

# Audit of Development Assessment Process

---

Process Audit for Regional Development Application No. 14/1004

Description: Construction of an Eco Tourist Resort

Located at Lot 13 DP 707955, 801 Kangaroo Valley Road, Bellawongarah


2 November 2015

Unit 5  
174 – 182 Gipps Road  
PO Box 7163  
Gwynneville, NSW  
2520

T +61 2 4228 7833  
F +61 2 4228 7844  
E [reception@tcgplanning.com.au](mailto:reception@tcgplanning.com.au)



This report has been prepared for Shoalhaven City Council in accordance with the scope of services provided by TCG Planning. This report should only be used only for the purpose for which it was expressly prepared and shall not be reproduced by any third party in part or full without the permission of TCG Planning or Council.

Document Status			Approved For Issue	
Version	Author	Reviewer	Signature	Date
Final	Elaine Treglown	Elaine Treglown		2.11.2015

## Contents

<b>Part A: Process Audit</b>	<b>4</b>
1.0 Introduction	4
2.0 Status of Application at Time of Review	4
3.0 Documents Reviewed	4
4.0 Statutory Procedure	6
4.1 Environmental Planning and Assessment Act 1979	7
4.2 Environmental Planning and Assessment Regulation 2000	10
<b>Part B: Peer Review</b>	<b>16</b>
4.3 Review of Assessment under Section 79C of EPA Act, 1979	16
<b>Conclusion And Recommendations</b>	<b>22</b>

## PART A: PROCESS AUDIT

### 1.0 Introduction

Shoalhaven City Council has engaged TCG Planning to audit the processing procedure of Regional Development Application No. 14/1004, which proposes the "construction of an eco tourist resort comprising: 42 accommodation units, 100 car spaces, function centre, restaurant, onsite sewage treatment plant, pool/gym facilities building, wildlife centre, day spa, bushfire refuge building, manager's residence, associated infrastructure (landscaping, creek crossings, etc.) and a new dwelling house" at Lot 13 DP 707955, 801 Kangaroo Valley Road, Bellawongarah.

The application was lodged with Shoalhaven City Council by Camberlee Investments Pty Ltd on 17 October 2014, with development application fees noted by the Council officer as being received on this date (receipt No. 28/23991). An independent audit of the application is being undertaken as the proposed development has received a high level of community interest and Council seeks to ensure that the processing of the application meets the legislative requirements of the Environmental Planning and Assessment Act, 1979, the Environmental Planning and Assessment Regulations, 2000, and other relevant environmental planning instruments and development control plans.

### 2.0 Status of Application at Time of Review

This application was audited by Elaine Treglown, Director of TCG Planning. At the time of preparing this audit the development application had been received by Council (on 17 October 2014) and notification completed. A draft Section 79C Assessment (under the *Environmental Planning and Assessment Act 1979*) had also been prepared in the form of a report to the Joint Regional Planning Panel. A peer review of the Section 79C assessment has also been undertaken by TCG Planning and is contained in Part B of this report, whilst the audit is contained in Part A.

The review of this report does not comprise a merits based assessment but is limited to consideration of whether the assessment addresses the relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act (EPA Act) and whether relevant legislative provisions have been satisfactorily met by Council in undertaking this assessment. Further, this review has also not considered the requirement for additional licences/permits/approvals from other agencies following determination of the development application by Council, which is a separate matter beyond the scope of the audit of the development application process.

### 3.0 Documents Reviewed

The following documents, which are contained on a CD received from Council on 22.7.2015 and later 'additional information' documents provided as requested, were reviewed and relate to Regional Development Application 14/1004.

- A copy of the 'Development Application' Form (pages 1-4). Although the applicant, David Hamilton, signed the declaration on 16.10.2014, there is no indication on this form of the date when the application was received by SCC. Council's online development application register states that the lodgement date was 17.10.2014. Owners consent from David Hamilton (noted as Director of Camberlee Investments Pty Ltd) is provided (on page 4), with a signatory dated of 16.10.2014.

