

## **JOINT REGIONAL PLANNING PANEL (Southern Region)**

JRPP No	<b>2014STH025</b>
DA Number	<b>RA14/1004</b>
Local Government Area	<b>Shoalhaven City Council</b>
Proposed Development	<b>Eco tourist facility, function centre and associated infrastructure.</b>
Street Address	<b>Lot 13 DP 707955 (No.801) Kangaroo Valley Road, Bellawongarah</b>
Applicant/Owner	<b>Camberlee Investments Pty Limited</b>
Number of Submissions	<b>292 and two petitions signed by 1,777 people in total</b>
Regional Development Criteria (Schedule 4A of the Act)	<b>Satisfies the criteria of Clause 7 (Eco-tourist development over \$5 million) of Schedule 4A of the Environmental Planning and Assessment Act 1979 as it is has been lodged as development for an eco-tourist facilities that has a capital investment value (CIV) over \$5 million dollars</b>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li><b>i. Environmental Planning and Assessment Act 1979</b></li> <li><b>ii. Environmental Planning and Assessment Regulation 2000;</b></li> <li><b>iii. State Environmental Planning Policy (State and Regional Development) 2011;</b></li> <li><b>iv. State Environmental Planning Policy (Infrastructure) 2007;</b></li> <li><b>v. State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;</b></li> <li><b>vi. State Environmental Planning Policy 55 – Remediation of Land;</b></li> <li><b>vii. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;</b></li> <li><b>viii. Shoalhaven Local Environmental Plan 2014;</b></li> <li><b>ix. Development Control Plan No.18 – Car Parking Code;</b></li> <li><b>x. Development Control Plan No.63 – Tourist Development in Rural Areas;</b></li> <li><b>xi. Development Control Plan No.78 – On-site Sewerage Management;</b></li> <li><b>xii. Development Control Plan No.91 – Single Dwellings and Ancillary Structures;</b></li> <li><b>xiii. Development Control Plan No. 93 – Waste Not (Site Minimisation and Management); and</b></li> <li><b>xiv. Shoalhaven Contribution Plan 2010.</b></li> </ul>

List all documents submitted with this report for the panel's consideration	<b>Attachment A – Draft Determination; Attachment B – Development Application Plans; and Attachment C – Site Location.</b>
Recommendation	<b>Refusal for the reasons contained in Attachment 'A'</b>
Report by	<b>Andrew Lissenden, Development Co-ordinator</b>
Report date	<b>30 October 2015</b>

## ASSESSMENT REPORT

### 1. Proposal

The development application (DA), as amended, proposes the construction of an eco-tourist facility comprising the following (summary only):

1. Forty two (42) accommodation units. Each accommodation unit containing a bed, living area, bathroom and deck. Six different accommodation designs are proposed.
2. A central facilities building comprising a basement level containing a waste room, car parking and storage facilities. A ground floor level containing a restaurant (90 person capacity), bar, amenities, kitchen, function facilities (120 person capacity), office space and deck area and a first floor level 1 containing a library/lounge and boardroom.
3. A gym and pool facilities building. The building containing an indoor/outdoor pool, amenities, gym, steam room and deck area.
4. A wildlife centre/bushfire building. The building containing displays and information on local flora/fauna, aboriginal heritage, local art and/or photography. The building will also be able to be used as the bushfire refuge building for the property and is capable of accommodating 200 people.
5. A day spa facility. The building containing 6 treatment rooms, amenities and a reception/waiting area.
6. A farm shed and manager's studio. The farm shed is an existing building on the site but will have a studio room attached to it containing a bed, living area and bathroom.
7. Three (3) new creek crossings.
8. A new dwelling house. This to be a single storey building containing 3 bedrooms, living area, kitchen, amenities, rumpus room, studio room and car parking for 4 vehicles.
9. Onsite sewerage treatment plant.
10. Landscaping works including the construction of a new dam and footpath/access path works.

11. Car parking for 88 vehicles.

12. Associated works including access/manoeuvring areas, drainage, landscaping and associated infrastructure works.

The above works are to be staged as follows:

- Stage 1: Demolition and site preparation works (i.e. earthworks);
- Stage 2: Building construction works above ground.

Refer to **Attachment 'B'** for a copy of the development application plans.

## **2. Subject Site and Surrounds**

The development site:

- Comprises one parcel of land legally identified as Lot 13 DP 707955 (No.801) Kangaroo Valley Road, Bellawongarah (known as Rockfield Park);
- Has an area of approximately 69.55 hectares;
- Is located approximately 6.3km west of Berry commercial area and 8km southwest of the Kangaroo Valley commercial area;
- Is adjoined to the north by Kangaroo Valley Road and two parcels of privately owned land, to the west by Black Ash Nature Reserve (owned by National Parks and Wildlife Service) and two parcels of privately owned land (one of which is owned in the same ownership as the development site), to the south by Tourist Road and one parcel of privately owned land and to the east by Tourist Road and two parcels of privately owned land (one of which is owned by Shoalhaven City Council);
- Currently has vehicular access from Kangaroo Valley Road (primary access point) and Tourist Road (secondary access point);
- Is predominately zoned RU1 - Primary Production with a portion of the site (north western and south eastern corners) zoned E2 - Environmental Conservation under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014);
- Currently contains a two storey dwelling, a maintenance/storage shed, dam, stockyards and internal fencing;
- Has large cleared areas along with patches of remnant natural vegetation. The vegetation in the north western corner of the site (area zoned E2) contains Illawarra Subtropical Rainforest which is an identified Endangered Ecological Community (EEC);
- Is currently being used for low scale farming;
- Slopes from its north western corner to its south eastern corner with an overall fall of approximately 66m;
- Is serviced by electrical infrastructure however it is not currently serviced by reticulated water or sewerage infrastructure;
- Is partially identified as bushfire prone land;
- Has a number of creeks that traverse the site; and
- Is not impacted upon by any known easements/restrictions as to user.

Refer to **Attachment 'C'** for additional details on the site's location.

### 3. Background

The following provides details on pre-lodgement discussions, post lodgement actions and general site history:

- a) Pre Lodgement: Pre-lodgement discussions (i.e. Development Advisory Unit (DAU) meeting) were held with Council staff on 2 October 2013.
- b) Post Lodgement: The current application was lodged on 17 October 2014. Council staff, during the assessment of the application requested additional information from the applicant on seven (7) occasions (i.e. emails dated 5 December 2014, 23 January 2015, 11 February 2015, 25 March 2015, 24 June 2015, 26 June 2015 and 8 July 2015). Issues raised included:
  - Response to concerns raised in the submission received during the notification period;
  - Aboriginal cultural heritage;
  - Traffic;
  - Flora/fauna;
  - Renewable energy use;
  - Effluent and groundwater;
  - Permissibility;
  - Noise;
  - Bushfire; and
  - Visual assessment.

Additional information was received from the applicant on

- 17 December 2014: Additional time request;
- 27 January 2015: Groundwater information;
- 28 January 2015: Groundwater/wastewater information;
- 1 February 2015: Response to submissions, eco-tourism report, updated traffic information, updated noise comments, updated aboriginal heritage information, updated flora/fauna information, Section J of the Building Code of Australia assessment;
- 21 March 2015: Response to legal advice, updated site plan and ground floor plan, additional traffic information);
- 9 April 2015: Groundwater/wastewater information;
- 1 May 2015: Additional traffic information, updated site plan and ground floor plan, additional energy/water efficiency information, additional effluent information, additional noise assessment information;
- 15 June 2015: Economic assessment;
- 6 July 2015: Additional noise assessment information;
- 17 July 2015: Additional groundwater/waste water comments;
- 27 July 2015: Revised wildlife centre/bushfire building plans;
- 5 August 2015: Updated access point designs);
- 2 September 2015: View analysis/assessment; and
- 13 October 2015: Additional noise assessment and water access licence information.

The applicant has submitted suitable development plans and supporting information to enable a reasonable assessment of the application to be undertaken pursuant to 79C of the Environmental planning and Assessment Act, 1979 (EPA Act).

- c) Site History: A review of Council's records has indicated that a number of applications relating to the existing development on the subject land have been lodged with Council. An overview of these applications is provided below:

- DA93/1925: Additions and extensions to existing dwelling (Approved 23/11/93);
- BA94/1720: Brick Veneer Dwelling (Approved 17/08/94); and
- BA96/1567: Machinery Shed (Approved 22/8/96).

In addition to the above, a development application for an eco-tourist facility and function centre on the same land was submitted to Council in May 2014 (reference RA14/1001 and 2014STH010). This application was subsequently withdrawn by the applicant on 6 June 2014 due to concerns that the development may be captured by the provisions of Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EPA Regs) as it proposed a sewerage system that met the criteria of designated development and therefore required the submission of an Environmental Impact Statement.

#### **4. Community Consultation**

The DA has been exhibited in accordance with public participation requirements for other advertised development as outlined in the EPA Act and EPA Regs. Information submitted with the DA has been exhibited on three (3) occasions as outlined below:

- a) Notification Period 1:

- Individual property owners within a 1,500 metre radius of the site were notified of the proposal (85 letters sent) as well notification to the Kangaroo Valley Tourist Association, Berry Chamber of Commerce and Tourism and the Berry Alliance. The notification period was from 5<sup>th</sup> November, 2014 to 8<sup>th</sup> December, 2014 (33 days);
  - The proposal was advertised in the local press on two occasions (South Coast Register on 5 November 2014 and 26 November 2014);
  - A notice (x2) was placed on the land to which the application relates (sign placed at main site entry on Kangaroo Valley Road and on entry gate of secondary entry off Tourist Road); and
  - The application and supporting documentation were on display at Council's City Administrative Centre in Nowra as well as on Council's website.
- i. Extension to Notification 1 (Council resolution, Min 14.839 – Council meeting 18.11.14):
- 8<sup>th</sup> December, 2014 to 9<sup>th</sup> January 2015 (32 days).
  - Letters sent (dated 28 November 2015) to all people who had made a submission at that time (80 letters sent).
- ii. Extension to Notification 2 (Council resolution Min 14.967 – Council meeting 16.12.14):
- 9<sup>th</sup> January 2015 to 9 February 2015 (31 days).

b) Notification Period 2 - Amended Development Application:

This notification was undertaken due to the receipt of amended plans and supporting information from the applicant.

- Letter sent (dated 10 February 2015) to all residents who had made a submission advising of additional information that has been submitted by the applicant and providing opportunity for comment. No fixed date for submissions advised; and
- The application and supporting documentation were on display at Council's City Administrative Centre in Nowra as well as on Council's website.

c) Notification Period 3:

- Individual property owners within a 1,500 metre radius of the site were notified of the proposal (85 letters sent) as well notification to the Kangaroo Valley Tourist Association, Berry Chamber of Commerce and Tourism and the Berry Alliance.
- The notification period was from 11<sup>th</sup> September, 2015 to 14<sup>th</sup> October, 2015 (33 days);
- The proposal was advertised in the local press on two occasions (South Coast Register on 11 September 2015 and 23 September 2015);
- A notice (x2) was placed on the land to which the application relates (sign placed at main site entry on Kangaroo Valley Road and on entry gate of secondary entry off Tourist Road); and
- The application and supporting documentation were on display at Council's City Administrative Centre in Nowra as well as on Council's website.

Council has received 292 submissions from 185 households/groups (101 submissions from the same household/multiple submissions). Of the submissions received from households/groups, 180 raised concerns/objected to the proposal, 4 did not raise concerns/objection and 1 was assessed as a comment (neither an objection or support letter). In addition to the individual submissions two petitions objecting to the development that have been signed by a total of 1,777 people (approximate) have also been received by Council.

The issues raised (summary only) included permissibility, traffic, groundwater impacts, effluent impacts, noise, Brush Tailed Rock Wallaby program, bushfire/safety concerns, aboriginal cultural heritage, visual impacts, impacts on wildlife and economic impacts.

In addition to the applications notification as detailed above, Council held a Residents Briefing Meeting. This was held at the Berry School of Arts on 9 December 2014. The Joint Regional Planning Panel has also held a public briefing meeting. This was also held at the Berry School of Arts on 26 March 2015.

Further discussion of the issues raised in the submissions and at the public meetings held are provided in the following sections of this report.

## **5. Statutory Considerations**

The following are relevant planning controls that have been considered in the assessment of this application.

- i. Environmental Planning and Assessment Act 1979;
- ii. Environmental Planning and Assessment Regulation 2000;
- iii. State Environmental Planning Policy (State and Regional Development) 2011;
- iv. State Environmental Planning Policy (Infrastructure) 2007;
- v. State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
- vi. State Environmental Planning Policy 55 – Remediation of Land;
- vii. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- viii. Shoalhaven Local Environmental Plan 2014;
- ix. Development Control Plan No.18 – Car Parking Code;
- x. Development Control Plan No.63 – Tourist Development in Rural Areas;
- xi. Development Control Plan No.78 – Onsite Sewerage Management;
- xii. Development Control Plan No.91 – Single Dwellings and Ancillary Structures
- xiii. Development Control Plan No. 93 – Controls for Waste Minimisation and Management;
- xiv. Shoalhaven Contribution Plan 2010; and

Additional information on the proposal's compliance with the above documents is detailed in the following sections of this report.

## 6. Statement of Compliance /Assessment

The following provides an assessment of the submitted application against the matters for consideration under 79C of the EPA Act.

### **Any planning instrument, draft instrument, DCP's and regulations that apply to the land**

- i) Environmental Planning and Assessment Act 1979 (EPA Act): The clauses/matters contained in EPA Act, apart from Section 79C, that have relevance to this application are overviewed below:
  - a) *Part 1, Section 5A (Significant effect on threatened species, populations or ecological communities or habitats)*: The development site contains Illawarra Subtropical Rainforest which is an identified EEC under the NSW Threatened Species Conservation Act 1995 (TSC Act) and will require the removal of some existing vegetation in the vicinity of the proposed creek crossings which in part comprises this EEC.

The applicant has submitted a flora and fauna assessment/7part test pursuant to Section 5A of the EPA Act prepared by Travers Bushfire & Ecology (dated 27 August 2014) and a supplementary report (dated 27 August 2014). The supplementary report was submitted as a result of concerns raised by Council in relation to microbat species not being adequately considered. Council has reviewed both documents and concurs with the assessment of impacts pursuant to Section 5A as prepared by Travers Bushfire & Ecology that the proposed development is unlikely to result in significant impact on any threatened species, populations or their habitats. It is however acknowledged should a development consent be issued the recommendations of the Travers Bushfire & Ecology 2014 Flora and Fauna Assessment should be incorporated as conditions.

