and Sewerage.

Erosion and Sedimentation Control Plan

- 5 The plans and specifications to accompany the Construction Certificate application are to include a sediment and erosion control plan to indicate the measures to be employed to control erosion and loss of sediment from the site. The sediment and erosion control plan is to be designed in accordance with the requirements of the *Landcom (March 2004), Managing Urban Stormwater, Soils and Construction*.

The sediment and erosion control plan must be prepared by a suitably experienced person such as a person certified by:

- The Institution of Engineers, Australia, for engineering and hydrology matters.
- The International Erosion Control Association for soil conservation matters.
- The Australian Society of Soil Science for collection or analysis of soil data.

The plan must incorporate (without being limited to) information on general site management, material handling practices, soil stabilisation, water control, sediment control, wind erosion control and access measures.

Street Tree Planting Scheme

- 6 The plans and specifications to accompany the Construction Certificate application are to include a street tree planting scheme which has been prepared in accordance with the requirements of Council's Street Tree Guidelines. The Plan must be prepared by a qualified landscape architect or professional landscape consultant.

The Plan must show all services. Plants to be used in the street tree planting scheme must:

- a be a minimum size of 2 metres in height,
- b have a 50mm calliper diameter,
- c be sourced from at least a 25 litre container,
- d be protected by a suitable tree guard (eg a 750mm square tree guard made from a 3m "Acacia" panel painted "Caulfield Green"),
- e be suitably supported by two 2100mm black star picket posts,
- f provided with slow release fertiliser,
- g include the provision of 125mm flexible agricultural pipe filled with 14mm blue metal for watering of the plant, and
- h be mulched with 100mm of native tree mulch.

Water supply

- 7 Water supply pipelines shall generally be located on the opposite side of the road to sewer mains wherever possible.

Calculations shall be provided confirming that pipes are adequately sized to suit the entire development prior to the issue of the Construction Certificate.

Water supply pipelines shall be constructed for the development site in accordance with Council Water Supply construction specification and the requirements of Council's Manager Water and Sewer.

Sewerage infrastructure

- 8 Sewerage infrastructure shall be located within public land wherever possible. Where sewer lines are located in private land a 3m easement shall be provided with the pipe located centrally within the easement.

The number of sewage pump stations serving the total development shall be limited to two as detailed in de Groot Benson plan 91111-106.

Sewerage infrastructure shall be constructed for the development site in accordance with the Council Sewerage Construction Specification and the requirements of Council's Manager Water and Sewer.

Sewage PS upgrade strategy

- 9 The applicant shall provide details of the upgrade strategy for Sewage PS 14 to cater for increased flow from the development.

The first upgrade of Sewage PS 14 shall be required for development following the release of Stage A1 of the subdivision and shall allow for the discontinuation of pumping to the Marshall Way catchment.

A new rising main shall be designed and constructed with a route to the north and with a crossing the existing Pacific Highway to discharge into a receiving manhole that shall be constructed with a connection to existing sewers draining to PS4 at Centenary Parade. All approvals and easements for the rising main shall be acquired by the applicant at his cost

An overflow storage tank shall be constructed adjacent to PS 14 prior to full development of the site. The tank shall have the capacity to hold 8 x ADWF from the fully developed site.

10 Engineering Construction Plans

Three (3) copies of engineering construction plans and specifications must accompany the construction certificate application for each stage of construction. Such plans are to provide for the works in the following table in accordance with Council's current Design and Construction Manuals and Specifications.

Required work	Specification of work
Kerb & Gutter, Road Shoulder Construction	<p>Kerb and gutter, road shoulder and associated drainage construction, footpath formation and turfing behind the kerb including any necessary relocation of services across the subdivision.</p> <p>Verges shall have a crossfall and width sufficient to accommodate and maintain; footpaths, landscaping, provision for utilities and services and provide compliant access grades to properties</p> <p>Stormwater Drainage systems shall minimise runoff, and where possible accommodate runoff within the site. Flows shall be conveyed through stormwater pipes and treated at the end of line with a suitable device such as a constructed wetland, details Calculations shall be provided confirming that pipes are adequately sized to suit the entire development prior to issue of Construction Certificate. Stormwater quality must be suitable for discharge into the adjacent creeks in accordance with Managing Urban Stormwater - Soils and Construction Vol. 1, 4th Edition prepared by Landcom.</p>
Full Width Road Construction	Full width road and drainage construction for all proposed roads on the approved plan.