- Copy of 'Administrative Procedures Checklist' for RA14/1004 dated 1.4.13, with the 'Vetting Officer' noted as Andrew Lissenden. The document indicates the following: DA fees paid; receipt of application acknowledged; owners consent obtained; DAU minutes on file; related files recorded; integrated development; regional application. The document indicates that the affected owners (1.5m radius of site), press, and community groups require notification of the development, and a notice is to be placed on the land. The dates that the Development Application was referred to internal Shoalhaven City Council (SCC) departments and government agencies has also been indicated, together with the reasons for referral.
- Copy of 'Checklist for Vetting RA14/1004 General Planning/Building Issues', dated 29.10.14 with the 'Vetting Officer' noted as Andrew Lissenden. The document identifies the following planning/building issues as applying to the proposed development: integrated development; advertised development; SEPP 55; SEPP 58; SEPP (State and Regional Development); SEPP (Infrastructure); Illawarra REP; Legality/Zoning; Zone Objectives; DCPS; S94 Contributions; Restrictions as to User/Easements; Colours and Materials; Car Parking; Waste Disposal; Visual Prominence; Landscaping; Flooding; Bushfire; Noise; Hours of Operation; Food Code; Disabled Access; Effluent Disposal; Section 68 Approval; Traffic Generation; Rural Access; Car Park Design/Manoeuvring; Safe Intersection Sight Distance; Drainage; Section 138 Approval.
- Site and building plans prepared by Project Tourism International Architecture Pty Ltd (PTI Architects), dated 26.09.2014, 10.11.2014, 27.01.2015, 30.01.2015, and 16.04.2015, as listed in Appendix 1 (*NB. the highlighting in this Appendix 1 references the most recent version of each plan*).
- Statement of Environmental Effects (SEE) titled '801 Kangaroo Valley Road, Bellawongarah' prepared for 'Camberlee Investments' by JBA Urban Planning Consultants Pty Ltd (dated 16 October 2014). (*NB. No appendices are included with the SEE electronic file, however they appear to have been provided as separate documents on the CD*).
- Document titled 'Rockfield Park Resort: Landscape Masterplan Report', prepared by Site Image Landscape Architects, dated September 2014 and Landscape Plans prepared by Site Image Landscape Architects (sheets 000, 100-101, and 121-132) dated 16.09.2014.
- Architects Statement, incorporating Visual Impact Statement and Plan of Management, prepared by PTI Architects, dated 15.09.2014.
- Building Energy Efficiency Certificate dated 02.10.2014 (Certificate No. 1006932691), issued by the Association of Building Sustainability Assessors. Appended are stamped copies of 'Homestead - Plans' and 'Homestead - Elevations & Sections' plans (Dwgs. 36-37, rev. A, prepared by PTI Architecture 26/09/2014), and a copy of the NatHERS Thermal Performance Specification (BASIX Thermal Comfort), and Building Energy Efficiency Certificate.
- BASIX Assessment Report prepared by ESD Synergy, dated 02.10.2015. The report applies to one proposed single level dwelling (Homestead/Residence). Appended to the document is the BASIX Certificate, issued 02.10.2014 (No. 579732S).
- 'Cost of Works Summary' prepared by PTI Architects, dated 23.09.2014, which provides a total estimated cost of \$14,925,000 for the proposed development.
- Various other specialist subconsultants reports/plans, including additional information responses as listed in Appendix 2 of this Audit.
- Various referrals to and from Department of Primary Industries (including Office of Water), Rural Fire Service, National Parks and Wildlife Service, Office of Environment and Heritage, NSW Roads and Maritime Services, Sydney Catchment Authority and Endeavour Energy.

- Various referrals to and from Council officers including Building Surveyor, Threatened Spaces Officer, Shoalhaven Water Group, Sewage Management Facility Officer, Tourism Manager, Traffic and Transport, Natural Resources and Floodplain, Development Engineer, Environment Officer.
- Various requests for additional information forwarded by Council to the applicant (via email and letter) and email communication to/from Council and the applicant.
- Extracts of minutes from Shoalhaven City Council meetings held on 18 November 2014 and 16 December 2014. The extracts from both meetings present motions to extend the submission period for RA14/1004 by at least four weeks, and to approach the JRPP to hold an advertised residents briefing meeting in Berry. The motions were carried.
- A request from Council for a legal opinion and various legal opinions including;
  - Copy on 'Request for Legal Services' by Andrew Lissenden and by Cathy Bern on 28.05.2015 (recipient unknown). The request concerns the following issues: the permissibility of the function centre component of the proposed development, the accurate classification of the proposed development as an eco-tourist resort, and details of any Land and Environment Court cases relating to Eco-tourist facilities.
  - Memorandum of Advice prepared by C.W. McEwen SC dated 3 February 2015.
  - Supplementary Memorandum of Advice prepared by C.W. McEwen SC dated 3 February 2015.
  - Memorandum of Advice prepared by Philip Clay dated 3 March 2015.
  - Memorandum of Advice from Ian Hemmings dated 17 August 2015.
- Copy of email correspondence to SCC from Richard Cullinan (Director, Cullinan Ivanov Partnership), dated 3 June 2015 relating to the obtaining of a legal opinion.
- Document titled 'Response to Submissions to Council and to stakeholder concerns based on the meeting in Berry Community Hall, 9th December 2014' (author and date unknown).
- Various 'peer reviews' (including requests for fee proposal from consultants) and responses to peer reviews (as listed in Appendix 2) including;
  - Review of Proposed Eco Tourist Resort prepared by Martens Consulting (dated 25 May 2015, 5 June 2015 and 23 June 2015);
  - Wastewater Management Strategy- Peer Review Response prepared by Diversi Consulting dated 14 July 2015;
  - Technical Review of Acoustical Submissions prepared by Day Design (Ref 558-1.1R dated 18 February 2015).
  - Review of Day Design Comments' prepared by Acoustic Logic (Ref 20140424.1/0704A/RO/BW dated 7 April 2015).
- Written and Published notices, including the most recent documents being the 'Re-notification' notice published in the South Coast register on 11.9.15 and 23.9.15 and letters to landowners, Endeavour Energy, Kangaroo Valley Tourist Association, Kangaroo Valley Progress Association and Berry Forum dated 10 September 2015.

#### 4.0 Statutory Procedure

Comment on the relevant clauses of Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) (as amended), the *Environmental Planning Assessment Regulation 2000* (the Regulation) and other relevant environmental planning instruments and development control plans/policies is provided below:

## 4.1 Environmental Planning and Assessment Act 1979

### **Part 1: Preliminary**

Section 5A (Significant effect on threatened species, populations or ecological communities or habitats) specifies matters to be taken into account in deciding *"if there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats"*. The site contains Illawarra Subtropical Rainforest (an EEC under the NSW Threatened Species Conservation Act 1995) and the application was accompanied by a Flora and Fauna Report and supplementary report prepared by Travers Bushfire & Ecology to address the requirements of Section 5A (the contents of which are further referenced in relevant sections below).