- b) *Part 2A, Division 3, Section 23G*: Subclause 2(a) confers Council's functions as consent authority on a regional panel if the development is of a class or description set out in Schedule 4A of the EPA Act (refer to discussion below). As the type of development proposed is identified in Schedule 4A, the functions of Council as the consent authority have been conferred on a regional panel (Southern Joint Regional Planning Panel - JRPP).
- c) *Part 4, Division 2, Section 79A (Public participation – advertised development and other notifiable development)*: Notice of the development application has been given in accordance with the EPA Regs. Additional details are provided below under the heading EPA Regs.
- d) *Part 4, Division 5, Section 91 (What is integrated development) and Section 91A (Development that is integrated development)*: The development, in order for it to be carried out, requires development consent and two approvals listed in this section (i.e. approval under the Rural Fires Act 1997 and under the Water Management Act 2000). As such, development as proposed is classified as “integrated development”.
- e) *Section 91A (Development that is integrated development)*: General Terms of Approval (GTA) have been sought and obtained from both the NSW Rural Fire Service (RFS) and the Department of Primary Industries – Office of Water (NOW) in accordance with the requirements of this section. Both the RFS and NOW have advised in their letters dated 28 July 2015 (original GTA provided on 25 November 2015 and updated due to the submission of amended plans) and 15 May 2015 respectively that they are prepared to issue their GTA's. The conditions, as detailed in the GTA's from both the above authorities should be included in any development consent if issued. In accordance with sub-clause 6, the RFS and NOW will be notified of the determination when it has been made.
- f) *Schedule 4A (Development for which regional panels may be authorised to exercise consent authority functions of councils)*: The development, based on the applicants submission, meets the criteria of Clause 6 under this schedule as a type of development (i.e. eco-tourist facility) that has a CIV of more than \$5 million dollars (i.e. the proposed development has a CIV of \$14,925,000) and therefore, must be referred to the Joint Regional Planning Panel for determination. As such, the application will be determined by the JRPP.

In summary, the proposed development does not conflict with the applicable provisions of the EPA Act.

- ii) *Environmental Planning and Regulation 2000 (EPA Regs)*: Relevant matters are overviewed below:
  - a) *Part 1, Clause 5 (Advertised development)*: The development application as it requires an approval under the Water Management Act 2000 is captured by the requirements of this clause. As such, the development, for the purpose of the EPA Regs is referred to as ‘other advertised development’.
  - b) *Part 6, Division 3, Clause 65 (Application of Division) and 66 (Seeking general terms*



*of approval*): As the development application meets the criteria of integrated development the provisions of this division are applicable. A copy of the development application and supporting information was forwarded to both the RFS and NOW on 3 November 2014 with amended information, when received, being forwarded through as required. Clause 66, Subclause 2 requires this information to be forwarded within 14 days of the application being lodged (i.e. by 31 October 2014). The delay in Council forwarding through the initial information was due to the time taken to undertake the initial processing and assessment of the application (e.g. registration, check for adequacy of information provided, etc).

- c) *Part 6, Division 3, Clause 67 (Approval body may require additional information)*: Neither the RFS or NOW during their assessment of the application provided a request to Council for additional information to be provided.
- d) *Part 6, Division 3, Clause 69 (Forwarding submissions to approval bodies)*: A copy of all submissions has been forwarded to each approval body (i.e. RFS and NOW) at the conclusion of Notification Period 3. Both the RFS and NOW advised Council on the 19 October 2015 and on 22 October 2015 respectively that they wished to provide no further comment on the proposal and that the advice/conditions previously provided adequately covers relevant issues (i.e. bushfire and groundwater extraction).
- e) *Part 6, Division 3, Clause 70 (Notification of general terms of approval)*: Both approval bodies (i.e. RFS and NOW) have provided Council with a written notice advising of their GTA's. The RFS providing its initial comments within 40 days and NOW providing its comments after the 40 day period.
- f) *Part 6, Division 7, Clause 86 (Application of Division) and Clause 87 (How must a development application be publically notified?)*: As the development application meets the criteria of 'other advertised development' the provisions of this division are applicable. Both a written notice and published notices have been given (latest written and published notices provided on 11 September 2015).
- g) *Part 6, Division 7, Clause 88 (Who must written notice be given to?)*: The written notice was provided to all people who own land adjoining the development site. In addition the written notice was given to the NSW Office of Environment and Heritage, NSW Department of Primary Industries – Fisheries, NSW Roads and Maritime Services - Transport, NSW Police Force and Endeavour Energy who are public authorities (not being concurrence authorities or approval bodies) that Council believed may have an interest in the application.
- h) *Part 6, Division 7, Clause 89 (What information must be contained in a written and published notice?)*: The written and published notice have been undertaken in accordance with the requirements of this clause (refer to written and published notices for Notification Period 3). In addition, as the development is classified as 'nominated integrated development' it has been exhibited for a period of 30 days (Notification Period 3 was for 33 days).
- i) *Part 6, Division 7, Clause 90 (Public notification of development application and accompanying information)*: The development application has been publicly notified

in accordance with the relevant requirements and during that time any accompanying information was available for inspection at the place or places specified in the public notice.

- j) *Schedule 3 (Designated Development)*: The requirements of this Schedule have been considered as the proposed development satisfies the criteria of Part 1, Clause 29 (Sewerage systems and sewer mining systems). Specifically, the development is proposing a 'sewerage system or works' that has an intended processing capacity of more than 20 persons and is located within 250 metres of a dwelling not associated with the development as well as being within 100 metres of a natural waterbody.

The locational requirements as specified in Clause 29 are however not applicable as the development is captured by the requirements of Clause 37A (Ancillary development) in Schedule 3. Clause 37A outlining that development in Part 1 is not designated development if it is ancillary to other development and will not be carried out independently of the other development. Accordingly, the proposed development is not considered designated development as the sewerage system works that are proposed are ancillary to the development and are not independent of the proposed development.

In summary, the proposed development, does not conflict with the applicable provisions of the EPA Regs.

- iii) *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP Development)*: Relevant matters are overviewed below:

- a) *Part 2 (State significant development)*: The development does not trigger the requirements for state significant development as detailed in Schedule 1 or 2 of SEPP Development.
- b) *Part 4 (Regional Development)*: The development has been lodged as a class or description included in Schedule 4A of the EPA Act (i.e. eco-tourist facilities with a capital investment value of over \$5 million dollars). As required by this Part, the Council consent functions are to be exercised by a regional panel, and as such, the application has been referred to the Southern Joint Regional Planning Panel for determination.

In summary, the processing of this application does not conflict with the applicable provisions of the SEPP Development.

- iv) *State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007)*: Relevant matters are overviewed below:

- a) *Clause 104 (Traffic-generating development)*: The development application when received was referred to NSW Roads and Maritime Services (RMS) for comment in accordance with the requirements of this clause. Initially, the proposal was considered, contrary to statements made in the submitted Statement of Environmental Effects (SEE), a type of development that meets the size requirements specified in Column 2 of Schedule 3 (i.e. site with access to any road that has 200 or more

vehicles) and as such should be referred to the RMS. The RMS has subsequently advised on 21 November 2014 that they do not object to the development application in principle as the development does not gain direct access from a classified road and due to the relatively low traffic generation rate of 41 peak hour vehicle trips and that it is unlikely to have an impact on a single classified road intersection.

In summary, the proposal complies with the relevant provisions of the SEPP 2007.

v) State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (SEPP 2011): Relevant matters are overviewed below:

- a) *Part 2 (Assessment and approval of development and activities)*: Part of the development site is within the Sydney Drinking Water Catchment (i.e. north western corner). In accordance with the requirements of Clause 11 (Development that needs concurrence of Regulatory Authority) the development application was referred to Water NSW (previously Sydney Catchment Authority) for concurrence. Water NSW advising in a letter dated 6 November 2014 that as the development is occurring outside the area identified as being affected by the Sydney Drinking Water Catchment it is not subject to the provisions of SEPP 2011, and therefore the concurrence of the Chief Executive is not required.

In summary, the proposal complies with the relevant provisions of the SEPP 2011.

vi) State Environmental Planning Policy 55 – Remediation of Land (SEPP 55): Relevant matters are overviewed below:

- a) *Clause 7 (Contamination and remediation to be considered in determining development application)*: Consideration has been given to whether the land on which the works are proposed is contaminated. In this regard, an evaluation of the subject site and available information has indicated the following:
- Council records do not identify the site as potentially contaminated land;
  - Council is not aware of any previous investigations about contamination on the land;
  - A potentially contaminating activity has not been previously conducted on the land;
  - Council is not aware of information concerning contamination impacts on land immediately adjacent to the subject land which could affect the subject land;
  - There is no land use restriction relating to possible contamination affecting the land;
  - There is no obvious visual evidence from a site inspection of any land contamination being present, and
  - The current application does not propose a change of use of land as specified by the requirements of SEPP 55.

Having regard for the above, further assessment is not required as there is no reason to suspect contamination or reason to suspect a risk of contamination during the construction and operation of the development. As such, the land is suitable from a contamination perspective for the proposed development/use.

In summary, the proposed development does not conflict with the aims and applicable provisions of SEPP 55.

- vii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX): The provisions of SEPP BASIX apply to components of the proposed development due to the Building Code of Australia (BCA) classification of some of the buildings. The provisions of this SEPP only applying to the proposed dwelling house which under the BCA is classified as a Class 1(a) building and is therefore BASIX affected development. The other buildings that are proposed on site are classified as either Class 3 (accommodation), Class 5 (office and spa facility), Class 6 (restaurant), Class 9b (function centre and gallery/refuge) or Class 10b (pool) buildings and are subject to Section J energy efficiency requirements under the BCA that would be addressed as part of any Construction Certificate issued.

A BASIX Certificate for the proposed dwelling house has been submitted with the application (Certificate No. 579732S). It is noted that the design of the dwelling has been amended (i.e. change in roofline, level of glazing) with no new BASIX Certificate submitted.

The changes do not result in a materially different building to the design that was the subject of the BASIX Certification and as such a new BASIX Certificate is not required. It is also noted that the requirements as noted on the submitted BASIX certificate are not shown on the submitted plans. No concerns are raised with this so long as any development consent, if issued, is conditioned so as to require the details to be noted on the plans (as per the requirements of Clause 145 of the EPA Regs).

In summary, the proposal does not conflict with the relevant provisions of the SEPP BASIX.

- viii) Shoalhaven Local Environmental Plan 2014 (SLEP 2014): The clauses/matters contained in SLEP 2014 that have relevance to this application are overviewed below:

- a) *Clause 2.3 (Zone objectives and land use table)*: The land where the development is proposed is part zoned RU1 Primary Production and part zoned E2 Environmental Conservation. The works proposed in each zone are discussed below:
- i. **RU1 Primary Production Zone**: The majority of the site is zoned RU1. The works proposed within the RU1 zone include (summary only) forty (40) of the proposed accommodation buildings, a central facilities building (containing restaurant/bar, a function centre and associated facilities), a wildlife centre/refuge building, spa building, gym/pool building, managers quarters and associated infrastructure. The proposed development/use is consistent with one of the applicable objectives of the zone as it will encourage diversity in primary industry enterprises. It is however potentially inconsistent with two of the other applicable objectives as it will impact upon/not maintain productive prime crop and pasture land (site is predominately identified under the agricultural land classification classes as Class 3 with the proposed development reducing the amount of this land available) and will not minimise conflict between land uses within this zone and land uses within adjoining zones (e.g. noise impacts). In terms of permissibility, the proposed development in the RU1 zone consists of a number of land uses that can be characterised as follows:

- An 'eco-tourist facility': An 'eco-tourist facility' is defined under SLEP 2014 as "a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

*It may include facilities that are used to provide information or education to visitors and to exhibit or display items*". This applies to the accommodation buildings, wildlife centre/refuge building, spa building, gym/pool building, manager's quarters and associated infrastructure. With reference to the definition of 'eco-tourist facility' in SLEP 2014, the proposed development will provide short term accommodation through the provision of the accommodation buildings (part a of the definition). The buildings are also in an area with special ecological/cultural features as they are located adjacent to the Black Ash Nature Reserve which contains threatened flora and fauna species (part b of the definition) and have been designed to minimise its bulk, scale and any associated ecological/visual footprint through its location in cleared areas within the site. Further part of the proposal seeks to reuse existing structures and has been sited so it is set back from boundaries and will use neutral colours to minimise visual impacts (part c of the definition – refer to additional discussion on this issue in the report below). An 'eco-tourist facility' is listed as a permissible use within an RU1 zone;

- A 'food and drink premises': A 'food and drink premises' is defined under SLEP 2014 as a "*premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:*

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar".

This applies to the restaurant and bar component of the development within the central facilities building along with the associated facilities (kitchen, toilets, etc). With reference to the definition of a 'food and drink premises' in SLEP 2014, the proposed development will provide facilities for the preparation and retail sale of food and drink for immediate consumption on the premises. Specifically, the definition of a 'food and drink premises' includes a restaurant and small bar. A 'food and drink premises' is listed as a permissible use in an RU1 zone. It could also be argued that this component is ancillary to the primary 'eco-tourist' use outlined above;

- A 'Function Centre': A 'function centre' is defined under SLEP 2014 as a "*building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility*".

This applies to the identified 'wedding/function centre' room within the central facilities building (as identified on the submitted plans and in the SEE). The submitted SEE outlining that this component of the development will be used for conferences or receptions. With reference to the definition of a 'function

centre' in SLEP 2014, the proposed development will therefore provide a place for the holding of events, functions, conferences and the like satisfying the requirements for this type of use which is a separate and independent use that is prohibited within a RU1.

The applicant's assessment contends that this component of the development is ancillary to the remainder of the development. This is due to it largely being used by the occupants of the eco-tourist component of the development and will serve the needs of the guests, and as such, assumes the character of that purpose and is therefore made permissible with consent (refer to additional discussion on this issue in the report below).

The function centre component of the central facilities building is not ancillary to the eco-tourist component of the development. Council in forming this view has had regard for the character, extent, scale and other features of the proposed use (i.e. it is of a greater size than the adjoining restaurant – 23% larger, has a larger intended capacity than the adjoining restaurant and the accommodation to be provided – 33% and 42% respectively). As outlined above a 'function centre' is a prohibited form of development/use in a RU1 zone; and

- A 'Dwelling House: This covers the proposed dwelling and associated infrastructure. A 'dwelling house' is listed as a permissible use in an RU1 zone.
- ii. E2 Environmental Conservation Zone: The north western and south eastern portions of the site are zoned E2. The works proposed within the E2 zone include (summary only) two of the proposed accommodation buildings and associated infrastructure. The area where works are proposed is already cleared/disturbed and will not result in additional clearing within the E2 zoned land. The buildings will not therefore impact upon the ecological integrity of water supply catchments, other catchments and natural waterways (the location of these buildings will not have an adverse impact on ground water or the waterways that traverse the site), will not impact upon fauna habitat linkages). For these reasons, the proposed development/use is consistent with the applicable objectives of the zone as it will not result in development that could destroy, damage or otherwise have an adverse impact on high ecological, scientific, cultural or aesthetic values.

In terms of permissibility, the proposed development in the E2 zone can be characterised as follows:

- An 'eco-tourist facility': This covers the two proposed accommodation buildings and associated infrastructure. With reference to the definition of eco-tourist facility in SLEP 2014, the proposed development in the E2 zone will provide short term accommodation through the provision of the accommodation buildings (part a of the definition), is located adjacent to the Black Ash Nature Reserve which is an area with special ecological/cultural features (part b of the definition) and has been designed to minimise its bulk, scale and any associated ecological/visual footprint (part c) of the definition – refer to additional discussion on this issue in the report below). An 'eco-tourist facility' is a listed as a permissible use within an E2 zone.