Required work	Specification of work
	<p>Local Roads 8m wide, collector roads and bus routes 11m wide within a 20m road reserve (min)</p> <p>Prior to issue of a construction certificate for <u>Stage A1</u>, the following details shall be submitted for Council's approval:</p> <ul style="list-style-type: none"> • A qualified practicing Civil Engineer shall carry out a structural analysis of the existing Alexandra Drive road pavement and provide a detailed report recommending a design for reconstruction as required to current standards for use by heavy vehicles and full development of the subject site. The recommended construction works to be completed prior to the issue of the Subdivision Certificate for Stage A1. <p>Alexandra Drive pavement design shall be based on a minimum 50 year design life and have a minimum 8m carriageway width.</p> <ul style="list-style-type: none"> • The intersection of Alexandra Drive and Old Coast Road shall be constructed to reflect drawing Number C101 and in accordance with Austroads Guide o Traffic Engineering Practice – Part 5 Intersections at Grade; • The proposed roundabout at Roundabout the southern intersection of the development and Alexandra Drive shall be designed to current Austroads standards and constructed in conjunction with Stage A1 roadworks; (applicant needs to demonstrate turning manoeuvres can be achieved at the roundabouts) • Details shall be submitted for council approval detailing the connection treatment of road pavement s and seals to existing roads and between stages of construction works • 13m radius temporary turning circle with guideposts required at the end of each stage of road construction
Traffic Control Devices	Regulatory and warning signs and posts, pavement markings and other devices where required for proposed new roads in accordance with the requirements of AS 1742.2 -2009 Traffic control devices for general use and Austroads Guide to Traffic Management series.
Traffic Calming	Traffic Calming measures to encourage a low speed environment throughout the subdivision and Alexandra drive, details to be submitted to and approved by council.
Pedestrian Refuge	Pedestrian refugees to be installed at anticipated high use crossings, details to be submitted to and approved by council.
Bus Shelters	Provision of bus shelters as indicated on plans with details of adjacent traffic slowing measures to be submitted and approved by Council.
Footpath Construction	Footpath Construction, landscaping and street lighting of neighbourhood parks and pathway links at locations indicated in the Landscape Masterplan
Footpath Construction	A 1.2 metre wide concrete footpath at least one side of the local roads offset from the kerb line.
Cycleway Construction	A 2.5 metre wide shared concrete footpath/cycleway for all proposed cycleways identified on the approved plan, roads offset from the kerb line. All cycleways shall be clearly marked and sign posted with adequate lighting for security
Gutter Crossings	Gutter crossings to each of the proposed community Parklands or areas that require vehicular access for maintenance purposes, where other than a rollover kerb is used.

Required work	Specification of work
Driveways	Providing vehicular access to the pump station site consisting of a sealed access road 3.5 metres wide must be provided prior to release of the subdivision certificate.
Service Conduits	Service conduits to each of the proposed new allotments laid in strict accordance with the service authorities' requirements.
Street Lighting	Street lighting being provided to the requirements of Essential Energy.
Street Name Signs	Street name signs and posts to all proposed new roads. <i>(Note: street/road names proposed for the subdivision must be submitted for Council approval prior to lodgement of the Construction Certificate application. A suitable name for any new road/s must be in accordance with Council's adopted policy).</i> The street name shall be selected from Council's adopted street names for the development.
Estate sign and/or structure	Council will not accept ownership or responsibility for the sign or structure. Council will need to be satisfied that a Plan is in place that will provide for ongoing maintenance of the sign and/or structure. Council reserves the right to assess the condition of the sign or structure and also its relevance at intervals of 5 years. The Estate name will not be recognised by Council as part of a property address.
Stripping and Stockpiling	Stripping and stockpiling of existing topsoil on site, prior to commencement of earthworks, and the subsequent re-spreading of this material together with a sufficient quantity of imported topsoil so as to provide a minimum thickness of 80mm over the allotments and footpaths and public reserves, upon completion of the development works.
Inter-allotment Drainage	Inter-allotment drainage to an approved public drainage system for each of the proposed new allotments where it is not possible to provide a gravity connection of future roofwater to the kerb and gutter. Inter-allotment drainage pits shall be located at all changes of direction, shall be constructed of concrete with 100mm thick walls and a minimum floor dimension of 600 x 600mm, with concrete lids.
Culverts required across drainage channels or streams	Culvert to be designed to ensure that peak flow rates for the 1 in 100 year storm event are not affected. The applicant is to obtain any necessary approvals from the Department of Natural Resources and/or the Department of Primary Industries, Fisheries, and plans.
Stormwater Outlets	An energy dissipating pit with a suitably installed locked grated outlet to all pipes or any other drainage structures. Grates must be of galvanised weldlock construction.
Stormwater Quality	Stormwater quality must be suitable for discharge in accordance with Department of Land and Water Conservation NSW (1998) The Constructed Wetlands Manual and NSW Department of Housing Manual (1989), Managing Urban Stormwater - Soils and Construction Vol. 1, 4th Edition prepared by Landcom.
On-site Stormwater Detention	Stormwater must be discharged via an on-site stormwater detention system that is to be designed to ensure that peak flow rates for the 1 in 20 year storm event exiting the subdivision do not exceed that occurring in the pre-development state. The Design must be in accordance with The Institution of Engineers, Australia (1987), <i>Australian Rainfall and Runoff</i> .
Access to Stormwater Structures	An all-weather gravel vehicle access must provided to detention ponds, drainage discharge points, filter controls and wetland areas for access by Council for maintenance purposes.
Filling to above Flood Level	Filling of Lots with clean suitable material to a level above to the 1% flood level.