### **Division 3 of Part 2A: Joint Regional Planning Panels**

#### Section 23G: Joint regional planning panels

Subclause (2A) states that *"an environmental planning instrument may only confer a council's functions as consent authority on a regional panel if the development is of a class or description set out in Schedule 4A"*. Clause 7 of Schedule 4A includes eco-tourist facilities that have a capital investment value of more than \$5 million and accordingly the Joint Regional Planning Panel will determine the application, with Council's functions conferred under section 23G.

### **Division 1 of Part 4: Development Assessment**

#### Section 76A(Development that needs consent):

Section 76A of the Act indicates that development consent is needed for development if a relevant environmental planning instrument so requires. The proposed use is not exempt development or complying development under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 nor under Clause 3.1 (Schedule 2 – Exempt Development) or Clause 3.2 (Schedule 3 – Complying Development) of Shoalhaven LEP 2014 (gazetted on 22 April 2014).

### **Division 2 of Part 4: Development Assessment**

#### Section 77A (Designated Development):

Section 77A confirms that designated development can be declared by an environmental planning instrument or the regulations. Clause 29(1)(b) of Part 1 of Schedule 3(Designated Development) of the Environmental Planning and Assessment Regulations, 2000 references sewerage systems which have an intended processing capacity of more than 20 persons equivalent capacity and which are located within 100 metres of a natural waterbody or wetland, or within 250 metres of a dwelling not associated with the development.

However, clause 37A (Ancillary Development) states that *"Development of a kind specified in Part 1 is not designated development if:*

- (a) it is ancillary to other development, and*
  - (b) it is not proposed to be carried out independently of that other development.*
- (2) Subclause (1) does not apply to development of a kind specified in clause 29 (1) (a)."*

As the sewerage system is not of a capacity referenced in clause 29(1)(a) and the system is ancillary and an integral part of the development to be undertaken on the site, we are satisfied that the sewerage treatment

system is not defined as Designated Development pursuant to Schedule 3 (Designated Development) of the Environmental Planning and Assessment Regulations, 2000.

Section 78A (Application):

Section 78A(8) specifies that a development application (other than an application in respect of State significant development) must be accompanied by:

- (a) if the application is in respect of designated development—an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations, or*
- (b) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats—a species impact statement prepared in accordance with Division 2 of Part 6 of the Threatened Species Conservation Act 1995.*

*Note. Part 7A of the Threatened Species Conservation Act 1995 provides for certain circumstances in which development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.*

The proposed development is not designated development (refer section 77A discussion above) and therefore an Environmental Impact Statement is not required to accompany the development application. Hence, section 78A(8)(a) is not relevant to the application.

With respect to section 78A(8)(b) the application was accompanied by a Flora and Fauna Assessment prepared by Travers Bushfire and Ecology (Reference 'Draft' A13119, dated August 2014) which concludes that the proposed Rockford Park Resort *"is unlikely to result in a significant impact on any threatened species, populations or EECs or their habitats"*. Further, the report indicates (page 71) that *"the site has not been identified as critical habitat"* under the provisions of the Threatened Species Conservation Act, 1995. Correspondence from Travers Bushfire and Ecology dated 27 August 2014 was submitted in response to a request for additional information from Council's Threatened Species Officer dated 21 October 2014. This correspondence concluded that a *"not significant" impact conclusion remains valid on threatened fauna species"*.

Following review of the correspondence dated 27 August 2014 from Travers Bushfire and Ecology, Council's Threatened Species Officer confirmed in a memo dated 3 March 2014 that the officer (noted as 'AJ') concurs with the assessment of impacts as contained in the submitted advice. Further, the Office of Environment and Heritage in advice dated 25 November 2014 advised that *"the proposal is unlikely to result in a significant impact upon any threatened species, endangered population or ecological community"*. On the basis of the assessment undertaken by Council and by the Office of Environment and Heritage it is accepted by TCG Planning that the land is not critical habitat nor is it likely to significantly affect threatened species, populations or ecological communities, or their habitats. Accordingly, the submission of a species impact statement is not required under section 78A(8)(b).

Section 78A(9) confirms that *"the regulations may specify other things that are required to be submitted with a development application"*. Compliance with the requirements of the EPA Regulations with respect to lodgement requirements is discussed in the following sections of this audit.



#### Section 79A (Public Participation - advertised and other notifiable development)

Clause 5 of the EPA Regulations includes the following types of development (not being designated development or State significant development) as advertised development:

*"(b) integrated development (not being threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 90A of the Act) under:*

- (i) a provision of the Heritage Act 1977 specified in section 91 (1) of the Act, or*
- (ii) a provision of the Water Management Act 2000 specified in section 91 (1) of the Act, or*
- (iii) a provision of the Protection of the Environment Operations Act 1997 specified in section 91 (1) of the Act".*

Such development is referred to by the Regulations as 'nominated integrated development'. As the proposed development requires the Obtaining of a Controlled Activity Approval under section 91 of the Water Management Act, 2000 the development is defined as nominated integrated development and hence is referred to by clause 'other advertised development'.

Section 79A(1) of the Act requires notice for advertised development and other notifiable development to be given in accordance with the provisions of the EPA Act, the regulations, the relevant environmental planning instrument and any relevant development control plan. The advertising requirements for other advertised development are contained in clauses 87-91 of the Environmental Planning and Assessment Regulations (EPA Regulations), as discussed in the later section of this audit.