- b) *Clause 4.2D (Erection of dwelling houses on land in certain rural, residential and environmental protection zones)*: This clause is applicable as the development application proposes the erection of a new dwelling house in land zoned RU1. The dwelling house that is proposed on the site is to replace the existing dwelling on site that is to be converted into a central facilities building as part of the current application. As such, the dwelling house proposed meets the requirements of subclause 1 and 2. In accordance with the requirements of subclause 5, development consent can be granted as it is the replacement of a previously lawfully erected dwelling house on rural land. The requirements of the other subclauses are not applicable to this application.
- c) *Clause 4.3 (Height of buildings)*: The 'Height of Buildings Map' does not contain any height controls relating to the development site. As such, the maximum height of all proposed buildings must not exceed 11m as required by subclause 2A. All buildings are under 11m in height and therefore comply with the requirements of this clause. A visual assessment has been submitted by the applicant which concludes that the proposed development will be visible from various locations but will not be overly prominent given the building materials proposed due to the low building heights for the accommodation buildings and how the buildings have been sited. It is agreed that the proposed buildings should not cause significant adverse impacts on the scenic amenity of the area or loss of views with the larger central facilities building being of a comparable size to the existing building on site to which it is proposed to be attached. It is however acknowledged that there will be some visual impact given the location of the proposed buildings in cleared areas and the topography of the site (refer to additional discussion on this issue in the report below).
- d) *Clause 5.9 (Preservation of trees or vegetation)*: The submitted application seeks consent to remove some existing vegetation in the vicinity of the proposed creek crossings. At the time of the applications lodgement a development control plan as referenced in subclause 2 had not been made by Council. As such, the requirements contained in this clause are unable to be considered as part of this development application. A flora and fauna assessment has however been submitted as part of the application and has been considered by Council as part of this assessment (refer to additional discussion on this issue in the report below).
- e) *Clause 5.13 (Eco-tourist facilities)*: As components of the proposed development have been characterised as an 'eco-tourist facility' the consent authority must be satisfied as to each of the criteria set out in this clause. The following comments are provided:
- Subclause 1: The accommodation and restaurant/bar components of the proposed development are consistent with the objectives in this clause as they will maintain the environmental features of the site as they do not require the removal of a significant amount of vegetation given the development's configuration that utilises the existing cleared areas on the site for the siting of new buildings/works. Some vegetation removal will be required for a creek crossing which has been assessed as not having a direct and/or indirect impact on flora and fauna. Increased stormwater generated will be contained on site through the provision of rainwater tanks with wastewater generated being treated on site (refer to additional discussion on this issue in the report below).

The cultural values of the land on which the development is being carried out will also be maintained as the continued use of the site as a farming property will be ongoing. Impacts on other cultural features (e.g. Aboriginal cultural heritage) have been assessed by the applicant having regard for the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* which has concluded that there is a low possibility that the study area may contain isolated Aboriginal artefacts (refer to additional discussion on this issue in the report below).

- Subclause 3(a): Council staff are **not satisfied** that the development has a 'demonstrated connection' with the ecological, environmental and cultural values of the area. With reference to ecological values the applicant has advised that it maintains a connection due to its bushland setting and ecological focus with the accommodation units being constructed in close proximity to remnant vegetation on the site and constructed from materials sympathetic to the environment. Limited details have been provided with the application on the specific ecological focus that the applicant has put forward. In addition, limited details have been provided to clearly demonstrate a connection between the development and the ecological, environmental cultural features of the area. The provision of a wildlife centre building that provides static displays **is not** sufficient to satisfy this requirement.
- Subclause 3(b): Council staff are satisfied that the development will be 'located' and 'constructed' (i.e. physical construction works) to minimise any impacts on, and to conserve, the natural environment. This is due to the siting of proposed buildings and associated works in areas that have been cleared with the overall development requiring minimal clearing works. In addition, sufficient conceptual sediment/erosion control and drainage details have been provided. It is however **not accepted** that the development will be constructed, managed and maintained so as to minimise impacts on and conserve the natural environment. For example, limited details have been provided with the application on the specifics of alternative power sources to be utilised (i.e. sizes, viability, etc). As such, the notion of environmental sustainability that the supporting information submitted with the development application states will be achieved, cannot be confirmed at this time.
- Subclause 3(c): Council staff are satisfied that the development will enhance an appreciation of the environmental and cultural values of the site or area. This clause does not contain a requirement in relation to the degree of enhancement and appreciation required and as such the provision of a wildlife centre building will provide guests with an opportunity to view displays. The applicant has also advised that interpretative signage and walking tracks will be provided so guests can gain an understanding of the cultural values of the site and area, however no specific details have been provided with the current application.
- Subclause 3(d): Council staff are satisfied that the impacts upon watercourses, soil quality, heritage, and native flora and fauna will be minimal. Sufficient information has been provided with the development application at this time to demonstrate this. In summary, minimal works are required in the vicinity of the existing creeks with NOW raising no objection to the proposed access road and supports the construction of bridges over the watercourses as proposed subject to



compliance with their requirements as this will result in a better ongoing outcome. No adverse environmental impacts are anticipated in terms of soil quality or heritage. As has been previously advised minimal impacts will be had on native flora and fauna with it being concluded that there will not be a significant impact directly or indirectly.

- Subclause 3(e): Council staff are satisfied that the site will be maintained to ensure the continued protection of natural resources and enhancement of the natural environment. The applicant has proposed a weed management plan and the applicant has indicated a willingness to progressively rehabilitate vegetation within the site. This rehabilitation/management could be formalised through a vegetation management plan (VMP) which can be a requirement of any development consent, if issued.
- Subclause 3(f): Council staff are satisfied that waste generation during construction can be avoided through the use of structures that have been prefabricated off site and through the re-use of existing buildings, where possible to minimise the need for demolition works and the associated wastes generated. Council is **not satisfied** that waste generation during operation will be “avoided” as per the requirements of this clause. Limited information has been provided by the applicant on how ongoing waste will be managed with it being advised that waste minimisation and management strategies in accordance with a detailed operational management plan will be prepared in conjunction with resort management. The information that has been provided consists of general statements such as “*waste minimisation will be provided through composting and recycling*”. As such, the applicant has not provided sufficient information to adequately address how operational waste will be “avoided”.
- Subclause 3(g): Council staff are satisfied that the proposed location of the development will avoid visibility above ridge lines as the closest ridge line is located along the site's western/north western boundary. The majority of all the development is located approximately 180m plus from this ridge line and will have a maximum height which will be approximately 20m below this ridge line. It will however be visible when viewed against the closest escarpment which runs along the site's western boundary and from watercourses such as Broughton Creek (to the southeast of Berry). It is however acknowledged that the visual impact/intrusion will be minimised through the design (predominately low level design) use of colours (natural colours proposed) and building materials the applicant is proposing to use, however concerns are still raised that given the number of accommodation units/density of the development the use of colours and materials that it will be still visible from a distance against the escarpment.
- Subclause 3(h): Council staff are satisfied that any infrastructure services required to service the site could be provided without significant modification to the environment. Specifically, this relates to wastewater, electricity, general water supply and access. While it is acknowledged that some minor excavation/earthworks and/or tree removal will be required they are not considered significant in terms of modification to the environment.
- Subclause 3(i): Council staff are satisfied that, where possible, power and water to the site are capable of being provided through the use of passive heating/cooling,

renewable energy sources and water efficient design. In this regard the applicant has advised that the following controls may be used (summary only):

- ✓ A thermal labyrinth will be considered “*subject to further detailed investigation on cost and performance*” for the function centre, gym and pool building;
- ✓ Daylight sensors will be used for lighting in the function centre, gym and pool building;
- ✓ Ceiling fans will be used to assist with air circulation in the accommodation units, function centre, wildlife centre and spa building;
- ✓ Motion activated thermostats and reed switches in the accommodation units to ensure the air conditioning is only activated when they are occupied.
- ✓ Variable speed drives;
- ✓ Building management systems and metering to monitor and optimise performance;
- ✓ Variable speed drivers for fans, pumps and air handling plant;
- ✓ 100 % outdoor heat recovery system for the gym and pool;
- ✓ Solar photovoltaic panels;
- ✓ Solar water heating;
- ✓ Cogeneration; and
- ✓ Bio-gas.

With reference to the above measures the applicant has advised that further investigation is required to determine their suitability before they are implemented.

- Subclause 3(j): Council staff are satisfied that the proposed development does not appear to adversely affect the agricultural productivity of adjoining land. Council as part of its assessment has had the ground water and waste water/effluent reports peer reviewed by an independent third party. This review has confirmed that with reference to groundwater, the type and scale of the development proposed is able to be provided with adequate groundwater and is unlikely to result in an impact on the groundwater availability of adjoining lands. With reference to effluent, with the construction an appropriately designed, managed and monitored effluent system wastewater can be effectively managed on the site and as such has no impact on adjoining land.
- Subclause 3(k): Council staff are **not satisfied** that sufficient information has been submitted with the development application to demonstrate compliance with the requirements (i) to (v) in this clause. Specifically, a management strategy has not been provided with the application that details measures for minimising the impact on the natural environment such as measures for the maintenance/regeneration of habitats. While it is acknowledged that the submitted documentation outlines, for example, the needs for a VMP and other strategies including the appointment of a suitably qualified ecological consultant to perform reviews and provide advice on the ecological condition of the site, this is as far as it goes. No specific details are provided on works to be undertaken that have been identified at this time, timeframes, etc. In addition, while a range of measures have been identified for efficient and minimal energy use, no specific processes that will be implemented as part of the development have been identified. Statements such as “*Significant efforts will go to minimising the creation of waste and consumption of energy and water*” are used. Limited details on mechanisms for monitoring and reviewing the

effect of the development have been identified/detailed. With reference to ISO 1400, no information has been provided that details the environmental management system it will create and it has not demonstrate its commitment to continuous improvement in environmental protection and pollution prevention.

In summary, Council has **not been satisfied** at this time that a number of the requirements in subclause 3 of Clause 5.13 have been satisfied. As such, in accordance with the requirements of this clause Council (who for the purpose of this application are the JRPP) is not able to recommend consent for the 'eco-tourist facility' component of the proposed development.

- f) *Clause 7.2 (Earthworks)*: The proposed development will require earthworks (e.g. central facilities building, gym/pool building, new dam) and as such having regard for subclause 2 the requirements of this clause are applicable. Having regard to the matters contained in subclause 3 the earthworks (given their location and the minimal amount required) will not adversely impact upon drainage patters (located away watercourses). Similarly, these works should not affect the amenity of adjoining properties (adequate separation between works and property boundaries), disturb relics (consideration has been given to impacts on Aboriginal objects - refer to additional discussion on this issue in the report below) and any development consent issued, if issued, could be conditioned so as to require appropriate measures to avoid, minimise and mitigate the impacts.
- g) *Clause 7.5 (Terrestrial Biodiversity)*: The 'Terrestrial Biodiversity Map' identifies the development site as being affected by 'Biodiversity – habitat corridor'. With reference to the matters contained in subclause 3 and 4:
  - The development in its proposed location (including the ancillary infrastructure required) will not have any adverse impact on the ecological value/significance of flora and fauna on the land, adverse impact on the importance of the vegetation on the land to the habitat/survival of native fauna and will not fragment, disturb the biodiversity structure of the land or habitat elements providing connectivity on the land; and
  - The development is predominantly designed and sited so as to avoid any significant environmental impact and if there is an impact (i.e. removal of vegetation for creek crossings) the works can be managed to minimise the impact.
- h) *Clause 7.6 (Riparian lands and watercourses)*: The 'Riparian Lands and Watercourse Map' identifies the development site as containing a number of 'Category 2' watercourses. With reference to the matters contained in subclause 3 and 4t:
  - The development will not have an adverse impact upon water quality or flows within the watercourse (sufficient separation between the development works and watercourses apart from the 3 proposed creek crossings which will require works within the creek). Conditions could be included in any development consent, if issued, to minimise impacts.
  - There is no evidence to indicate that the works proposed will impact on the stability of the beds and banks of the watercourses or will have adverse impacts on aquatic/riparian species, habitats or there ecosystems. Any design approved will require it to allow the free passage of water, fish and other aquatic organisms

as well as detail stabilisation works to be undertaken before, during and post construction. Any development consent, if issued, could be conditioned accordingly.

- The proposed development does not seek to extract water from the watercourses that traverse the site and as such there will not be an increase in water extraction from these watercourses; and
  - The development is predominantly designed and sited so as to avoid any significant environmental impact and if there is an impact (i.e. construction of creek crossings) the works can be managed to minimise the impact.
- i) *Clause 7.7 (Landslide risk and other land degradation)*: The development site does contain areas with a slope in excess of 20%. With reference to the matters contained in subclause 3 and 4:
- There will not be adverse impact from the proposed development/works in relation to the geotechnical stability of the site or an increase in erosion or other land degradation processes. This being due to the portion of the site where the majority of works are proposed having a slope under 20%; and
  - The proposed development has been designed/sited and will be managed (e.g. provision of sediment and erosion control measures, provision of energy dissipaters at the end of any drainage points, etc) to avoid significant adverse environmental impacts and/or managed to minimise impacts.
- j) *Clause 7.11 (Essential services)*: The proposed development requires the provision of water, electricity and effluent management systems. Details on each of these is provided below:
- Water: The development site is not serviced by a reticulated water supply. As such, the supply of water is proposed through the capture of rain water from roofs which is to be supplemented by water from an existing bore on the property. Council has had the applicant's submitted groundwater and effluent reports peer reviewed and has also obtained comment from NOW. Both the above concluding that the bore on site shows good production potential for the water that is required with the drawdown of water from within the site expected to have minimal environmental impact on available groundwater resources beyond the property boundary. This issue is discussed in greater detail in the report below.
  - Electricity: The site is currently serviced with electricity. Advice received from Endeavour Energy during the applications assessment confirming that the existing electricity distribution network in the vicinity of the site can be upgraded to deal with the additional load the development will create.
  - Effluent: The development site is not serviced by a reticulated sewerage system. As such, the applicant is proposing the onsite disposal of effluent through above ground irrigation. As outlined above Council has had the applicant's effluent report peer reviewed which in summary has concluded in part that the development as proposed will be able to effectively manage wastewater/effluent on the site (refer to additional discussion on this issue in the report below).

Having regard for the above, services are able to be provided to the development.

In summary, the proposed development, **does conflict** with the permissibility requirements detailed in Clause 2.3. Specifically for the 'function centre' component of the development as this component is not ancillary to the primary use of the site and is therefore not permissible use on the site. In addition, Council is **not satisfied** that the 'eco-tourist facility' component of the development adequately addresses the requirements of Clause 5.13. As such, parts of the proposed development conflict with some of the aims and applicable provisions in SLEP 2014.

ix) Development Control Plan No.18 – Car Parking Code (DCP 18): The clauses/matters contained in DCP 18 that have relevance to this application are overviewed below:

a) Car Parking Requirement Schedule: The table below summarises the proposed development's car parking provision and what is required in accordance with the numerical requirements of DCP 18.

<i>Proposed land use</i>	<i>DCP 18 requirement</i>	<i>Floor space proposed</i>	<i>Spaces required</i>	<i>Spaces provided</i>	<i>Compliance with DCP 18</i>
<i>Serviced Tourist Apartments</i>	1 car space per accommodation unit with 1 or two bedrooms + 1 car space for the site manager.	-	43 (42 units x 1 + 1 for manager) car spaces.	88 car spaces in total.	No
<i>Restaurant/ Reception Centre</i>	1 car space per 6.5m <sup>2</sup> of public dining (outside the CBD.  Outside urban areas a 50% reduction on car parking for the refreshment room component.	491m <sup>2</sup> gross floor area (221m <sup>2</sup> restaurant + 270m <sup>2</sup> function room)	59 (41.5 + 17)  Restaurant: (221/6.5)/2 = 17  Function Room: 270 /6.5 = 41.5	88 car spaces in total.	No
<i>Staff Car Parking</i>	Spaces required for use of an owner/operator must be provided over and above those required above.		20 Staff	88 car spaces in total.	No
<b>Total</b>			<b>122</b>	<b>88</b>	<b>No</b>

Setting aside the function centre permissibility issue for the purpose of calculating the required car parking (which if the use is not considered permissible will reduce the number of car spaces the development is required to provide), the submitted application proposes to provide less car parking than is required by the numerical requirements in DCP 18. The difference equates to 34 car spaces or a 27.9% variation. The difference relates to how the applicant has applied the concession for the refreshment room and reception centre. DCP 18 outlines that outside urban areas (which this site is) the concession is only applied to the refreshment room where the applicant has applied the concession to both the refreshment room and reception centre therefore reducing the amount of car parking required.

