



building constructions

**OBJECTION TO DEVELOPMENT STANDARD  
STATE ENVIRONMENTAL PLANNING POLICY  
NO. 1**

**DEVELOPMENT APPLICATION FOR  
SUBDIVISION OF CONSERVATION LAND**

**KOPA STREET AND DUDLEY ROAD,  
WHITEBRIDGE**

**15 August 2014**



## Introduction

This objection is made in accordance with the provision of State Environmental Planning Policy No. 1 (SEPP1) with respect of an application to subdivide conservation zoned land at 2-4 Kopa St and 142 Dudley Rd, Whitebridge (DA/1774/2013). The Objection should be read in conjunction with the Statement of Environmental Effects and proposed plan of subdivision accompanying the development application.

## Relevant EPI

Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004)

## Zoning

2(2) Residential (Urban Living)

3(1) Urban Centre

7(2) Conservation (Secondary)

## Zone objectives

The objectives of the 7(2) Zone that is subject to this Objection are:

- (a) protect, conserve and enhance land that is environmentally important, and*
- (b) protect, manage and enhance corridors to facilitate species movement, dispersal and interchange of genetic material, and*
- (c) enable development where it can be demonstrated that the development will not compromise the ecological, hydrological, scenic or scientific attributes of the land or adjacent land in Zone 7 (1), and*
- (d) ensure that development proposals result in rehabilitation and conservation of environmentally important land, and*
- (e) provide for sustainable water cycle management.*

The development is considered to be consistent with the zone objectives because:

- The subdivision will consolidate the conservation land into a single title to better facilitate its protection and management as public land.
- The conservation land, although highly degraded with little value to reflect its conservation zoning, will be revegetated and dedicated to the Council as public land to manage as part of the adjacent Fernleigh Track corridor and adjacent land along Station Street.
- Restoration will establish the lands role as a functioning vegetation corridor.
- The land will contain stormwater management systems in the form of swales and bio-retention basins to promote sustainable water cycle management, improving the quality of water discharging from the public roads and car park.

The proposed development, including the subdivision of the conservation land subject to this Objection, is considered to be consistent with the provisions of the 7(2) Conservation (Secondary) zone.

## Standard being varied

Lot size

## Relevant clause

Clause 24 Subdivision and Schedule 2 Subdivision Standards

## Objectives of the standard

The objectives are not explicitly stated but the clause does provide that:

- (2) *Land in any zone may be subdivided only if the consent authority is satisfied:*
- (a) *that the resulting lots will conform to the requirements in Schedule 2 (Subdivision standards) applicable to subdivision in that zone, and*
  - (b) *the resulting lots can be developed in accordance with this plan.*

It is assumed the objectives in Schedule 2 are to establish controls that help ensure land subdivided under this provision can be developed / conserved in accordance with site characteristics and requirements of Lake Macquarie LEP 2004 and DCP No. 1.

## Value of standard

Minimum lot size 40 hectares

## Proposed value and variation

The conservation land, to be consolidated into a single lot, totals approximately 3,980m<sup>2</sup> (0.40ha)

## Impact on attaining objects specified in section 5(a)(i) and (ii) of the Act

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979* (EPA Act) states:

5 *The objects of this Act are –*

(a) *to encourage –*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land;*

Strict compliance to the standard would hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EPA Act in that it will preclude the orderly and economic development of this land consistent with its zoning. The conservation land will be consolidated into a single title and dedicated as public land. It will be revegetated and managed to restore and protect ecological values consistent with its zoning. The proposal is generally consistent with relevant planning controls and policies. It will have a positive impact on the restoration and conservation of natural and artificial resources because:

- The site is degraded and the conservation land will have its values restored;
- No significant vegetation in the conservation land will be affected by the development;
- Restoration works in the conservation land will improve the buffering to the adjoining local heritage item;
- The design seeks to protect water quality and the environment by providing stormwater management systems (swale, basin etc) in the corridor; and
- The development is consistent with State government and Council strategic land use strategies for managing growth and protecting the environment in Lake Macquarie Local Government Area.

The scale and nature of the non-compliance subject to this Objection does not give rise to any matter of state or regional significance. The standard is appropriate in the context for which it is intended, being to establish a numerical control for subdivision. The control helps ensure such land can be developed / conserved in accordance with the planning controls. In this instance non-compliance does not adversely affect the public benefit of maintaining the standard because this proposal involves application for the consolidation of conservation land already below the minimum lot size. All conservation land on the site is to be consolidated into the same title and dedicated to Council as public land. The variation will not create a precedence that could undermine the control as no private development or land use is proposed on the conservation land.

### **Why standard is unreasonable or unnecessary**

Application of the standard is considered unnecessary as the subdivision, as part of a broader development, will consolidate conservation land into the same title. It is currently held across separate titles, in smaller portions. This consolidation will remove the fragmentation and improve the long term management of the site by allowing it to be managed as public land.

No other adjacent conservation land is currently held in the same ownership and consolidation to achieve to 40 hectare lot size is not possible. Upon dedication Council may consider consolidating it with other land in the vegetation corridor to achieve the minimum standard, being land containing the Fernleigh Track and adjacent Council owned land in Station Street.

### **Cumulative impacts**

Variation to the standard is a part of the proposal to restore and dedicate the 7(2) land. The proposal doesn't reduce the size of 7(2) land in any holding. The cumulative impact of consolidating the conservation land into a larger holding and dedicating it to Council is that over time such land will be less fragmented. It also provides better opportunity for holistic management of the vegetation corridor.