Landscape Plans

- 11 The plans and specifications to accompany the Construction Certificate application are to include a detailed landscape plan indicating the locations, names, mature heights of shrub and tree species to be planted, and the location of grassed and paved areas. The design is to include an effective physical barrier between public spaces, vehicles, accessways, parking areas and the surrounding landscaped area. The Plan must be prepared by a qualified landscape architect or professional landscape consultant.

Traffic Control Plan

- 12 The plans and specifications to accompany the Construction Certificate application are to include a traffic control plan to indicate the measures to be employed to control traffic during construction of the subdivision. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual (1998), *Traffic Control at Work Sites*, and Australian Standard 1742.3 - 1985, *Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'*.

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

Splay corner required

- 13 Splay corners at intersections are to be dedicated to Council at no cost to Council.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO SUBDIVISION WORKS COMMENCING

Written Notification

- 14 Written notification of intention to commence works must be forwarded to the Council seven (7) days prior to work commencing. Notification is to include contact details of the supervising engineer and site contractor.

Public Liability Insurance

- 15 The developer and/or contractor must produce evidence to the Principal Certifying Authority of public liability insurance cover for a minimum of \$20 million. Council is to be nominated as an interested party on the policy. The public liability insurance cover is to be maintained for the duration of the period of the works and during any maintenance period.

Erosion & sediment measures

- 16 Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

Construction times

- 17 Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on residential premises, can only occur:
 - a Monday to Friday, 7.00 am to 6.00 pm.
 - b Saturday, 8.00 am to 1.00 pm.
 - c No construction work to take place on Sundays or Public Holidays.

Responsibilities under the National Parks and Wildlife Act 1974

- 18 All earthmoving contractors and operators must be instructed that, in the event of any bone, or stone artefacts, or discrete distributions of shell, being unearthed during earthmoving, work must cease immediately in the affected area, and the Local Aboriginal Land Council and officers of the National Parks and Wildlife Service, informed of the discovery. Work must not recommence until the material has been inspected by those officials and permission has been given to proceed. Those failing to report a discovery and those responsible for the damage or destruction occasioned by unauthorised removal or alteration to a site or to archaeological material may be prosecuted under the National Parks and Wildlife Act 1974, as amended.

Maintenance of sediment and erosion control measures

- 19 Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

Bond required to guarantee against damage to public land

- 20 A bond of 5% of the construction value of each stage of works is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets caused as a result of construction works under this consent.

21 Construction noise

Construction noise is to be limited as follows:

- a For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).

Fencing to protect trees

- 22 Trees to be retained are to be protected by a fence so as to minimise disturbance to existing ground conditions within the drip line of the trees. The fence is to be constructed:

- c with a minimum height of 1.2 metres,
- d outside the drip line of the tree,
- e of steel star pickets at a maximum distance of 2 metres between pickets,
- f using a minimum of 3 strands of steel wire,
- g to enclose the tree, and
- h with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter

The fence is to be maintained for the duration of the site clearing, preparation and construction works.