The above calculation of 122 car spaces also includes a component for staff car parking (based on the maximum number of staff the applicant proposes) which the applicant has included in their determination of the total car parking required as per the requirements in DCP 63. The inclusion of staff car parking in the total car parking requirement is considered reasonable given the location of the site and the limited available public transport.

While it is acknowledged that this is a large variation to Council's numerical requirements, no concerns are raised with the variation sought as the additional spaces required to make the 122 car spaces can be provided as an informal overflow car parking area to the north of the proposed car parking, there is a large co-usage/shared component between the different uses (i.e. the applicant proposes people staying at the accommodation will be using the function centre component of the development) and the car parking provision proposed will not have any impacts in terms of people parking off site. The above solution satisfying the objective of this part of DCP 18 which is to ensure adequate provision of off street car parking within the new development. Any development consent, if issued, could be conditioned in relation to the total number of car spaces to be provided.

- b) *Parking Layout and Dimensions:* The amended car parking design has been based on the Australian Standards (AS2890.1 and AS2890.6) and not DCP 18 in respect of the dimensions of car spaces, aisle widths, manoeuvring requirements, etc. No concerns are raised with this as the elected Council has previously resolved that AS2890 can be used instead of DCP 18. No stack car parking is proposed with all car parking on site being accessible from the adjoining public road system. No dead end aisles are shown, with the concept design making provision for vehicles to enter and leave in a forward direction. Requirements in relation to the provision of car parking as shown on the submitted car parking concept plan and associated line marking of the spaces (i.e. marking of turning bay area, marking of individual spaces, signage, etc.) could be conditioned on a development consent, if issued.
- c) *Access:* Access to the development site is proposed via two access points. Each is discussed separately below:
  - o Access Point 1: The primary access point is from Kangaroo Valley Road via a newly constructed site entrance and associated driveway. All access to and from the site will be via this access point which will enable both cars and service vehicles to access all components of the development (proposed accommodation, restaurant,

function centre and spa treatment room). Due to safety and sight distance concerns with the original design provided an updated design for this access was submitted during the applications assessment.

The updated design has addressed Council's initial concerns in relation to sight distances and the design speed. The applicant now proposing the construction of a Basic Right Turn (BAR) and Basic Left Turn (BAR) treatment that have been designed in accordance with 80km/h design speeds. The treatment proposed ensuring sight distances comply with relevant Austroads requirements. The information submitted indicating that there is not sufficient space in the existing road reserve to undertake all required works and as such widening of the road reserve is required which the applicant has indicated will be undertaken on the southern side of Kangaroo valley Road (i.e. into the development site). Council's Traffic Section while acknowledging the submitted designs compliance with applicable requirements has identified that widening on the western side of the proposed access point may have to be increased to ensure that a clear zone, in accordance with Austroads requirements, is provided (i.e. no vegetation, fences, etc within this area). Further discussions with Councils Traffic Section indicates that this requirement could be conditioned on any development consent, if issued. Other requirements that could be conditioned include a detailed signs and lines plan (inclusive of additional advanced warning signs, intersection signs, etc), detailed designs, ongoing maintenance of sight distances and ceding of land for road widening (at no cost to Council).

- Access Point 2: A secondary access point is proposed from Tourist Road. This is identified as an entry/exit point for emergency vehicles only. Concerns were initially raised with sight distance issues at this access and as a result more detailed designs have been provided. The amended designs provided have addressed the concerns with sight distances with minimal additional works required within the existing road reserve area. Due to the proposed/limited usage of this access no BAR/BAL treatments are required. Given the minimal works proposed at this access point no concerns are raised subject to the imposition of conditions, on any development consent if issued, relating to the works required, ongoing maintenance of sight distances and this access point only being used for emergency vehicle requirements with all other routine access to any part of the site to be undertaken by the Kangaroo Valley Road access.
- d) *Manoeuvrability and service areas*: An assessment of the manoeuvrability in the internal car parking area for cars has indicated that it complies with the requirements of AS2890. In terms of delivery vehicles, the development has been designed to accommodate ongoing servicing by vehicles up to 8m (i.e. a garbage truck) although the submitted application details that servicing will be undertaken by vehicles up to a long rigid truck (7.5m). Sufficient space is available within the site for this size vehicle to manoeuvre into and out of the site in a forward direction. No concerns are raised with the location of the designated loading/service area or the ability for delivery/service vehicles to access the garbage storage area and the designated service area.
- e) *Drivers with a Disability*: Two (2) car parking spaces for people with disabilities are shown on the amended car parking layout plan. This is above the requirements of DCP 18. The spaces proposed are located in close proximity to the central facilities buildings entry point and have been sized to comply with AS2890.6:2009.

Requirements in relation marking/ identification of the spaces could be conditioned on any development consent, if issued.

- f) *Construction Requirements:* Construction details for the car parking areas within the site, driveway and manoeuvring areas have been not been provided as part of the current application. No concerns are raised with this as Council could condition the construction requirements on any development consent, if issued.
- g) *Miscellaneous Requirements:* The applicant has provided some details in the information submitted to indicate that appropriate access signage, car space markings, lighting of the car park area, etc will be provided. Requirements in relation to the above could be conditioned on any development consent issued, if issued;
- h) *Landscaping:* The amended car parking plan shows landscaping around the perimeter of the car parking area and also through the centre so as to provide screening and canopy trees for shade. While specific species and pot sizes have not been identified Council staff are of the opinion that this could be conditioned on any development consent, if issued. Having regard for the above comments, the overall landscaping proposed is sufficient and will provide additional screening so as to assist in softening the visual appearance of the car parking area when viewed from within the site and further assist in incorporating the works into the natural environment.

In summary, the proposal, subject to the imposition of conditions as outlined above, does not conflict with the aims of DCP 18 and the provisions of the relevant Australian Standards.

- x) Development Control Plan 63 – Tourist Development in Rural Areas (DCP 63): The provisions of DCP 63 apply to the proposed accommodation buildings. A summary of Council's assessment against the applicable provisions is provided below:
  - a) Part 2.1: The submitted SEE contains sufficient information to satisfy Council staff that the design as submitted has had regard for a site analysis that has considered the opportunities and constraints of the site. It therefore complies with the relevant requirements of this part.
  - b) Part 2.2: The proposed accommodation units do not comply with the density requirements in this part. As the development site has a total area of 69.55 hectares a maximum of 35 accommodation units are allowable (1 cabin per 2 hectares). The application proposing 42 accommodation units which requires a land area of 84 hectares. This equating to a variation to the acceptable solution of 20% (i.e. 7 additional cabins/a further 20% of the existing development sites land area is required to enable compliance with the acceptable solution for density).

The applicant has acknowledged this non-compliance and has justified, what they consider to be a minor variation, by advising that the proposal will maintain and conserve the rural character of the area, will not impact upon the amenity of the area including water quality and stormwater runoff and the use is permissible with consent on the land. Council in considering this variation has had regard for the performance criteria as well as the relevant zone objectives and the aims/objectives of DCP 63. An opinion has been formed that while a variation is acceptable as it meets some of the performance criteria (the density proposed is sustainable in that it will not impact upon groundwater, effluent can be managed subject to a detailed design and will not impact



groundwater or areas off site, etc), the extent of the requested variation is excessive as the density proposed **is not compatible** with the character of the rural area (e.g. noise impacts, land in the area predominantly contains single dwelling houses and where they do contain tourist accommodation it is to a lesser quantity). It is noted that in the Shoalhaven Development Control Plan 2014 (the current document that contains the applicable requirements for this type of development) contains the same density controls.

- c) Part 2.3: The proposed accommodation units exceed the floor space requirements in this part. The smallest design is Accommodation Unit 3 with a floor area of approximately 138m<sup>2</sup>. This representing a variation of 13%. The variation to the maximum size is acceptable as each accommodation building is made up of two or more separate components (i.e. two units that are attached/under the same roofline). As such, the grouping of accommodation units into one building will assist in reducing visual impacts when compared against a development that provides a separate building for each accommodation unit. The accommodation buildings do not exceed 7.5m in height, have been designed by a registered architect, are located in cleared areas including associated asset protection zones, propose to use materials and colours that will not cause unacceptable visual impacts and do not provide domestic laundries. It therefore complies with the relevant requirements of this part.
- d) Part 2.5: An 'Operational Plan of Management' that provides general details on how the development will be managed to minimise any impacts has been submitted with the application. The site will have an on-site manager available 24 hours a day. A managers studio/quarters is proposed which given its size is considered ancillary to the overall eco-tourist component of the development. It has been provided in accordance with the applicable ratio. Access is available straight from the accommodation buildings to the manager's quarters via pedestrian pathways. Support infrastructure in the form of a pool, gym, day spa, walking tracks within the development site have been provided. It therefore complies with the relevant requirements of this part.
- e) Part 2.6: Upgrades to the access points will be required (refer to additional discussion on this issue in the report) and will be designed so it is sympathetic the existing landform. The car parking and serving areas are located to the rear of the rear of the development and given the topography in this area it will not be prominent. Overflow parking will be provided. Access for people with disabilities is provided in the formal car parking area and three (3) accessible rooms are proposed. The property has direct access to two public roads. The primary access point from Kangaroo Valley Road services all components of the development and all works will be undertaken in accordance with relevant standards (i.e. conditioned on a development consent, if issued, in relation to construction requirements, sediment/erosion control, bushfire access requirements, etc). The number of car parking spaces to be provided by the applicant **does not** comply with the minimum number required. An additional suitable area is available to the north of the proposed formal car parking area for an informal car parking area required (refer to additional discussion on this issue in the report under the heading DCP 18).
- f) Part 2.7: On site effluent disposal is proposed and generally complies with the requirements of DCP 78. This issue is discussed in greater detail in the report below). The siting of the new development has had regard for the topography of the land, and

as such, is not located on a slope that exceeds 20%. The applicants landscape masterplan details pedestrian access through the EEC on site. Additional details are required before any final approval for these specific works can be given (refer to additional discussion on this issue in the report). The development is primarily located in cleared areas and consideration has been given to flora and fauna issues (refer to additional discussion on this issue in the report). It therefore complies with the relevant requirements of this part.

- g) Part 2.8: The proposed accommodation units have been designed to comply with RFS requirements. The RFS have provided advice on the application and have recommended conditions/GTA's should it be approved. Flooding is not an issue for this site and the development will be located on stable land with a slope not exceeding 12%. It therefore complies with the relevant requirements of this part.
- h) Clause 2.9: All accommodation units and associated facilities (e.g. day spa, gym/pool), except for the two units adjacent to the sites northern boundary are setback in excess of 30m from site boundaries. The two northern units have a minimum setback of approximately 17m from the boundary. This representing a variation to the acceptable solution of 43%. While the existing established vegetation and the separation between the proposed accommodation units should ensure that there are no visual impacts, noise is a concern. An assessment of this impact has not been undertaken by the applicant and as such cannot be discounted given the proximity of these units to the adjoining residence. Minimal details on external lighting have been provided, however given the topography of the site and the location of buildings in the central portion of the site it is anticipated that the external lighting will not adversely impact adjoining properties given the separations that exist. It has been advised that the proposed restaurant will not operate after 10.30pm Monday to Friday or after midnight on weekends. The accommodation buildings generally have been grouped and sited to minimise impacts.
- i) Part 2.10: Details on the proposed staging of the development have been provided with the application. No concerns are raised with the staging proposed as it will facilitate the orderly development of the land.
- j) Part 2.11: Sufficient information has been provided to satisfy Council that adequate grid power is available to service the development. The applicant has indicated the use of alternative energy sources as well, however very limited details/specifics on the actual systems to be used has been provided. A satisfactory supply of potable water is proposed through the capture of water in rainwater tanks and the use of bore water. While a water access licence has been established, it at this time has no allocated volumetric entitlement. Accordingly, a satisfactory supply of potable water is not currently available. The requirement to obtain the required allocated volumetric entitlement could be conditioned as a deferred commencement condition on any development consent, if issued.

In summary, the proposal could be conditioned to address some issues associated with the noncompliance with a number of acceptable solutions in DCP 63. However, there is concern with the density and the setback provided for the two northern accommodation units and the associated variation as the relevant performance criteria and relevant aims/objectives of DCP 63 **have not** been met.

- xi) Development Control Plan 78 – Onsite Sewerage Management (DCP 78): The provisions of DCP 78 apply to the on-site effluent/wastewater disposal component of the proposed development. The applicant proposing to treat wastewater generated by the development with an on-site sewerage treatment plant (STP) and its disposal of the treated product on site through a 3 hectare spray irrigation area (located in a cleared pasture area in the northern portion of the site). Two reserve areas for effluent irrigation are located in the lower portion of the site. The STP to be located in the lower portion of the site as well.

Due to the scale/complexity of the works proposed, Council employed an independent third party (Martens Consulting Engineers) to undertake a peer review of the onsite waste water/effluent information submitted with the development application and supporting information submitted during the applications assessment. The consultant also reviewed submissions received that raised concerns with effluent disposal. Martens Consulting Engineers have provide two reports to Council (Report 1 dated: 23 June 2015, Report 2 dated: 4 August 2015 and 11 August 2015), both of which are viewable on Council's website using the DA Tracking links. A summary of the final findings relating to effluent disposal is provided below:

- Sufficient information has been provided to allow Council to be confident that a development of the type and scale proposed is able to effectively manage wastewater on the site;
- Information that has been provided by the applicant is often unclear (contradictory and at times superseded);
- An updated waste water management report should be provided;
- Additional details on how accommodation units 41, 42 and the new dwelling house if not being serviced by the STP need to be provided. The servicing of these areas needing to be in accordance with Council's requirements in DCP 78 (now known as Chapter G8 of the Shoalhaven Development Control Plan 2014);
- Insufficient information has been provided with the current development application to allow for the approval of a Section 68 Application (as per the requirements of Clauses 26 to 30 of the Local Government regulation 2005);
- Subject to all the comments in the report dated 4 August 2015 being adequately addressed/implemented and the associated documentation from the applicant being updated, the effluent system will be able to comply with performance criteria P1, P2, P3, P4, P5, P6, P8, P9 and P10 of DCP 78. It however does not comply with performance criteria P7 as an incorrect assessment has been used. Martens advising that a water balance assessment should be used for the development to address this issue.

Having regard for the above comments and the experience of Martens Consulting Engineers, Council accepts the conclusions reached that the management of onsite sewerage for the development, as documented, would potentially be able to be done in a sustainable manner on the development site. The issue at this time being that the assessment and design submitted by the applicant is inadequate to demonstrate how this can be undertaken. An updated assessment demonstrating compliance with the recommendations in the table contained on Pages 1 to 6 of the Martens Consulting Engineers letter dated 4 August 2015 should be provided before operational development

consent is considered. As such, the requirement for an updated waste management report could be imposed as a deferred commencement condition on any development consent, if issued.