#### **Division 4.1 of Part 4: State Significant Development**

##### Section 89C: Development that is state significant development

Section 89C(2) of the EPA Act enables a State Environmental Planning Policy to declare any development, or any class or description of development, to be 'State significant development'. Clause 8 of State Environmental Planning Policy (State and Regional Development) 2011 lists state significant development within Schedules 1 and 2. Schedule 1 of this SEPP includes:

- (2) Development for other tourist related purposes (but not including any commercial premises, residential accommodation and serviced apartments whether separate or ancillary to the tourist related component) that:*
  - (a) has a capital investment value of more than \$100 million, or*
  - (b) has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance or a sensitive coastal location.*

The Area Schedule and Costing Calculation prepared on 23 September 2014 (presumably by the applicant) indicates that the development has an estimated cost of \$14,925,000, which is less than the specified amount which would result in the development being identified as state significant development, as it is not located in an environmentally sensitive area of State significance or a sensitive coastal location.

#### **Division 5 of Part 4: Special Procedure for Integrated Development**

##### Section 91: What is integrated development"?

The proposed development is integrated development for the purpose of section 91 of the EPA Act, 1979. Specifically, the proposed development requires an activity approval under section 91 of the Water

Management Act, 2000. Further, an authorisation under section 100B of the Rural Fires Act, 1997 is required in respect of bush fire safety for the development of land for special fire protection purposes. The proposed development, which comprises tourist accommodation, is defined as a special fire protection purpose under section 100B (Bush fire safety authorities) of this act and a person must obtain a bushfire safety authority before developing bush fire prone land for a special fire protection purpose.

#### Section 91A: Development that is Integrated Development

The application was referred to the Department of Primary Industries (Office of Water) on 3 November 2014 and subsequent additional information forwarded, with General Terms of Approval issued on 15 May 2015. Further, the application was referred to the NSW Rural Fire Service on 3 November 2014 and subsequent additional information forwarded, with a final Bush Fire Safety Authority issued on 28 July 2015, in compliance with this section.

### **Part 8: Miscellaneous**

#### Section 147: Disclosure of Political Donations

This section requires a person who makes a 'relevant planning application' to disclose *"reportable political donations or gifts (if any) made by any persons with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined."* Section 18 of the development application has been completed, indicating that no such donation has been made.

## **4.2 Environmental Planning and Assessment Regulation 2000**

### **Division 1 of Part 6: Procedures relating to development applications**

#### Clause 49 and 50

Development applications are required to be submitted in accordance with the provisions of clauses 49 and 50 of the *Environmental Planning and Assessment Regulation 2000*. In this regard, the consent of the owner of Lot 13 (DP707955) Kangaroo Valley Rd, being Camberlee Investments Pty Ltd, was obtained, with the notation on the application form indicating that the signatory (David Hamilton) is a director of Camberlee Investments Pty Ltd. Further, the application was received and registered by Council. It is noted that no record of fees was appended to the document, nor could a record of fees, receipt or invoice, be found on Council's disk of documents submitted as part of this audit. However, we note that a receipt number (28/23991) has been documented on the Development Application for fees in the amount of \$20,706.11. It is recommended that a copy of the receipt and clarification of the breakdown of fees be appended to the development application file.

With respect to the registration of the application it is recommended that Council ensure that the 'Office Use Only' section of the DA form is updated to reflect the date that the development application was lodged (17 October 2014). Further, the 'total project value' (\$13,568,181) recorded on the DA Application form lodged by Camberlee Investments on 17 October 2014 is inconsistent with that reported in the Cost of Works Summary prepared by PTI Architects on 23 September 2014 (\$14,925,000). Council should confirm the correct project value and, if required, obtain or refund any difference in fees.

Clause 50(1)(a) specifies that a development application *"must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1"*. The application form contains the name and address of the applicant; a description of the development; the address/formal particulars of the subject and; a list of concurrence/approval authorities; the estimated cost of the development (although a discrepancy is noted between submitted information as previously discussed); owners consent; meeting the information requirements of Part 1 of Schedule 1. Although a checklist was not submitted by the applicant it is considered that the 'Appendix' list contained in the Statement of Environmental Effects prepared by JBA adequately satisfies this requirement.

Further, the application is accompanied by documentation submitted in compliance with clauses 2(1) to (3) of Part 1 (Schedule 1) including a site plan (showing a north point and details of existing vegetation); an aerial photo showing the location of adjoining buildings and a description of uses on adjoining land (contained in sections 2.2 and 2.3 of the Statement of Environmental Effects); a survey plan which shows existing site levels, dimensions and site area; sketch plans (showing building locations, floor plans, elevations finished levels, parking arrangements and access, landscaping and drainage); plans suitable for exhibition purposes; plans showing the existing buildings where expansion/alteration is proposed; a statement that specifies the maximum number of persons that will occupy the restaurant/function centre; and a Statement of Environmental Effects prepared by JBA (Ref 13463, dated October 2014), in compliance with clause 2(4).

Clause 2A requires the submission of a BASIX certificate for any BASIX affected development, with a certificate to be issued no earlier than 3 months before the date on which the development application is made. In response to this requirement a BASIX Assessment report was prepared by ESD Energy on 2.10.14 (incorporating Certificate 579732S and stamped plans) in respect of the 'Rockfield Park Residence', which is defined as a BASIX affected building. This certificate was within the 3 month date of validity and therefore at the time of lodgement was a relevant and valid certificate.