### **Environmental planning grounds to justify contravention**

The development standard seeks to establish land of a size that can be developed / conserved consistent with its environmental attributes. The proposed subdivision will consolidate conservation land into a single lot and dedicate it to Council as public land. It will remove fragmentation and reduce the magnitude of variation to the standard that exists under the current titling.

### **Lake Macquarie Local Environmental Plan 2004**

Clause 3 provides the following objectives of LMLEP 2004:

*...to achieve development of land to which this plan applies that is in accordance with the principles of ecologically sustainable development by:*

*(a) promoting balanced development of that land, and*

*(b) implementing the Lifestyle 2020 Strategy adopted by the Council on 27 March 2000.*

The proposal represents the balanced development of land. Built form on the urban land will be complemented by restoration and long term management of the conservation land subject to this Objection. It is consistent with the vision of the *Lifestyle 2020 Strategy* described in Part 2 as:

*The vision for the City, held by Council and the community, is that it is:*

- *A place where the environment is protected and enhanced.*
- *A place where the scenic, ecological, recreational and commercial values and opportunities of the Lake and coastline are promoted and protected.*
- *A place with a prosperous economy and a supportive attitude to balanced economic growth, managed in a way to enhance quality of life and satisfy the employment and environmental aims of the community.*
- *A place that recognises, encourages and develops its diverse cultural life and talents and protects and promotes its heritage.*
- *A place that encourages community spirit, promotes a fulfilling lifestyle, enhances health and social well-being, encourages lifestyle choices and has opportunities to encourage participation in sport and recreation.*
- *A place that promotes equal access to all services and facilities and enables all citizens to contribute to and participate in the City's economic and social development.*

This vision is given detail and clarity through Council's planning controls with which the proposed development is generally consistent. In addition to this Clause 21 of the LMLEP 2004 states:

*The consent authority, in determining a written objection made pursuant to State Environmental Planning Policy No. 1 – Development Standards, is to consider the underlying objectives of the development standard or other requirement concerned and the following, to the extent that they are relevant to the proposed development:*

- (a) neighbourhood and local context,*
  - (b) topography,*
  - (c) solar orientation,*
  - (d) neighbourhood amenity and character,*
  - (e) privacy,*
  - (f) overshadowing,*
  - (g) security, safety and access,*
  - (h) local infrastructure,*
  - (i) landscape design,*
  - (j) waste disposal,*
- in addition to the matters referred to in that policy.*

These matters are summarised in the table below.

<b>Requirement of Clause 21 of LEP 2004</b>	<b>Compliance and Comments</b>
Objectives of the Development Standard	The objectives of the development standard are unclear, but inferred objectives and the associated aims and objectives of the LEP and the zone have been addressed.
Neighbourhood and Local Context	Whitebridge and surrounding suburbs have urban development traversed by or integrated with remnant bushland, dedicated conservation areas, and important corridors linking them. The development continues this pattern by providing a consolidated urban footprint and restoring an important corridor identified by Council.
Topography	The subdivision will not in itself change the topography. The development will establish built form and vegetation across the site with currently cleared conservation land being revegetated.
Solar Orientation	No dwellings are proposed on the conservation land. Lot orientation reflects the zone boundary and configuration.
Neighbourhood Amenity and Character	Neighbourhood amenity and character will be improved by revegetation of the conservation land. It will improve buffering between the development, Fernleigh Track and Station St. Consolidation and dedication of conservation land will promote better management of the entire corridor.
Privacy	Privacy will be improved by the revegetation of this land, improving visual separation between the Fernleigh Track and proposed housing.
Overshadowing	Subdivision will not affect overshadowing. Revegetation of the conservation land may cause overshadowing but it will not significantly affect amenity given it is on the east – south-eastern boundary of proposed dwellings. It should not exacerbate overshadowing of the Fernleigh Track as there is remnant vegetation along its boundaries already.
Security, Safety and Access	This will not be adversely affected by consolidation of the conservation land.
Local Infrastructure	Infrastructure and utilities will not be affected.
Landscape Design	Landscape design responds to the site and context. Detailed plans have been submitted for assessment that includes the revegetation of this conservation land.
Waste Disposal	The proposed subdivision will not affect the efficient management of waste collection and disposal services.

## **L&E Court five part test**

The NSW Land and Environment Court established a five part test for considering an application to vary a standard. The following discussion is provided.

- The objectives of the relevant standard are achieved despite the variation. The proposed consolidation of conservation land, while below the 40 hectare minimum standard, is a better environmental outcome because it reduces the current fragmentation of this land and consolidates it as a single title to be dedicated to Council as public land.
- The purpose of the standard will not be undermined or adversely affected as the proposal brings positive environmental outcomes despite the inconsistency.
- The broader objectives of the LMLEP 2004 and EPA Act are maintained.
- The development represents orderly and economic development of the land and the environmental impacts are considered acceptable.

## **Conclusion**

Strict adherence to the development standard controlling the subdivision of land is considered unnecessary. The proposed development improves environmental outcomes for the site. The standard is considered unreasonable as the total amount of conservation land is less than the development standard and the standard cannot be met. The development consolidates this land into one title and dedicates it as public land, removing fragmentation and improving the long term environmental outcome.

Strict adherence to the provisions of Clause 24 and Schedule 2 is considered unnecessary and unreasonable and the variation should be considered favourably.