- xii) Development Control Plan 91 - Dwellings and Ancillary Structures (DCP 91): The provisions of DCP 91 apply to the proposed dwelling house. A summary of the assessment against the applicable provisions is provided below:
- a) Part 2.1: The proposed house complies with the numerical floor space ratio, building envelope and setback requirements. It also complies with the building material requirements and applicable requirements relating to the external appearance. It therefore complies with the relevant requirements of this part.
  - b) Part 2.2: The proposed house will have no impact on views from existing dwellings or impact on privacy of adjoining dwellings. It therefore complies with the relevant requirements of this part.
  - c) Part 2.3: The proposed house complies with applicable BASIX requirements and does not impact upon adjoining dwellings in terms of overshadowing. It therefore complies with the relevant requirements of this part.
  - d) Part 2.4: The proposed dwelling provides car parking, site access and driveways in accordance with this clause. It therefore complies with the relevant requirements of this part.
  - e) Part 2.6: The proposed dwelling complies with the BASIX requirements for storm water and will be able to comply with applicable Council requirements for storm water management associated with the dwelling. It therefore complies with the relevant requirements of this part.
  - f) Part 2.7: The proposed house will require minimal excavation and as such is able to comply with the applicable excavation/fill requirements. It therefore complies with the relevant requirements of this part.
  - g) Part 2.8: The proposed house is located on bushfire prone land and given the nature of the development (includes tourist accommodation) has been assessed by the RFS who have advised that it complies with applicable requirements subject to conditions. It therefore complies with the relevant requirements of this part.

Having regard for the above, the proposed development subject to the imposition of conditions, does not conflict with the aims and relevant provisions of DCP 91.

- xiii) Development Control Plan 93 - Controls for Waste Minimisation and Management (DCP 93): A basic waste minimisation and management plan (WMMP) for the construction and on-going use of the proposed development has been submitted with the development application. Each aspect is further discussed below:

- a) *Construction Waste*: The information provided with the application details that a large amount of waste will not be generated during construction as no major buildings on the site are to be demolished and as the accommodation buildings are partially prefabricated off site. No details on the quantity of waste to be generated and specific disposal locations for construction waste have been identified at this time. Council

staff raise no concerns with this as the requirements of DCP 93 allow the submission of a detailed waste management plan with a Construction Certificate application. Any development consent, if issued, could be conditioned so as to require the submission of a detailed WMMP prepared in accordance with Council's current requirements prior to issue of a Construction Certificate with the ongoing management of construction waste being in accordance with the approved plan.

- b) *On-going Waste:* The applicant has advised that ongoing operational waste will be managed in accordance with a detailed operational management plan to be prepared in conjunction with the resort management. It also being advised that waste minimisation will be provided through composting/recycling and guests will be encouraged to minimise waste generation during their stays. Limited details have been provided on the operational management plan that is still to be prepared and the associated composting and recycling measures proposed. The floor plan for the central facilities does show a designated waste storage area in the basement of the building. The plan noting 3 skip bins (1,100 litre) and 7 wheelie bins (240 litre). Discussions with SITA (Council's waste service provider) which included a site visit found that the site would be serviced by a private contractor using a rear lift service and no concerns were raised with the ability to service the site in relation to access, pick up, manoeuvring, etc. Any development consent, if issued, could be conditioned in relation to how the ongoing waste will be serviced/managed.

Having regard to the above, the proposed development (subject to the imposition of conditions if consent was to be granted), does not conflict with the aims and relevant provisions of DCP 93.

- xiv) *Shoalhaven Contribution Plan 2010:* The provisions of Council's Section 94 Contribution Plan apply to the development. Having regard for the works proposed, the following Section 94 projects are relevant to restaurant, function centre and accommodation component of the application.

<b>Restaurant/Function Centre</b>	<b>Accommodation Units</b>
Citywide Fire & Emergency Services	Northern Shoalhaven Sports Stadium
Shoalhaven Fire Control Centre	Planning Area 1 - Active recreation facility upgrades
Contributions Management and Administration	Nowra Swimming Pool Expansion
	Synthetic Hockey Field Facility
	Citywide Fire & Emergency services
	Shoalhaven Fire Control Centre
	Contributions Management & Administration
	Embellishment of Icon and District Parks and Walking Tracks

The total monetary contribution applicable to the development is \$34,434.14 (calculation based on 42 x 1 bedroom accommodation units, 1 manager's studio and the gross floor area of the restaurant/function centre which equates to 22.8 Equivalent Tenements (17.2

for the accommodation units and 5.6 for the restaurant/function centre). Any development consent, if issued, could be conditioned to reflect the above.

**Likely impact of that development on the natural and built environment and social and economic impacts in the locality.**

- i) **Threatened Species:** The applicant has submitted a flora and fauna assessment/7part test prepared by Travers Bushfire & Ecology (dated 27 August 2014) and a supplementary report (dated 27 August 2014). The supplementary report was submitted as a result of concerns raised by Council in relation to microbat species not being adequately considered. Council and the NSW Office of Environment and Heritage (OEH) have reviewed both documents and concur with the assessment of impacts prepared by Travers Bushfire & Ecology that the proposed development is unlikely to result in significant impact on any threatened species, populations or their habitats (i.e. no clearing works/vegetation removal required for the asset protection zones as required by the RFS or the buffers for the wastewater/effluent irrigation area). It is however acknowledged that the development will require some vegetation removal and/or modification to facilitate two of the proposed creek crossings, one of which will impact upon the EEC. In addition to it being recommended by both Council and OEH that any development consent, if issued, be conditioned in accordance with the recommendations of the Travers Bushfire & Ecology 2014 Flora and Fauna Assessment, OEH have recommended the preparation of a VMP to manage/enhance retained vegetation within the development site.
- ii) **Noise, odour and dust:** Each of these issues is discussed separately below:
  - a) **Noise:** The applicant has submitted a noise impact statement prepared by Acoustic Logic (dated 28 May 2014) and three supplementary reports dated (dated 22 January 2015, 7 April 2015 and 7 October 2015). The assessments submitted have looked at construction noise as well noise generated from the ongoing use of the proposed development (traffic, plant and entertainment). Given the concerns raised in relation to noise impacts, Council employed a third party (Day Design Pty Ltd) to undertake a peer review of the noise assessment submitted with the development application and supporting information submitted on 22 January 2015 and 7 April 2015. The consultant also reviewed some of the submissions received that raised concerns with noise issues. Day Design Pty Ltd provided two reports to Council (Report 1 dated: 18 February 2015, Report 2 dated: 27 August 2015), both of which are viewable on Council's website using the DA Tracking links. A summary of the final findings relating to noise issues are provided below:
    - o A number of issues previously raised have been addressed in the additional information submitted by the applicant (e.g. intrusiveness criterion, sleep arousal, activity noise, resulting noise level criteria, plant noise). Sufficient information has **not been submitted** to support the noise predictions and claims of noise compliance;
    - o There has been a mistake in determining the closest residential receptors to the site that has in turn underestimated the potential for noise impact (i.e. noise level is in excess of the acceptable noise criteria prior to midnight at distance in excess of 1 km);
    - o The Office of Liquor, Gaming and Racings acceptable noise limits will be exceeded;

- The noise levels as detailed in the report from the applicant dated 7 April 2015 will not be achieved at the nearest receptors to the site based on the music noise levels used in the calculations; and
- The potential for noise impact from usage of the accommodation has not been assessed.

Having regard for the above comments Council concurs with the view that noise impacts based on the information submitted will be in excess of required levels and will adversely impact on the adjoining properties. However, should the determining body wish to approve the application, Day Design Pty Ltd has provided acoustical conditions to ensure that the Office of Liquor, Gaming and Racing acceptable noise levels are met. Concerns are raised with this approach, given the fundamental nature of this issue. The imposition of conditions to resolve a fundamental amenity issue could lead to ongoing compliance requirements given Council's ability to adequately monitor, on an ongoing basis these requirements. This matter needs to be more clearly resolved prior to any consideration of an operational consent.

- b) *Odour*: It is not anticipated that the proposed development will create an unacceptable odour problem given the separation that exists between the central facilities building and the sites property boundaries. Any development consent, if issued, could however be conditioned so as to require no offensive odour being generated.
  - c) *Dust*: Dust has the potential to be an issue during the construction process, however it is acknowledged that given the proposed buildings location on the site any impacts should be minimal. To minimise the impacts of dust during the construction period, any development consent, if issued, could be conditioned to require dust suppression measures to be implemented. This including, but not limited to, the spraying down of vehicles and trafficable areas, installation of shade cloth along the boundaries of the disturbed area.
- iii) *Context and Setting*: The proposed buildings (apart from the two northern accommodation units) are setback from adjoining property boundaries a sufficient distance so as to minimise visual impacts to and from the adjoining lands and not result in overshadowing/reduce sunlight access to adjoining lands (i.e. located in the central portion of the site). The buildings are a mixture of single story (accommodation buildings, gym/pool building, spa building, manager's studio, gallery/refuge building and dwelling house) and two storey (central facilities building). The proposed addition to the central facilities building has a maximum height which is under the existing roof of the dwelling to be retained to which it will be attached.

All new construction is shown on the submitted plans as having a mixture of flat roofing (spa building), pitched roofs (new dwelling house) and skillion roofs (remainder of new buildings). Materials proposed are a mixture of rendered masonry, timber cladding, masonry cladding, glazing, timber screening and metal roof sheeting. Colours proposed as noted on the submitted plans are sympathetic to the natural and rural environment and will assist in integrating the buildings into the existing natural/rural environment. Given the proposed location of the buildings on the site, the existing topography and established vegetation the development will not have an adverse impact on views from adjoining properties and/or result in view loss. The main view corridor from the site is to the east

towards Berry and the Shoalhaven River. Contrary to statements made in the applicant's submitted SEE the development should not have an adverse impact on views from properties to the west as the majority of the western boundary consists of the Black Ash Nature Reserve with residential properties along the sites western boundary (to the north and south) having their views to the east constrained by the natural topography and or existing vegetation on their site and/or the development site.

The design has incorporated articulation to the facades of all buildings which will assist in providing visual interest when viewed from within the site or in close proximity. Overall, the built form is predominately of a low scale and the overall design of the development provides a positive contribution to the built environment on the site and is satisfactory in terms of its context and setting.

- iv) Visual Impacts: A visual assessment has been undertaken on behalf of the applicant by Project Tourism International Architecture Pty Ltd (dated 2 September 2015). Council is of the opinion that this assessment primarily focuses on the visual impacts when viewed from locations in close proximity to the site (less than 200m from the sites boundaries, although there is one photograph provided from a greater distance). The applicant assessment concluding that the development proposed would not have an adverse visual impact and that *"any development would be barely indistinguishable"*.

Council as part of its assessment has separately undertaken a visual impact assessment that has considered the visual character, qualities and physical setting of the development site and proposed works. In terms of this site it is has been assessed as a rural locality and has been characterized as one of high visual quality as there are quality views to the east and south east of water bodies and other manmade and natural landscapes and to the west of natural landscapes.

It is accepted that the development will be visible from certain locations. Council staff however believe that the most significant visual impact will be from a distance (i.e. greater than 500m) and that visual impacts from locations in close proximity to the site (i.e. Kangaroo Valley Road and Tourist Road) will be reduced due to the presence of existing vegetation (when viewed from the north east) and the topography of the land (when from the east). When viewed from a greater distance (e.g. 2km, 5km and 10km) views of the proposed development will not be obstructed by the topography of the land or existing established vegetation. This specifically relating to views of the development site from the east. Even though there is a large amount of established existing vegetation which will form the backdrop to the development, it is Council staff's opinion that that the eye will be drawn to the structure proposed on the site due to the density of the development in a central location on the site. As such, it is considered that the proposal will alter the visual landscape and impact upon the existing visual amenity from a distance when viewed from the east. It is however considered that a reduction in the number of separate accommodation buildings will reduce the developments visual impact. In addition, the use of a natural colour, and buildings materials that are not reflective will assist in blending the structure into the backdrop.

- v) Water Supply: The applicant has submitted an onsite waste water management report prepared by Diversi Consulting and Dr Peter Bacon (dated September 2014 and undated supporting information) that in part looks at the water supply for the proposed



development. The applicant, in summary, proposing to utilise potable water from both rainwater tank collection as well as extraction from an existing bore on site for which a licence has now been obtained from NOW to allow for its commercial use (at the time of writing this report there was no allocated volumetric entitlement). The licence issued allowing an extraction volume of 10 million litres of groundwater per year. Given concerns raised in relation the proposed developments use of groundwater and associated impacts, Council employed an independent third party (Martens Consulting Engineers) to undertake a peer review of the applicants submitted assessment (this including supporting information that was provided and a number of submissions received that raised concerns with groundwater impact issues). Martens Consulting Engineers have provided two (2) reports to Council (Report 1 dated 23 June 2015 and Report 2 dated 4 August 2015 and 11 August 2015). The above documents being viewable on Council's website using the DA Tracking links. A summary of the final findings relating to groundwater are provided below:

- Sufficient information has been provided to allow Council to be confident that a development of the type and scale proposed is able to be provided with adequate water (groundwater supplied);
- Groundwater supplies in terms of quality for the site as well as neighbouring groundwater quality should not be adversely impacted upon by the sites effluent management system. This being conditional on an appropriate managed and monitored STP achieving tertiary treated effluent, an appropriate designed and constructed effluent irrigation area with appropriate loading rates and an appropriate sized and operated wet weather storage system; and
- No disagreement is had with NOW's conclusion that the modest required groundwater draw is unlikely to result in an impact on the groundwater availability of neighbouring landowners.

In addition to the above assessment by Council, NOW undertook their own assessment of groundwater supply issues and concluded that the extraction of groundwater as proposed has been adequately considered by the applicant. In this regard they have advised, in part, that:

- The drawdown effects are expected to be within the property with minimal environmental impact on available groundwater resources beyond the property boundary;
- The bore within the site shows good production potential; and
- Buffer distances are considered acceptable, however monitoring bores should be installed which will assist in assessing seasonal impacts, drawdown impacts and any unforeseen environmental impacts.

Having regard for the above comments, Council staff are of the opinion that the allocation of a volumetric entitlement needs to be more clearly resolved prior to any consideration of an operational consent.

- vi) **Traffic and Access:** The applicant has submitted a Traffic Impact Statement prepared by Varga Traffic Planning (dated 14 August 2014 with attached supplementary report dated 24 September 2014) and two supplementary reports (dated 30 January 2015 and 26 March 2015). The supplementary reports were submitted as a result of issues raised by

Council's Traffic Engineers in relation to vehicle generation rates and the resultant impacts on the existing road network.

In summary, the proposed development will increase the number of vehicles utilising the adjoining road network (i.e. specifically Kangaroo Valley Road and Tourist Road). As there is no public transport to the site, it is expected that all guests and employees will arrive by car as well as additional truck movements as a result of service vehicles.

The projected additional traffic volumes to be generated by the proposed development are a significant increase on existing background volumes on the surrounding road network. However, based on the applicant's assessment of the cumulative traffic flows against RMS Environmental Capacity performance standards, it is accepted that even with the additional proposed traffic generated by the development the projected traffic volumes should still be within the maximum peak hour volume considered to be suitable for a local street/existing road network. Accordingly, it is Council staff's opinion that the likely additional traffic generated by the proposed development can be accommodated by the surrounding road network, subject to all recommendations made by Council's Traffic Section being adequately met. Including, but not limited to, restriction of vehicles associated with the sites ongoing servicing to a maximum length of 7.5m (apart from waste disposal vehicles), a detailed signs and lines plan being submitted for the developments access points, all access (except emergency vehicle access) being restricted to the Kangaroo Valley Road access point and the submission of detailed designs for both access points.