#### 55 What is the procedure for amending a development application?

Clause 55 of the EPA Regulations allows for the amendment or variation of a development application by the applicant (with the consent of Council) however requires, in the case of integrated development that the consent authority must immediately forward a copy of the amended or varied application to the concurrence authority or approval body. The NSW RFS references in its correspondence of 25 November 2014 and 28 July 2015 references Council's initial correspondence of 3 November and also later correspondence of 3 May 2015. Correspondence from Office of Water dated 15 May 2015 confirms that subsequent correspondence was received from Council following the initial referral of 3 November 2014. Accordingly, it is considered that the provisions of this clause have been met.

#### 55A Amendments with respect to BASIX commitments

This clause applies to a development application that has been accompanied by a BASIX certificate and requires the submission of a replacement BASIX certificate where the development application has been amended or varied such that the proposed development differs *"in any material respect from the description contained in a current BASIX certificate for the development"*. It is noted that the plans for the BASIX affected building (homestead/residence) which were viewed as part of the BASIX certification report (PTI Architects, 'Homestead - Plans', dated 26.09.2014, Drawing 36, Revision A, and 'Homestead Elevations and Sections' dated

26/09/2014, Drawing 37, Revision A) have been superseded by plans dated 10.11.2014 (Dwgs. 36 and 37, Revision B). Whilst the changes to the building are not significant, we note that there are changes to the roofline and possibly the level of glazing which may impact on the energy efficiency outcomes. Accordingly, the consent authority should ensure that it is satisfied that the changes will not affect the BASIX outcomes and, if it concludes that the building is now materially different, it should request the submission of a replacement BASIX Certificate to meet the requirements of clause 55A.

### **Division 7 of Part 6 Public participation—other advertised development**

#### 66 Seeking general terms of approval

Clause 66 requires the consent authority to forward a copy of the application (together with all accompanying documentation) to applicable approval bodies and shall include details of the basis on which its approval is required, the date of receipt of the development application, and (if known at that time) the dates of the relevant submission period if the application is to be publicly notified under section 79 or 79A of the Act.

Subclause (2) requires that an application "*that indicates on its face that such an approval is required*" must be forwarded to the relevant approval body within 14 days after the application is lodged. In this regard the development application was lodged on 17 October 2014 (as noted on Council's online application register) and correspondence was referred to Department of Primary Industries (Office of Water) and NSW Rural Fire Service on 3 November 2014, noting which approval is required. Whilst this timeframe is slightly beyond the 14 days specified it is assumed that Council was initially assessing the application to confirm the approvals which were required and, on this basis, the timeframe meets the intended outcome of this clause. This has been confirmed by the assessing officer, within the report to the Joint Regional Planning Panel (2014STH025) where it is stated "*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, vetting, etc)*".

#### 69 Forwarding of submissions to approval bodies

This clause applies to development that is required to be advertised or notified under section 79 or 79A of the Act and requires that "*Immediately after the expiration of the relevant submission period, the consent authority must forward to each approval body a copy of all submissions received in response to the advertisement or notification*". At the date of finalising this audit the re-notification period had been completed. Further, Council had forwarded emailed advice to the Department of Primary Industries - Office of Water and the NSW Rural Fire Service on 19 October 2015 advising of the number of submission received and including a link to enable access to the submissions. Acknowledgement of this advice and confirmation that the Bush Fire Safety Authority remains applicable was received from NSW RFS on 19 October 2015. The Office of Water also acknowledged this email and confirmed that "*groundwater extraction has been adequately considered by the proponent and therefore*" the Office of Water "*has no further comment in this regard*".

#### 70 (Notification of general terms of approval)

The NSW RFS and DPI - Office of Water have both provided General Terms of Approval (GTAs). Both the NSW RFS and DPI – Office of Water provided GTAs within 21 days after each department received advice from

Council of the submissions received, meeting the required timeframe for an application which is required to be notified under Section 79A of the EPA Act.

#### ***Division 7 of Part 6 Public participation—other advertised development***

##### Clause 87: How must a development application be publicly notified?

This clause requires the consent authority to give written notice of the application and publish a notice, advising of the application, in a local newspaper. Following completion of an initial review of the processing of the application, TCG Planning identified that advertising of the application did not meet the relevant requirements of the EPA Regulations, 2000, as the development meets the criteria of 'other advertised development' (nominated integrated) and accordingly Council proceeded with re-exhibition of the application. Following review of the latest exhibition documents TCG Planning is satisfied that the requirements of this clause have been satisfied, as Council has placed published notices in the South Coast Register on 11 and 23 September 2015 and a written notice, meeting the notification requirements, was forwarded on 10 September 2015.

##### Clause 88: Who must written notice be given to?

Clause 88 requires that a written notice of the development application must be given to "such persons as appear to the consent authority to own or occupy the land adjoining the land to which the application relates" and "to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the consent authority, may have an interest in the determination of the application". In addition to the approval authorities Council also forwarded correspondence to landowners located within 1500m of the development site (including both private owners and Crown Lands Office), Endeavour Energy, Kangaroo Valley Tourist Association and Kangaroo Valley Community Association. Council, at the time of re-advertising did not forward further correspondence to Roads and Maritime Services, NSW Police Force, National Parks and Wildlife Service, Department of Primary Industries - Fisheries NSW and Office of Environment and Heritage. However, referral to such departments was not legislatively required and, having reviewed the advice received, it is not anticipated that the advice from such departments would alter as a result of re-referral and hence this is considered acceptable.