Care to be taken when placing services near trees

- 23 All care is to be taken to manually excavate around or under any lateral structural support roots of any tree so as to minimise root disturbance where services are to be laid within the dripline of a tree.

No filling around trees

- 24 No soil or fill material is to be placed within the drip line of a tree so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil/fill must be finer than that being covered in situ, *eg clay must not be placed over loam soil.*

Inspection of Public Works

- 25 Development works on public property are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection. You must quote your construction certificate number and property description to book your inspection.
- a prior to commencement of site clearing and installation of erosion control facilities;
 - b at completion of installation of erosion control measures;
 - c prior to installing traffic management works;
 - d at completion of installation of traffic management works;
 - e at the commencement of earthworks;
 - f before commencement of any filling works;
 - g when the sub-grade is exposed and prior to placing of pavement materials;
 - h when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
 - i at the completion of each pavement (sub base/base) layer;
 - j before pouring of concrete for kerb and guttering;
 - k prior to the pouring of concrete for sewerage works;
 - l on completion of road gravelling or pavement;
 - m during construction of sewer infrastructure;
 - n during construction of water infrastructure;
 - o prior to sealing and laying of pavement surface course.

All works at each hold point are to be certified as compliant, in accordance with Council's current Design and Construction Manuals and Specifications, prior to proceeding to the next hold point. Council will undertake random audits of work sites to verify compliance of public works as required.

Public safety requirements

- 26 All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. Council is not held responsible for any negligence caused by the undertaking of the works.

Council Specification

- 27 All works are to be constructed to at least the minimum requirements of Council's Adopted Engineering Standard.

Approved Plans to remain on site

- 28 A copy of the approved Construction Certificate including plans, details and specifications must remain at the site at all times during the construction of the subdivision.

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO THE RELEASE OF THE SUBDIVISION CERTIFICATE

Contributions and Certificate of Compliance (Water, Sewer and Drainage)

- 29 Contributions set out in the following table are to be paid to Council.

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.

The Certificate of Compliance under Section 306 of the Water Management Act 2000, identifying payment of the contributions, is to be provided to the Principal Certifying Authority.

Public service	No of Equivalent Tenements	Contribution Rate (Amount per ET)	Contribution Levied	Date until which Contribution rate is applicable
Water	330	\$12,033	\$3,970,890	01/07/2014
Sewer	330	\$9,090	\$2,999,700	01/07/2014
Drainage				
TOTAL			\$6,970,590	01/07/2014

Contribution to be paid towards provision or improvement of amenities or services

- 30 Contributions set out in the following Schedule are to be paid to Council. The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.

Evidence of payment of the contributions is to be provided to the Principle Certifying Authority prior to the issue of the Construction Certificate.

Schedule of Contributions pursuant to Section 94 of the Environmental Planning and Assessment Act 1979

Public amenity or service	Unit type	No of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Community Facilities and Open Space	Lot	346 – (15+1) = 330	\$1,904	\$628,320	30/06/14
Bellwood Local Roads and Traffic Infrastructure	Lot	330	\$3135	\$1,034,550 - %23 (equalling Link Rd contribution) = \$796,603.50	
Road Upgrading: Bellwood Road intersection	Lot	330	\$877	\$289,410	30/06/14
Surf Life Saving Equipment	Lot	330	\$107	\$35,310	30/06/14
Section 94 Administration Charge			10% of above total	\$174,964.35	30/06/14
TOTAL				\$1,924,607.80	

Certificates for Engineering Works

- 31 The submission of all test certificates, owners manuals, warranties and operating instructions for civil works, mechanical and/or electrical plant, together with a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council's Adopted Engineering Standard.

Works-As-Executed Plans

- 32 Works-as-executed plans, certified by a suitably qualified engineer or a registered surveyor, are to be submitted with the application for a subdivision certificate. Where the design is carried out utilising computer aided design CAD, all cad computer files are required to be provided on CD (Compact Disc) with the final drawings. The CAD files must include all lot and road boundaries, lot numbers and easements. The data is to be supplied in accordance with the requirements of Council's GIS Officer.
- In the case where development involves filling of flood prone land, an additional copy of the works-as-executed plan relating to earthworks and final plan of subdivision must be submitted detailing the 1% flooding contour.