The NSW Police in their comments disagree with the opinion of Council's Traffic Section above and raise concerns that the increase in traffic generated by the development on the roads that service the site is not possible. This increase in conjunction with the current condition of the roads will lead to an increase in traffic related incidents which will in turn result in road closures and diversions. Council's Traffic Engineers have looked at this issue closely and while it is acknowledged that sections of the road are narrow and the road is at times affected by fog, etc they raise no concerns with the ability of the existing road network to cater for the additional traffic movements that the development will generate.

In terms of construction traffic, larger vehicles are legally permitted to travel via Tourist Road and Kangaroo Valley Road. Under the Roads Act 1993, vehicles that have a legitimate origin and destination on a weight restricted/length restricted road (which both Kangaroo Valley Road and Tourist Road are) the use of the road is not restricted for that specific purpose. Sufficient site distances exist at both site's access points, subject to works being undertaken as detailed in this report, to enable safe entry and exit from the site for cars and trucks.

vii) Economic/Social Impacts: Both issues are discussed separately below:

- Economic Impacts: The proposed development should have a positive economic impact during the construction phase through the creation of construction jobs, although these will be short term. Post construction additional employment opportunities will also be created for the local community and wider area (both jobs on the site and economic benefits for those businesses who provide goods and services

to the developments operator and to those other business that guests visit). Given the proposed development is aiming to target the luxury tourism market it will provide additional accommodation options for visitors to the area. As such, it is not expected to compete directly with existing tourism operators providing accommodation, however it is anticipated that there will be some impact through providing additional choice. It is however believed this impact will be minimal given the growth of the tourism industry in the Shoalhaven Local Government area.

- Social Impacts: The proposed development will have a positive social impact through allowing people to experience the environmental values of the area generally. Subject to the implementation of mitigation measures as detailed in this report, specifically in relation to wastewater/effluent disposal, access works, groundwater drawdown) any social impacts from the proposed development will be minimised. It is recognised however that the development as proposed may have negative social impacts in terms of noise from both the function centre and accommodation components of the development.

### **The suitability of the site for the development**

The development site:

- Is not impacted upon by constraints placed by adjacent development;
- Is able to be gain access and/or provide utilities and services to adequately service the development;
- Will not lead to unmanageable impacts on existing transport infrastructure;
- Is not impacted upon by external noise sources that would preclude this type of development;
- Is not impact upon natural hazards that are unacceptable for the proposed development;
- Will not prejudice the use of the remainder of the site for agricultural uses; and
- Will not adversely impact upon flora and fauna.

Having regard for the above, the development site is generally considered suitable for a tourist accommodation facility. It is however not suitable for a tourist related facility of the size proposed (i.e. need to reduce the number of accommodation units and delete the function centre component). The reduced size ensuring greater compliance with Council requirements and also reducing the amount of disturbance in terms of potential cumulative impacts on groundwater, effluent, traffic generation and visual impacts. It being acknowledged that effluent and groundwater impacts are not considered an issue with the current development.

### **Any submissions made in accordance with the Act or the regulations**

Submissions from the general public and public authorities are discussed separately below:

- a) *The Public*: In accordance with Council's Community Consultation Policy, the development application when received was notified as is outlined in Section 4 (Community Consultation) of this report. A summary of the issues raised in the submissions received and associated comments from Council are provided below, noting that a number of the issues raised are discussed in greater detail elsewhere in this report:

- *Noise:* Concern has been raised about noise impacts from the development and the applicants submitted noise assessment. Specifically that it may be flawed as it contains errors and emissions with residents concluding that the proposed development will result in unacceptable level of noise disturbance. Submissions received have also raised concerns about noise impacts on wildlife. With reference to noise issues generally, Council engaged an independent third party to peer review the submitted noise assessment. Additional discussion on the noise issue and the conclusions from this peer review are contained in Section 6 (Statement of Compliance /Assessment) of this report. With reference to the impact of noise on wildlife the applicant in their submitted flora and fauna assessment has addressed the issue of noise impacts on wildlife which has concluded that there will be no impact. Council has considered this assessment and concurs with the conclusions reached.
- *Brush Tailed Rock Wallaby Program:* Concerns have been raised about the applicants proposed program and associated notations that it being developed and supported by Taronga Conservation Society Australia. The applicant has during the assessment of the development application removed this component and as such it is no longer forms part of the current development application/is not a consideration for Council. Additional discussion of this issue including Council's assessment is provided in Section 7 (Other Issues) of this report.
- *Eco-tourism Credentials and Definition:* Concern has been raised about the applicant's ability to achieve eco-tourism accreditation and the ability of the development if approved to meet the criteria for eco-tourism. The eco-tourism criteria outlined in a number of the public submission being the criteria that is required by eco-tourism Australia. The definition for 'eco-tourism' that a number of the public submission relied on was also the definition of eco-tourism as adopted by eco-tourism Australia. Council in the assessment of this application can only have regard for the definition of 'eco-tourism' and the associated criteria as contained in the SLEP 2014. As such the eco-tourism Australia criteria and definition have no relevance to this application. With reference to the applicant's ability to achieve eco-tourism accreditation from eco-tourism Australia if the application was approved, it is a matter for the applicant and is not a consideration in Council's assessment.
- *Traffic and Road Conditions:* Concern has been raised about the increase in traffic that this development will generate specifically along Kangaroo Valley Road and Tourist Road and the resultant increase in the number of traffic accidents that will occur as a result of the increased traffic. Concern has also been raised about the condition of the roads that service the development site (e.g. narrow, no line marking, steep drop offs) and the impacts this will have on users who are not familiar with the roads during heavy rain, fog and when trees are down. Additional discussion of this issue including Council's assessment is provided in Section 6 (Statement of Compliance /Assessment) of this report.
- *Effluent Disposal:* Concern has been raised about the disposal of effluent/wastewater on the site and the ability of the site to be able to cater for the quantity of wastewater the proposed development will produce. Concerns has also been raised about the applicant's submitted wastewater reports in terms of errors, emissions and general data used (e.g. consideration of large/prolonged rainfall events, inaccurate figures used, impacts downstream). With reference to wastewater/effluent issues generally,

Council engaged and independent third party to peer review the submitted wastewater assessment. Additional discussion/Councils assessment on the effluent/wastewater issue and the conclusions from this peer review are contained in Section 6 (Statement of Compliance /Assessment) of this report.

- *Permissibility/Characterisation of the Development:* Concern has been raised about the permissibility of the 'function centre' component of the proposed development and the applicant's assessment that the function centre use is ancillary to the main use of the site as an 'eco-tourist facility'. Concern has also been raised about how the development has been characterised by the applicant as an eco-tourist facility when it better fits the definition of 'hotel or motel accommodation' under SLEP 2014 which is a prohibited form of development in both an RU1 and E2 zone under SLEP 2014. With reference to noise issues generally Council engaged and independent third party to peer review the submitted noise assessment. Additional discussion/Councils assessment of this issue is contained in Section 6 (Statement of Compliance /Assessment) of this report.
- *Aboriginal Heritage:* Concern has been raised about the applicant's submitted Aboriginal heritage due diligence assessment as it is a required consideration that has not been adequately addressed. Council forming the opinion that it has no role to play in the due diligence process. Additional discussion of this issue including Councils assessment is provided in Section 7 (Other Issues) of this report.
- *Scale and Density:* Concern has been raised that the proposed development given the number of accommodation units and associated support uses is out of character with the surrounding area which is predominantly protected environmental areas or land used for agriculture. Council's assessment also concluding in part the density of the accommodation part of the development may not be appropriate for the site. Additional discussion/Councils assessment of this issue is contained in Section 6 (Statement of Compliance /Assessment) of this report.
- *Water Management:* Concerns have been raised about the supply of water that is required to service the development, associated impacts the development will have on groundwater and the contamination of watercourses/aquifers. Council engaged and independent third party to peer review the submitted wastewater assessment which included water supply and contamination issues. Additional discussion/Councils assessment on this issue and the conclusions from this peer review are contained in Section 6 (Statement of Compliance /Assessment) of this report.
- *Sustainability:* Concern has been raised that the applicant has failed to demonstrate how energy usage will actually be reduced as well as no details on a VMP. Council in its assessment acknowledges the lack of definitive detail provided for both these issues. Additional discussion/Councils assessment of this issue is contained in Section 6 (Statement of Compliance /Assessment) of this report.
- *Precedent:* Concern has been raised that this development will set a precedent in the area for similar types of development to occur. Council staff are of the opinion that this application will not set a precedent as any similar development proposals will need to have regard for applicable requirements (e.g. land zoning, DCP's, etc) and go through an assessment process having regard for relevant requirements at that time. Each application lodged will be assessed on its own merits.

- *Use of Consultants:* Concern has been raised about Council using a number of external consultants to provide advice and the associated costs this has incurred. It is Council's assessment that any large development application which may exceed the requirements of Council staff and in which there has been a large amount of public interest on a specific issue should be outsourced for advice from people who specialise in those specific areas. This ensuring that the application and associated issues receive a comprehensive assessment. For this application independent advice has been sought in relation to noise, effluent/wastewater and groundwater.
  - *Impact on Businesses:* Concern has been raised that the proposed development will have adverse impact on other smaller scale accommodation businesses in the area (e.g. hotels/motels, small accommodation venues). The impacts of competition are not a relevant planning consideration under S79C of the EPA Act.
  - *Bushfire Risk:* Concern has been raised that the proposed development will increase the bushfire risks as there will be more people contained on the site which will result in more people being forced onto the adjoining roads during a fire event. Due to the type of development proposed the RFS is required to provide its approval which it has (subject to conditions). The applicant as part of this application proposing to construct a bushfire refuge building on site which will provide a refuge on site for all occupants of the development during a bushfire event. No concerns are raised with this and the sizing of the refuge complies with relevant requirements.
  - *Flora and Fauna:* Concern has been raised about the impact the development will have on flora and fauna within the site and on adjacent sites. The applicant has submitted a flora and fauna assessment which has been reviewed by Council's Threatened Species Officer. Additional discussion/Council's assessment of this issue is contained in Section 6 (Statement of Compliance /Assessment) of this report.
  - *Impact on Property Values:* Concern has been raised that the development will result in a devaluation of current property values. There is no evidence to support the claim that adjoining property values will be adversely affected if the development as currently proposed was approved. It is therefore considered that on the basis of information that Council currently has available that this claim is unfounded.
  - *Legal Advice:* Concern has been raised that any legal advice received by Council has not be made publically available at this time. Council's standard procedure relating to legal advice it obtains on development applications is not to release the advice it receives. This ensure legal privilege is maintained should the application be the subject of future legal action.
  - *Process:* Concern has been raised about the process. Specifically that that there was insufficient information in the provided notification each time amendments were notified to clearly identify what amendments had been made. Council staff have exhibited the application in accordance with relevant requirements. In addition, the applicant generally provided a covering letter with each significant change that provided a summary of the amendments. This information being viewable at Council or on its website.
- b) Public Authorities: Submissions have been received from four (4) public authorities (RFS, OEH, NOW, RMS and NSW Fisheries) with GTA's being provided from the relevant public authorities. These submissions are discussed in greater detail in Section

8 (Referrals) of this report. Council staff are of the opinion that comments raised in the submissions received have been resolved or can be resolved through the imposition of conditions should a development consent be issued.

### **The public interest**

Consideration has been given to Federal, State and Local Government interests (e.g. policy statements, planning strategies and/or studies, etc) as well as community interests. In this regard, Council is aware of the South Coast Regional Strategy 2006-2031 which provides broad planning direction over a 25 year period and in part discusses the role of tourism in the area to which the proposed use of the land for an eco-tourist development generally would align.

On a local level consideration has been given to the Shoalhaven Tourism Masterplan 2012-2017 to which the proposed development would generally comply due to it in increasing the diversity of accommodation choices and provide economic benefit to the region.

There are no other known policy statement/documents that have relevance to the current application. Numerous issues have been raised by the public in both submissions and public meetings.

In summary the proposed development, based on the information provided, is not expected to have any significant impacts on the environment (i.e. effluent, groundwater, flora/fauna and Aboriginal heritage). However, given the size of the development (i.e. number of accommodation units), the permissibility issue (i.e. the 'function centre' component and compliance with Clause 5.13 of SLEP), the noise impacts and the submissions received from the public, Council staff are of the opinion that the proposed development in its current form is not in the public interest.

### **7. Other Issues:**

- a) Drainage: The applicant has submitted a Stormwater Management Plan prepared by Diversi Consulting (dated September 2014 – Rev: B). The four (4) major components of the plan are rainwater tanks (44,000 litre tank attached to each accommodation unit building as well as tanks to the central facilities building, spa building and gym/pool building), bi-retention basins (located adjacent to the car park and at the creek outlets/discharge points), grass/vegetated swales (located upstream of the internal roads and linkages between pipes) and Gross Pollutant Trap (GPT) units (located at the stormwater outlet locations within the site). In terms of site drainage and water quality, the above systems will remove fines, nutrients, suspended solids, coarse sediments, litter and other debris as well as assist in minimising potable water demand and result in minimal impacts from the development in terms of stormwater runoff. Any development consent, if issued, could therefore be conditioned in relation to stormwater design being implemented in accordance with the submitted documentation.
- b) Aboriginal Cultural Heritage: The applicant has submitted a Due Diligence Aboriginal Heritage Assessment prepared by Oz Ark Environmental and Heritage Management Pty Ltd (dated October 2014) and a supplementary report (dated 30 January 2015). The assessment undertaken consisting of both desktop modelling as well as a visual inspection of the site. In summary, both reports have concluded that in accordance with the *Due*

*Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, as the criteria in Step 2 of Section 8 have not been satisfied an application for an Aboriginal Heritage Impact Permit (AHIP) is not required with the site being assessed as having a low probability of containing isolated Aboriginal artefacts. The submitted report has however identified a number of measures that must be implemented during any construction process which include (summary only):

- ✓ Works crews involved should be informed of the possibility of unanticipated finds and the provided Unanticipated Finds Protocol implemented in the case of an aboriginal object being uncovered;
- ✓ If aboriginal objects are found all works on site are to stop and OEH notified immediately. If human remains are found all works should stop, site secured and the NSW Police and OEH notified; and
- ✓ Topsoil being stockpiled separately with the aim of keeping any isolated artefacts in the same area (if found).

Council in reviewing relevant documentation has formed the opinion that it has no role to play in the due diligence process and that the onus is on the proponent to satisfy itself that the works proposed for the development are or are not likely to impact aboriginal objects, and whether they are satisfied that that they will have a legal defence to the strict liability defence if Aboriginal objects are harmed as a result of the construction activities. The above opinion is the same as expressed by OEH in their advice dated 23 March 2015. OEH also advising in their correspondence that they are of the opinion that the applicant may not have adequately considered the presence of subsurface objects as part of their assessment (i.e. no archaeological testing undertaken). Subsequent discussions with OEH have confirmed that at this time they have no records/evidence that there are Aboriginal objects on the site.

Council as part of its assessment has undertaken an Aboriginal Heritage Information System (AHIMS) search which has also indicated that there are no Aboriginal sites recorded in or near the development site and no Aboriginal places declared in or near the development site. Any development consent, if issued, could be conditioned so as to require the measures outlined in the applicants submitted assessment to be implemented during the construction process.