##### Clause 89: What information must be contained in a written notice and a published notice?

Clause 89(1) requires that the written notice and published notice must contain the following information:

- (a) a description of the land (including the address) on which the development is proposed to be carried out,*
- (b) the name of the applicant and the name of the consent authority,*
- (c) a description of the proposed development,*
- (d) a statement that the application and the documents accompanying that application may be inspected at the consent authority's principal office for a period specified in the notice during the consent authority's ordinary office hours,*
- (e) a statement that any person during the period specified under paragraph (d) may make a written submission in relation to the development application to the consent authority,*
- (f) the dates of the period specified under paragraph (d).*

Clause 89(2)(a) states that in the case of integrated development the written notice and the published notice:

- (i) *must contain a statement that the development is integrated development, and*
- (ii) *must state the approvals that are required and the relevant approval bodies for those approvals,*

Further, under clause 89(2)(b) in the case of development that is threatened species development, the written and published notices must contain a statement that the development is threatened species development.

The proposed development is not "threatened species development" as defined by clause 4 & 5 (1) (c) of the EPA Regulations, as it is not development to which section 78A(8)(b) of the EPA Act applies. Accordingly, the published and written notices are not required to refer to the development being "*threatened species development*". However, the subject development is integrated development under the Water Management Act, 2000 and the Rural Fires Act. Whilst it is noted that only the approval requirement under the Water Management Act triggers the 'nominated integrated development' definition, it is noted that neither the approval requirements under the Water Management Act, nor the Rural Fires Act were stated on the original written and published notices. Further, neither the original written nor published notices referenced the development as being integrated development. Accordingly, in our opinion the requirements for the original notification of the application had not been met. Council, upon being made aware of this omission proceeded to readvertise the development, with a published notice placed in the South Coast register on 11 September 2015 and 23 September 2015 and notification letters sent to landowners on 10 September 2015. The amended published and written notices contained a statement that the development is integrated and also reference the approval bodies and approvals required and therefore now meet the requirements of clause 89.

Clause 89(3) requires that in the case of nominated integrated development the application must be advertised for a period of 30 days, commencing on the day after the day on which the published notice is first published in a newspaper. The application was re-advertised from 11 September 2015 to 14 October 2015, in compliance with clause 89(3).

Additional requirements for advertising are contained in Shoalhaven Council's Community Consultation Policy for Development Applications (including Subdivision) and the Formulation of Development Guidelines and Policies. Section 3.3.2 of this policy specifies that RDAs will be advertised for a minimum period of 30 days, except where state legislation specifies a longer period. As noted above the 30 day requirement is applicable and has been met.

The written and published notices comply with the requirements of clause 89(1) of the EPA Regulations as they contain a description of the land; the name of the applicant (Camberlee Investments Pty Ltd); the name of the consent authority (JRPP); a statement that the application and documents may be viewed at the offices of Shoalhaven Council during office hours; a statement that any person may make a written submission (until 14 October 2015); and the dates of the exhibition period (11 September to 14 October 2015). The notices published in the South Coast Register on 11 and 23 September also contained the information required by clause 89.

Section 3.3.3 of the policy requires all property owners and Council's community consultative bodies who may be affected by the development to be notified in accordance with Table 1 of the policy. Level 2

development specified in Table 1 includes tourist development. The degree of community consultation which is required for Level 2 development is neighbour notification within a 60m radius in urban areas and 200m in rural areas. Relevant community consultative bodies and the Chamber of Commerce are also to be notified. Council has clarified that individual property owners within a 1,500 metre radius of the site were notified of the proposal (on 10 September 2015). The Notification letter contained the information as specified in Section 3.3.20 of the policy. Further, the Berry Forum was forwarded a letter advising of the proposed development, also on 10 September 2015.

Section 3.3.21 (Signs) of the policy indicates that signs may be erected to identify those sites the subject of a development application if the Director, Development and Environmental Services, considers such a sign to be appropriate having regard to the nature of the application or the location of the site. Council in this instance has determined this to be the case. Photos of signs which were erected on the site have been appended to the file.

Council officers have confirmed that the development application and supporting documentation was displayed at Council's City Administrative Centre in Nowra and on Council's website. The published and written advertisements notes that documents and plans are available were available on Council's web page. Regional development applications are also to be registered on the state government website at [www.jrpp.nsw.gov.au](http://www.jrpp.nsw.gov.au). Emailed correspondence (31 October 2014) from the JRPP Secretariat confirms that RA14/1004 had been received by the Panel Secretariat. At the date of preparing this audit the application was listed on the JRPP website.

Section 3.3.25 of the Community Consultation Policy specifies that advertised material shall be made available on Council's online tracking system for a period of approximately 2 weeks after the close of the exhibition period. As at 30 October 2015 the information remained available on Council's on line tracking system, meeting the requirements of section 3.3.25.

Clause 91: Public notification of development application and accompanying information

A development application and any accompanying information is required to be made available for inspection during the relevant submission period at the place or places specified in the public notice and any person may inspect and obtain copies of information. The information was available on Council's web page as specified in the published and written notice and the assessing officer has confirmed in the section 79C assessment that the information was also available for inspection at the places specified in the notice, being Council's Administration Centre, meeting the requirements of this clause.