Certificate for Pipes, Access Driveways, etc. Within Easements

- 33 A certificate from a registered surveyor is to be submitted to Council certifying that all pipelines, structures, access driveways and/or services are located wholly within the relevant easements.

Electricity Supply Certificate

- 34 Written evidence from an electricity supply authority is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of underground electricity supply throughout the subdivision.

Telephone Supply Certificate

- 35 Written evidence from Telstra is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of underground telephone supply throughout the subdivision.

Certificate of Compliance

- 36 Written evidence from Nambucca Shire Council is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made with Nambucca Shire Council for the provision of adequate water supply and that payment of all relevant capital contributions toward headworks has been made.

Record of Infrastructure

- 37 A record of infrastructure coming into Council ownership, upon registration of the final plan of subdivision, is to be submitted to Council.

Restrictions as to user

- 38 Site 4 as identified by AHIMS, shall have a "restriction as to user" covenant placed over it preventing disturbance or building to the satisfaction of the Office of Environment and Heritage.

The Section 88b instrument shall provide a warning to persons of Aboriginal descent that land within the hearing range of a "bullroarer" from the "Diamond Tree" site may have impacts on the health of females and children.

Completion of All Works

- 39 All roads, drainage and civil works, required by this development consent and associated Construction Certificate, are to be completed.

Erection of Street Signs

- 40 The subdivider is to supply and erect street signs for the approved street names in accordance with this development consent and the Construction Certificate approval.

Maintenance Bond

- 41 A maintenance bond of 10% of the value of the works constructed is to be lodged with Council. A copy of the contract construction cost of the subdivision works is to be submitted with the bond. The maintenance period is 12 months and will commence from the date of issue of the final Compliance Certificate. The security may be provided, at the applicant's choice, by way of cash bond or a satisfactory bank guarantee. An application in writing for the release of the bond must be made at the satisfactory completion of the maintenance period.

Notice to be fixed to onsite detention system

- 42 A plate is to be fixed onto the onsite detention system, in a prominent position, which states:
- "This is an onsite detention system. It is an offence to reduce the volume of the tank or basin or interfere with any part of the structure that controls the outflow".

Plan of Subdivision

- 43 An application for a Subdivision Certificate must be made on the approved form. The Subdivision Certificate fees, in accordance with Council's adopted schedule of fees and charges, must accompany such application. Seven (7) copies of the plan of subdivision are to be submitted with the application for a subdivision certificate. The location of all buildings and/or other permanent improvements including fences and internal access driveways/roads must be indicated on 1 of the copies.

Plan of Subdivision and Section 88B Instrument requirements

- 44 A Section 88B Instrument and 1 copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for the items listed in the following table:

Item for inclusion in Plan of Subdivision and/or Section 88B Instrument	Details of Item
Dedicated Public Road Access	Dedication of suitable public road accesses to all proposed allotments.
Dedicated Public Pathway	Dedication of the proposed pathway(s) to the public.
Dedicated Public Reserve	Dedication of the proposed Lot(s) as public reserve.
Dedicated Corner Splays	Dedication of 7.5m corner splays at all street junctions and intersections.
Inter-allotment Drainage Easements	The creation of easements for drainage of water, with a minimum width of 1.5 metres, over all inter-allotment drainage pipelines and structures located within the proposed allotments.
Drainage Easements	The creation of easements for drainage of water over all drainage pipelines and structures located within the proposed allotments in accordance with Council's policy.
Drainage Reserve	The dedication of a drainage reserve over the drainage treatment devices and constructed access.
Sewer Easements	The creation of 3m wide easements for drainage of sewage over all sewage pipelines and structures located within the proposed allotments in accordance with Council's policy.
Easement for Support	The creation of a suitable easements for support/batter as required for the provision of infrastructure
Prohibit development on Flood Prone Land	Prohibiting the erection of buildings on land which is inundated by a 1% AEP flood event.
An easement to allow the maintenance of the fire trail, fuel reduced zone and fuel free zone	Easement to provide access by Council and Rural Fire Service in the event that maintenance is not carried out

45. If items of Aboriginal heritage are discovered within any work zone during future site construction works or processes, the items are to be immediately reported to OEH and all work in that area is to be stopped until the find has been investigated by OEH and advice received from OEH confirming that site work can re-commence.