- c) Legal Advice: Legal advice has been received from both the applicant (prepared by Philp Clay SC) and objectors (prepared by Chris McEwen SC). The advice submitted providing comment on whether the function centre component of the proposed development is a permissible development purpose in the RU1 Primary Production zone under SLEP 2014 and is viewable on Council's website using the DA Tracking links. A summary of the conclusions in the submitted advice is provided below"

- Chris McEwen SC was of the opinion *"that when regard is had to the nature and extent of the proposed function centre use, it is for the independent purpose of a 'function centre' and is accordingly prohibited regardless of whether it is related to or inter-dependent with the permissible purpose of eco-tourist facility or food and drink premises (which includes restaurant). A consent authority has no power to grant consent to development for a prohibited purpose."* Upon the applicant making



amendments to the application which included, in part, a restriction that the use of the function centre would require at least 50% of the function attendees being required to concurrently book accommodation on the site, supplementary advice was provided by the applicant. This advice stated that *“Notwithstanding the further information provided by the applicant, I remain of the opinion that the function centre facility use is a prohibited purpose for which Council has no power to grant development consent”*.

- Philip Clay SC was of the opinion that *“the following refinements, which should be reflected in conditions of development consent, lead to the conclusion that the function centre is ancillary:*

- (a) the function room can only be booked by a person who is staying at the eco-tourist facility at the time of the function;*

- (b) the capacity of the function centre is limited to 100 guests;*

- (c) no more than 20 non-resident guests may attend a function.*

and *“The function centre, with the imposition of conditions suggested, is permissible by virtue of being ancillary component to the eco-tourist facility which is a use permissible with consent in the RU1 zone.”*

Council has obtained its own advice and has concluded from reviewing available information that the ‘function centre’ component of the development is not considered ancillary to the primary use of the site as an ‘eco-tourist facility’ and is **not** a permissible form of development in land zoned RU1 under SLEP 2014.

- d) Brush Tailed Rock Wallaby Conservation Program: The application as originally submitted proposed a program on the site to assist with preservation of the Brush Tailed Rock Wallaby (BTRW). This involving the establishment of a BTRW enclosure on site. OEH have advised Council that any proposal to establish an enclosure on site would be subject to a separate OEH licencing process requiring assessment under the Threatened Species Conservation Act 1995. While OEH have acknowledged that there have been discussions between themselves and the applicant there has not been a determination on the suitability of the site. The applicant in the additional information provided to Council in January 2015 advised Council that the BTRW program is to be deleted from the current application.

- e) Landscaping: A concept landscape plan/assessment has been provided with the development application in the form of a landscape masterplan. The landscape masterplan divides the development area into six zones. While the plan is very general in nature it does identify the landscaping themes proposed in each area which primarily are new plantings, walkways, seating, terraces and other aesthetic treatments. While the submitted plan identifies treatments, limited details have been provided on planting types and quantities. No concerns are raised with this so along as any development consent, if issued, contains condition in relation to this information being provided prior to issue of a Construction Certificate.

The landscape masterplan also identifies the need for a VMP to guide regeneration planting and on-going maintenance of the retained vegetation (this also aligning with comments provided by OEH). No VMP was submitted with the current application. A condition in relation to the VMP could be included on any development consent, if issued. The landscape masterplan also shows works being undertaken within the EEC to the north of

the gym/pool and spa building. These works including the construction of walkway through the EEC and adjustment to the existing stream. Given the works proposed, additional details are required before any final approval for these specific works can be given. In this regard design details for the proposed walkway would be required that demonstrated as per the requirements of the submitted flora and fauna assessment that no existing vegetation would be removed/impacted upon (e.g. elevated walkway, survey details identifying existing tree locations). In terms of adjustments to the stream, these works are discouraged and would require further detail as well as an amended Controlled Activity Approval from NOW. A discussion with NOW indicating that their current general terms of approval only relate to the creek crossings.

f) Council's Policy for Reflective Building Materials – Use in Coastal and Rural Areas (POL12/127): This policy aims to prevent the use of highly reflective materials in coastal and rural area. A summary of the assessment against the applicable provisions is provided below:

- P1: Based on information that has been submitted, the design of the building, including building materials and external colours, should not adversely impact the reasonable amenity of any property that has views to the building. The new buildings proposed incorporating articulation, are primarily of a low scale and are to have exterior colours that are natural with the larger buildings (central facilities building) using darker colours. The roof material for all buildings is shown on the plans as being metal roofing with the colours shown for the roof being similar to the 'ironstone' colour in the colourbond range. The roofing proposed for the majority of buildings will be skillion with the central facilities building having large amount of glass along its northern elevation. The applicant advising that the glass façade of the function centre will be provided with a reflectivity coefficient of 20% or less. Access roads through the site are existing or follow existing track, however works will be required that will require minimal earthworks. Overall, Council is satisfied that building materials and colours to be used will not be highly reflective. Any development consent, should it be issued, should be conditioned in relation to reflectivity requirements and the requirements for building materials/colour schemes to be used.
- P2: A visual assessment has been undertaken by the Project Tourism International Architecture Pty Ltd (dated 2 September 2015). This assessment primarily looks at impacts from the roads adjoining the property with limited assessment being undertaken at greater distances from the property. While it is acknowledged that the development should not have an adverse visual impact from a close distance (Kangaroo Valley Road and Tourist Road) due to the existing vegetation in the northern portion of the site and the topography of the site when viewed from the east (Tourist Road) it still will be visible from these locations. Council's assessment of visual impact has concluded that for greater distance (e.g. 2km, 5km and 10km) the development will be visible from a public road or public place. This impact being reduced if the number of accommodation units/buildings was reduced and therefore reducing the clustering of buildings in the central portion of the site.

g) Land Owner's Consent: Written consent from the current landowner (Camberlee Investments Pty Ltd) has been provided with the development application. This constituting written consent from a director of the company.

- h) Easements/Restrictions on the use of the land: A review of the Deposited Plans (DP) and associated Section 88B instruments for the subject site has indicated that it is not affected by easements and/or restrictions on the use of the land.
- i) Safety and Security: As per the requirements of Council's Safer by Design Guidelines, consideration needs to be given to the principles of Crime Prevention through Environmental Design (CPTED). An 'Operational Plan of Management' prepared by PTI Architecture (dated 15 September 2014) has been submitted with the development application. This has been used to assist Council in undertaking a preliminary Safer by Design Crime Risk Assessment, having regard for Safer by Design Principles. This assessment has determined that the design of the building has ensured that elevations, where possible, have been activated through the use of windows which will allow the passive surveillance of the adjoining areas.

In addition to the above, the public access points to the site and buildings are clearly defined (access from Kangaroo Valley Road provides direct access to the central facilities building), with the grounds surrounding the building being designed so they are visually open and providing a good visual connection between the building and the adjacent areas that will be used by occupants and visitors (internal pathways, way-finding signs). CCTV is proposed to be installed to all entries and exits and the main public/operational areas. Details on lighting to be provided indicates that it will be provided to all external areas. Access to the majority of the development, given its intended use, is proposed to be controlled with security/access cards (i.e. accommodation units, gym/pool building, etc).

In terms of territorial reinforcement, access, space management and surveillance opportunities, the proposed development has been classified as having low to medium risk rating and therefore, requires no modification and/or incorporation of features above what the applicant has outlined as part of their Statement of Environmental Effects and supporting information submitted with the application to minimise the potential risk of crime and/or anti-social behaviour.

- j) Energy Efficiency: The applicant has submitted an assessment against Part J of the Building Code of Australia (BCA) prepared by Thermal Energy (dated 23 September 2015). Part J of the BCA requirements are mandatory requirements for the classes of building that the application proposes (apart from the new dwelling house which is subject to the BASUX provisions). The building requirements to comply with Part J are the base requirements that must be complied with for these classes of buildings in all areas (e.g. an office building, shop or other building, etc). The applicant has also submitted a Sustainability Incentives and Strategy Report that in part details environmental design and sustainability features that the proposed development will employ to reduce energy consumption. In summary, the report identifies a number of measures that can be used to achieve BCA Section J compliance as well as additional strategies beyond the minimal requirements to achieve an independent eco-tourism rating. The measures discussed include a thermal labyrinth, a 100% outdoor heat recovery system, solar panels. Solar hot water heating, cogeneration and bio-gas. While the above measures would all assist in reducing energy consumption and greenhouse gas emissions, no specific measures to be implemented have been identified. The report submitted detailing *"that the measures proposed will be evaluated during detailed design stage to determine the optimal site renewable strategy"*.

- k) *Flooding:* The subject site is not identified as being flood prone on Council's mapping. As such, no detailed assessment in relation to flooding has been undertaken. However, consideration has been given to flooding/water levels in respect of the proposed creek crossings and impacts water flow in these creeks will have on these crossings. Based on the location of the site in the top portion of the catchment and the concept designs submitted no concerns are raised.
- l) *Climate Change:* No cumulative impacts are expected in regard to the proposed development that could further contribute to climate change. Furthermore, there are no risks relevant to the site that could potentially be exacerbated by climate change.

## **8. Referrals**

### **Internal:**

- **Development Engineer:** Concerns were initially raised with the access locations onto Kangaroo Valley Road and Tourist Road and details required on how the accommodation buildings will be serviced/accessed (refer to advice dated 18 November 2014). Access issues to be commented on separately by Council's Traffic Engineer given the works required within the road reserve. Relevant additional information was re-referred for comment. No objections raised subject to the imposition of recommended conditions (refer to advice dated 16 March 2015).
- **Building Surveyor:** Concerns were initially raised in relation to BASIX commitments for the dwelling house, Part J Assessment and manager's residence design. Updated designs submitted.
- **Traffic Engineer:** Concerns were initially raised with traffic generation and associated impacts, accident history and vehicle access arrangements (refer to advice dated 19 November 2014). The application was re-referred for comment when additional information was received. Concerns were raised with access designs and signage/line marking (refer to advice dated 20 May 2015). Further additional information was again re-referred when received. Concerns were raised with access design and signage/line marking (refer to advice dated 22 May 2015). Further information re-referred when received and subsequent discussions had with the Traffic Engineer. Concerns still had with some aspects of the submitted access designs and associated signage. Confirmed with Council's Traffic Engineer that these issues can be conditioned.
- **Environmental Health Officer:** No concerns were raised subject to the imposition of recommended conditions (refer to advice dated 4 November 2015).
- **Flood Engineer:** No concerns were raised and no conditions recommended (refer to advice dated 25 November 2014).
- **Threatened Species Officer:** Concerns were initially raised with survey work associated with existing hollow bearing tree to be removed (refer to advice dated 18 November 2015). The application was re-referred for comment when additional information received. No objections were raised subject to the imposition of recommended conditions (refer to advice dated 17 March 2015).

- Shoalhaven Water: No concerns were raised and no conditions recommended (refer to advice dated 14 November 2014).
- Tourism Manager: No concerns raised and no conditions recommended (refer to advice dated 13 November 2014).

**External:**

- NSW Rural fire Service (RFS): No concerns were raised and GTA's provided (refer to advice dated 25 November 2014). Amendments to application re-referred for comment. Updated general terms of approval provided (refer to advice dated 28 July 2015). Subsequent advice provided by the RFS has indicated that they did not wish to amend their advice as a result of submissions received during the notification period (refer to advice dated 19 October 2015).
- Department of Primary Industries – Fisheries: No concerns were raised subject to the imposition of recommended conditions (refer to advice dated 24 November 2014). Amendments to application re-referred for comment. No concerns were raised subject to compliance with previous advice (refer to advice dated 11 March 2015).
- NSW Office of Environment and Heritage (OEH): Advice was provided that the ecological/biodiversity issues have been adequately addressed with it being recommended that a VMP be prepared to manage the retained vegetation. Concerns were raised in relation to Aboriginal cultural heritage with it being suggested that further investigation in accordance with OEH guidelines be undertaken. In terms of flooding and water quality management concerns were also raised and advice provided that consideration needed to be given to these issues by the consent authority (refer to advice dated 25 November 2014). Further additional information was re-referred when received. Updated advice was received that provided additional comments on Aboriginal cultural heritage and that there appears to be a potential for subsurface Aboriginal object to be present on the land and that further investigation should be undertaken. OEH advising that they had no role in the due diligence process with it being up to the applicant to follow applicable requirements and determine what impacts the development will have and whether they are satisfied that they will have a legal defence if Aboriginal objects are harmed as a result of the proposed activity (refer to advice dated 23 March 2015).
- Department of Primary Industries – Office of Water (NOW): No concerns were raised and GTA's provided (refer to advice dated 15 May 2015). In summary:
  - ✓ No objection was raised to proposed bridges over the watercourses;
  - ✓ No approval was required for harvesting water;
  - ✓ The existing bore is able to sustain required drawdown with minimal impact to available ground/water beyond the property boundaries;
  - ✓ Buffers provided to bore are adequate.

Subsequent advice provided by NOW has indicated that they did not wish to amend their advice as a result of submissions received during the notification period and that a combined approval has been issued by NOW for commercial use of the bore to service the proposed development (extraction volume of 10ML) and a water access licence has been established, however this has no allocated volumetric entitlement (refer to advice

dated 22 October 2015).

- NSW Police Force: No objection was had with the uses proposed, however concerns were raised with the increase in traffic that the development would generate, the number of traffic related incidents along this section of road and the fact that the proposal will lead to an increase in traffic related incidents.
- Endeavour Energy: No concerns were raised and no conditions recommended. Advice could be provided on any development consent, if issued, in relation to an application to Endeavour Energy for further assessment of electrical load (refer to advice dated 10 November 2014).
- Water NSW (previously known as the Sydney Catchment Authority): No concerns were raised as the proposed development is located outside the Sydney Drinking Water Catchments. As such, it is not subject to the provisions of the SEPP 2011.
- Transport – Roads & Maritime Services (RMS): No concerns were raised and advice provided that given the relatively low traffic generation rate it is unlikely to have an impact upon a single classified road intersection (refer to advice dated 21 November 2014).

## 9. Options

The Joint Regional Planning Panel may:

- a) Resolve to refuse the application (i.e. adopt the recommendations of this report including the reasons for refusal or modify the provided reasons); or
- b) Resolve to approve the application subject to conditions (e.g. partial consent pursuant to Section 80(4) of the EPA Act or a deferred commencement consent); or
- c) Write to the applicant requesting them to amend/modify the proposal and subject to the matters being satisfactorily resolved, a further report be submitted to the Joint Regional Planning Panel (Southern Region) for its consideration.

## 10. Conclusion

This application has been assessed having regard to the Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Following a detailed assessment, it is considered that Development Application No. RA14/1004 (2014STH025) should be refused for the reasons as detailed in the report above.

## 11. Recommendation

RECOMMENDED that, in respect of RA14/1004 (2014STH025) for an 'Eco tourist facility, function centre and associated infrastructure, the application be refused for the reasons as contained in **Attachment 'A'**.