## PART B: PEER REVIEW

### 4.3 Review of Assessment under Section 79C of EPA Act, 1979

The auditor has also undertaken a review of the report to the Joint Regional Planning Panel (JRPP) No. 2014STH025 pertaining to the subject development application referenced as RA 14/1004 - Eco tourist facility, function centre and associated infrastructure, which was prepared by Andrew Lissenden, Development Coordinator of Shoalhaven Council and which was provided via email on 2 November 2015. The review of this report does not comprise a merits based assessment but is limited to consideration of whether the assessment addresses the relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act and whether relevant legislative provisions have been satisfactorily met by Council in undertaking this assessment.

The relevant matters for consideration under Section 79C (Evaluation) of the Environmental Planning and Assessment Act, 1979 are listed below, together with a comment confirming, whether, in the opinion of TCG Planning, the consideration of each matter is complete and has met legislative requirements.

#### (i) any environmental planning instrument

##### State Environmental Planning Policies

We are of the opinion that the provisions of relevant State Environmental Planning Policies have been adequately addressed in relation to:

- Approval requirements under State Environmental Planning Policy (State and Regional Development) 2011 (SEPP Development):
- Referral requirements under State Environmental Planning Policy (Infrastructure) 2007: Division 17 'Roads and Traffic' Subdivision 2 'Development in or adjacent to road corridors and road reservations' of the SEPP is applicable to land which has a frontage to a classified road. Clause 100(1) specifies the type of development on a classified road (or proposed classified road) that is permitted and requires concurrence by the RTA (now RMS). Whilst the RMS "*Schedule of Classified Roads and Unclassified Regional Roads*" is contradictory in relation to the identification of classified roads in this locality, Council referred the application to the RMS on 3 November 2014, as it noted that referral was required in accordance with Schedule 3 of the SEPP. The RMS advised on 21 November 2014 that the proposed development does not gain access to the classified road network. Accordingly, the referral requirements of this SEPP have been met.
- Referral requirements under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011: Clause 11 (Development that needs concurrence of regulatory authority) of this SEPP specifies that "*a consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment except with the concurrence of the Regulatory Authority*". The application was referred to Sydney Catchment Authority on 3 November 2014, with Council indicating in its correspondence that the "*maps are unclear*". The Sydney Catchment Authority advised in correspondence of 6 November 2014 that "*as the proposed development is located outside of Sydney's Drinking Water Catchment it is not subject to the provisions of the SEPP, and thus concurrence of the Chief Executive is not required*".



Council has determined that the amended plans for the residence are not materially different to the original plans which were accompanied by a BASIX assessment and has recommended a condition to require inclusion of the BASIX requirements on the plans to be lodged for the construction certificate. The consent authority should reaffirm this position to ensure that the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) have been met.

With respect to the requirements of SEPP 55 – Managing Land Contamination this policy requires that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated. Further, subclause (2) specifies that:

*"(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines."*

Subclause (4) requires this investigation to be carried out where:

- (a) land that is within an investigation area,*
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
  - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
  - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The report to the JRPP states that "a potentially contaminating activity has not been previously conducted on the land" and "the current application does not propose a change of use of land as specified by the requirements of SEPP 55". However, the officer's report also notes that the land "is currently being used for low scale farming". Whilst the potential for contamination is likely to be low, it is noted that "agricultural/horticultural activities" are listed in Table 1 Contamination of the Managing Land Contamination Guidelines (DOPE then DUAP) as an activity that may cause contamination. Further, we are of the opinion that a change in land use is proposed. The type of agricultural activity which has been carried out on the land is unclear. Based on the requirements of subclause (4)(b) and 4)(c)(i) it is considered that it would have been prudent to have obtained information regarding the type of agricultural activities conducted on the site or to have requested a Phase 1 investigation. TCG Planning consider that in the absence of this information the requirements of SEPP 55 have not been met, however recommend that the consent authority consider its position with respect to this matter in its determination of the application.

#### Local Environmental Plans

Shoalhaven Local Environmental Plan 2014 (SLEP 2014) was published on 8 April 2014 and applies to RA14/1004 which was lodged on 17 October 2014.

The property is predominantly zoned RU1 Primary Production under this plan, with the majority of works sited within this zone. Part of the land is zoned E2 Environmental Conservation and some works sited in the north-western portion of the site are located in this zone. The Council officer in his report to the JRPP has correctly considered the objectives and permissible uses of each zone and has determined that the proposed uses are captured by the definitions of 'eco-tourist facility' (accommodation buildings, wildlife centre/refuge building, spa building, gym/pool, manager's quarters and associated infrastructure); 'food and drink premises' (restaurant, bar and associated kitchen facilities within the central facilities building); 'function centre' (wedding/function centre room within central facilities building); and 'dwelling house' (for the proposed dwelling to be used for permanent occupation).

SLEP 2014 defines as 'eco-tourist facility' 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.*

*Note. See clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.*

*Eco-tourist facilities are not a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.'*

We concur that this the use is most appropriately defined as an eco tourist facility subject to the consent authority's acceptance of the Council officer's merits based advice that the development meets subclauses (b) and (c) of the 'eco-tourism' definition.

With respect to the proposed dwelling house, we note that this dwelling will replace the existing dwelling on the site, which is to be converted to a central facilities building. We agree with the advice contained the Council officer's report that a dwelling house is a permissible use within the RU1 zone and we are satisfied that a replacement dwelling is permissible under clause 4.2D(5) (erection of dwelling houses on land in certain rural, residential and environment protection zones).