46. Rural Fire Service of NSW General Terms of Approval:

a. The development proposal is to comply with the subdivision layout identified on the drawing prepared by de Groot & Benson numbered 91111-112 (Amendment No. C), dated January 2014.

b. At the issue of subdivision certificate and in perpetuity the entire area of each newly created residential lot shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

c. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on relevant lots (including public reserves) within the respective stages of the subdivision requiring the provision of asset protection zones (APZ) as shown on the drawing prepared by de Groot & Benson numbered 91111-112 (Amendment No. C), dated January 2014. APZs shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

d. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on the undeveloped residue lot at the issue of subdivision certificate for Stages A1, A2, B1, C1, C2 and D1 requiring a 22 metre wide temporary asset protection zone (APZ) around the perimeter of the relevant subdivision stage. The temporary APZ shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' and shall be established prior to issue of subdivision certificate.

e. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

f. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

g. A restriction to the land use pursuant to section 88B of the 'Conveyancing Act 1919' shall be placed on the residue lot at Stages A1 and A2 requiring a temporary alternative access to be provided from the cul-de-sacs in each stage to the existing northern roundabout on Alexandra Drive at the intersection with proposed Bus Road 3. The temporary alternative access shall be constructed prior to issue of subdivision certificate and shall be maintained in accordance with section 4.1.3(3) of 'Planning for Bushfire Protection 2006'. The temporary alternative access may be deleted upon commencement of Stage C1.

h. Any temporary cul-de-sac created in the respective stages of the development shall provide an all-weather 12 metre outer radius turning circle.

i. The proposed southern extension of Alexandra Drive to link with Marshall Way (DA 2013/183) shall be constructed prior to the issue of subdivision certificate for stage A1.

j. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

47. NSW Office of Water General Terms of Approval

Plans, standards and guidelines

a. These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA 2012/011 and provided by Council. Any amendments or modifications to the proposed controlled activities may render these GTA invalid.

If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.

b. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (eM) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.

c. The consent holder must prepare or commission the preparation of:

- (i) Vegetation Management Plan
- (ii) Works Schedule
- (iii) Erosion and Sediment Control Plan

d. All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the NSW Office of Water's guidelines located at www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx

- (i) Vegetation Management Plans
- (ii) Riparian Corridors
- (iii) Outlet structures
- (iv) Watercourse crossings

e. The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.

Rehabilitation and maintenance

f. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.

g. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.

Access-ways

h. The consent holder must design and construct all ramps, stairs access ways, cycle paths, pedestrian paths or other non-vehicular form of access way so that they do not result in erosion, obstruction of flow, destabilisation, or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.

Bridge, causeway, culverts, and crossing

i. The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.

Disposal

j. The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

Drainage and Stormwater

k. The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.

l. The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.

Erosion control

m. The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

Excavation

n. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

Maintaining river

o. The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.

River bed and bank protection

p. The consent holder must establish a vegetated riparian zone along Swampy and Bellwood Creeks in accordance with a plan approved by the NSW Office of Water.

48. In accordance with Part 20A, Telecommunications Act 1997, the subject development shall include 'fibre-ready' pit and pipe utilities; and arrangements shall be made with a telecommunications carrier of the proponents choice to provide telecommunications infrastructure throughout the development. Discussions should be held with the preferred carrier on their pit and pipe requirements to facilitate deployment. Details, plans and specifications for the above (along with appropriate certification from the selected carrier) shall be submitted with all relevant construction certificates for the development.

REASONS FOR CONDITIONS

- 1 To comply with the provisions of Nambucca Local Environmental Plan 2010.
- 2 To ensure the development is completed in accordance with conditions of consent and approved plans.
- 3 To preserve the environment and existing or likely future amenity of the neighbourhood.
- 4 To provide and/or maintain an adequate drainage network that will not cause damage to existing or future development.
- 5 To ensure that appropriate landscaping is provided.
- 6 To provide funds for the provision of services and facilities as required by the increased population or activity.
- 7 To ensure compliance with engineering standards.
- 8 To minimise the possible adverse effects from bushfires.
- 9 To ensure compliance with Section 68 of the Local Government Act 1993.
- 10 To ensure compliance with Local Government (Approvals) Regulation 1999 (Part 4 Approvals relating to management of waste)
- 11 To ensure compliance with the Roads Act 1993.

ATTACHMENTS

Plans...