## Attachment 'A'



**NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION  
BY THE SOUTHERN JOINT REGIONAL PLANNING PANEL**

**BY REFUSAL**

**Environmental Planning and Assessment Act, 1979  
RA14/1004**

**TO:**

Camberlee Investments Pty Ltd  
No.801 Kangaroo Valley Road  
BELLAWONGARAH NSW 2535

being the applicant(s) for **RA14/1004** relating to:

No.801 Kangaroo Valley Road, BELLAWONGARAH (Lot 13 DP 707955)

**REFUSED USE AND/OR DEVELOPMENT:**

**Construction of an Eco Tourist Resort comprising: 42 accommodation units, 88 car spaces, function centre, restaurant, onsite sewage treatment plant, pool/gym facilities building, wildlife centre, day spa, bushfire refuge building, managers residence, associated infrastructure (landscaping, creek crossings, etc) and a new dwelling house.**

**DETERMINATION DATE:**

-

**REFUSAL DATE:**

-

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the development proposes a use that is prohibited on the land in accordance with the requirements of Clause 2.3 (Zone objectives and Land Use Table) of the Shoalhaven Local Environmental Plan 2014;
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the development has not satisfied Council that the requirements of Clause 5.13 (Eco-tourist facilities) of the Shoalhaven Local Environmental Plan 2014 have been met;

3. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979 the proposed development does not satisfy the provisions of Part 2.2 (Density standards) and Part 2.9 (Amenity of Area) of the Shoalhaven Development Control Plan No.63 – Tourist Development in Rural Areas;
4. Pursuant to Section 79C(1)(b) Environmental Planning and Assessment Act, 1979 the proposed development will have an unacceptable impact in terms of the noise generated which will have an adverse impact on the amenity enjoyed by residence in proximity to the site;
5. Pursuant to Section 79C(1)(c) Environmental Planning and Assessment Act, 1979 the site is unsuitable for the proposed development; and
6. Pursuant to Section 79C(1)(e) Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest.

### **RIGHTS OF REVIEW AND APPEAL**

#### ***Development Determination under Environmental Planning and Assessment Act, 1979***

*Section 97 of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised **within six (6) months** after receipt of this notice.*

### **PRIVACY NOTIFICATION**

*Personal information contained on this Development Consent Modification and any associated documents will be published on Council's website as required by the Government Information (Public Access) (GIPA) Act 2009.*

### **APPROVAL BODIES**

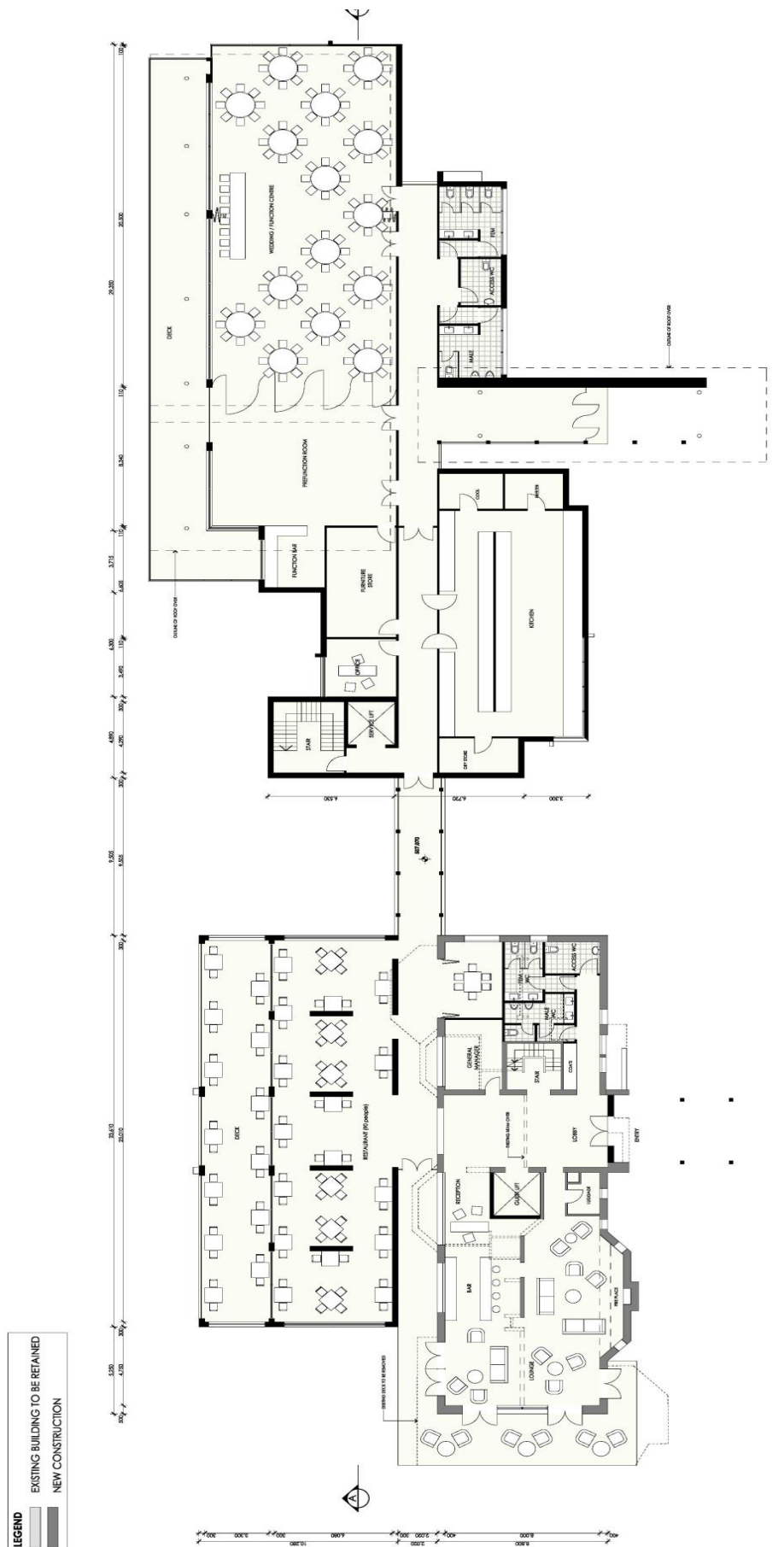
*The NSW Rural Fire Service and the Department of Primary Industries – Office of Water have provided General Terms of Approval for the proposed development.*

## Attachment 'B'

## Site Plan



### Central Facilities Building – Ground Floor



**Central Facilities Building - Artist**

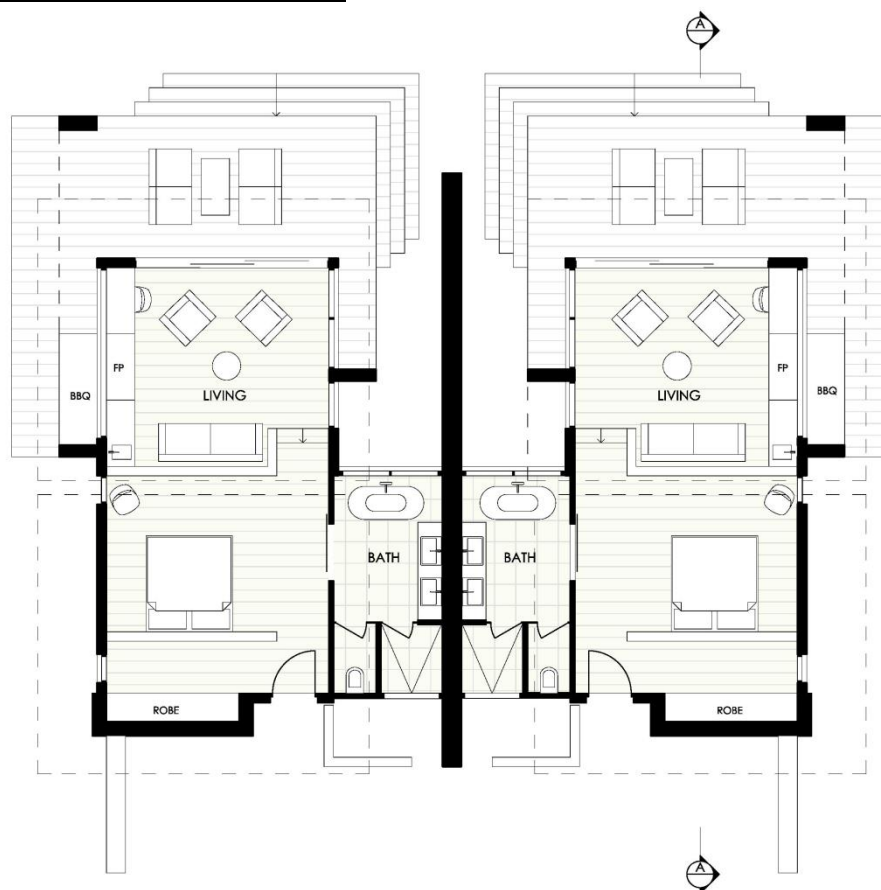


**Accommodation Unit – Type 1A Floor Plan**





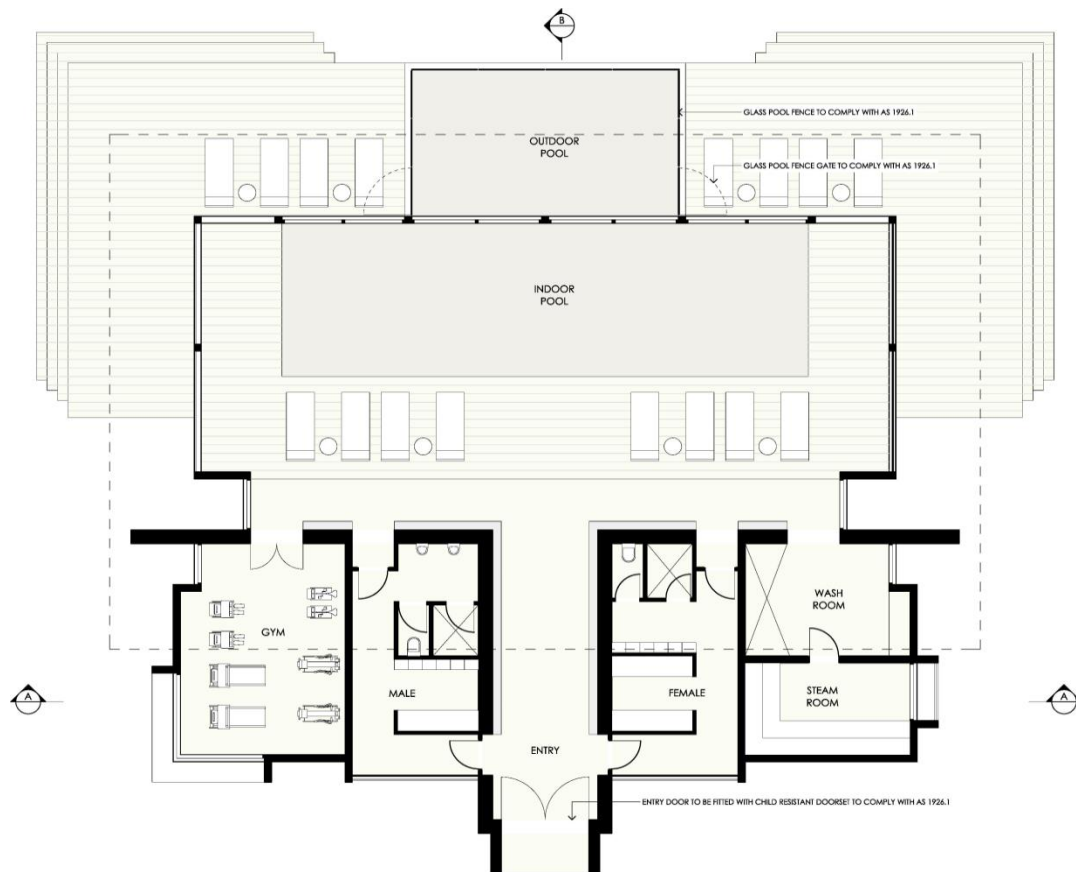
### **Accommodation Unit – Type 4 Floor Plan**



### **Accommodation Unit - Artist Impression**



## Gym and Pool Building Floor Plan



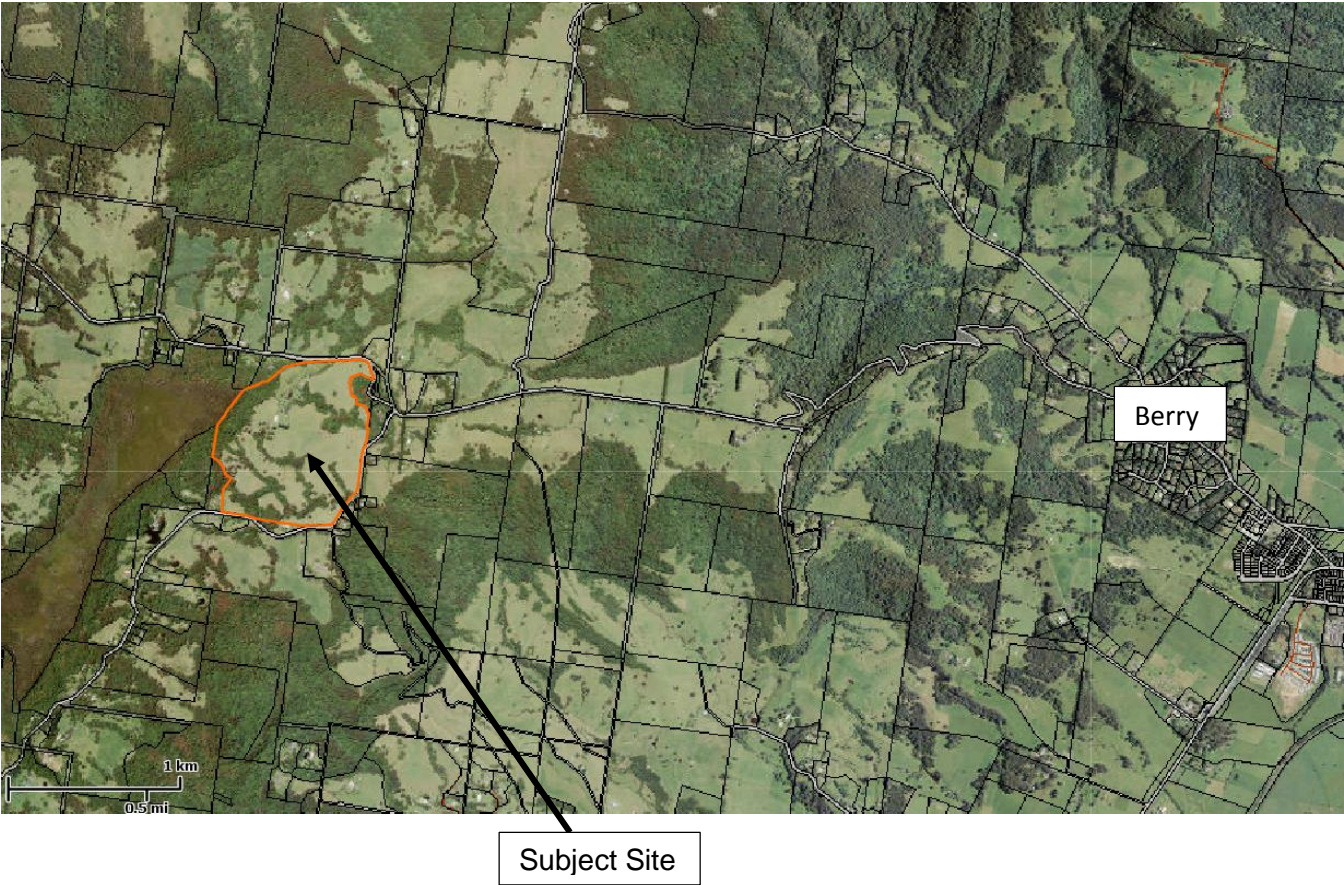
## Dwelling House Floor Plan





## Attachment 'C'

Location Plan



Location and Zoning Plan