With respect to the categorisation of the restaurant component of the development as a 'food and drink premises' we concur with this definition. We also concur with the Council officer's conclusion that the wedding/function centre is most appropriately defined as a 'function centre' which is defined within 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"*.

We are also satisfied that the Council officer assessment report adequately considers other relevant clauses within SLEP 2014, however we draw no conclusion regarding the merits based assessment which the Council officer has made in relation to such clauses (noting that this does not form part of our brief).

We do note that the Council officer's report:

- a) Specifically draws attention to the ability of the development to meet the provisions of clause 5.13 and particularly subclause (3)(a) (which requires evidence of a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area) and subclause (3)(k) (which requires submission of a management strategy) and agree that these are fundamental issues to which the consent authority must be satisfied prior to granting consent.
- b) Indicates that Clause 7.5 (Terrestrial Biodiversity) applies and that the 'Terrestrial Biodiversity Map' identifies the site as being affected by 'Biodiversity - habitat corridor'. We note that the written descriptor on Council's online mapping also indicates that the site contains 'Biodiversity Significant Vegetation' however this is not reflected in the mapping and appears to be an error in the written description. We are therefore satisfied that the officer's report adequately considers this clause.
- c) Does not reference clause 7.1 (Acid Sulfate Soils), which applies as the Acid Sulfate Soils Map indicates that the land contains class 5 acid sulfate soils. However, as the works are not within 500m of class 1,2,3 or 4 lands that are below 5 metres AHD the preparation of an Acid Sulfate Management plan is not required.
- a) States that in relation to clause 7.11 (Essential Services) that the site can be serviced. In this respect we note that the this clause states that *"Development consent must not be granted for development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required...."*. Martens Consulting Engineers have identified that this has not been adequately demonstrated, and therefore have suggested the issuing of a deferred commencement consent. However, clause 7.11 of SLEP 2014 does not enable the consent authority to grant development consent (whether in the form of a deferred commencement consent or otherwise) unless it is satisfied that adequate arrangements have been made to provide services when required. On the basis that Martens Consulting have confirmed in advice of 11 August 2015 that *"sufficient information has been provided to allow Council to be confident that a development of the type and scale detailed is able to be provided with adequate (groundwater supplied) and able to effectively manage wastewater on the site"* we believe that clause 7.11 is satisfied.

With respect to servicing it is also noted that the site is not connected to reticulated water supply and hence will rely on rainwater, water from a bore and from dams on the site. OEH, in correspondence of 15 May 2015 advised that the bore is currently licensed only for stock and domestic use and that the proponent has made application to change the licence to *"commercial use with an extraction volume of up to 10ML which is currently being processed and assessed. The proponent has also established a Water Access Licence (Zero Share) to facilitate water trading but which presently has no allocated volumetric entitlement"*. Whilst the availability of water supply does not appear to be in dispute, as a range of options appear to be available, there is a need to demonstrate the exact source of such supplies, particularly in the event that a commercial licence cannot be obtained. We concur that one option which exists is the issuing of a 'deferred commencement' with a condition which requires that the applicant to demonstrate the source and volumes of the water supply, and/or that approval/licensing has been obtained to allow the bore to be utilised for commercial purposes. However, prior to issuing a consent in any form the consent authority is required to confirm that it

endorses the officer's advice that clause 7.11 is met and that adequate arrangements have been made for servicing.

**(ii) Proposed instrument (the subject of public consultation and notified to the consent authority),**

We are not aware of any draft planning instrument which has been notified and which is of relevance to the subject application.

**(iii) any development control plan**

Shoalhaven Development Control Plan 2014, which is the current DCP in force, was adopted by Council on 14 October 2015 and came into force on 22 October 2014. RA 14/2014 was lodged on 17 October 2014. Section 10 (Savings and Transitional Provisions) of SDCP 2014 states "*Shoalhaven DCP 2014 does not apply to any development application that was lodged with Council before the commencement of this Plan on 22 October 2014*". Therefore, this DCP does not apply to the proposed development and the provisions of any previous DCPs, technical policy or other Council policies apply.

We are also satisfied that the Council officer's assessment report has considered the applicable development control plans and policies which were in force at the date on which the development application was lodged, being DCP 18 - Car Parking Code, DCP 63 - Tourist Development in Rural Areas, DCP 78 - Effluent Disposal in Unsewered Areas, DCP 91 (Minimum Building Requirements), DCP 93 (Waste Not- Site Minimisation and Management) and POL12/127 (Council's Policy for Reflective Building Materials) . However, again we draw no conclusion regarding the merits based assessment which the Council officer has made in relation to such DCPs, policies and contributions plans (noting that this does not form part of our brief). We do note that the Council officer's report:

- b) States that Australian Standards 2890.1 and 2890.6 is to be used in the assessment of parking layout and dimensions, instead of the requirements contained in DCP 18. Council has discretion in this regard and hence the use of this assessment standard is reasonable.
- c) Has identified that DCP 63 (Tourist Development in Rural Areas) contains a density standard which specifies a maximum number of accommodation units based on a site area. Section 3.4 (variations) of this DCP specifies that variation to standards within the DCP may be sought "*where it can be shown that a proposal will not compromise the aims and objectives of the plan and that the performance criteria will be satisfied. Any request must be supported by sufficient detail to justify a proposed variation*". The applicant has submitted a request to vary this standard in Table 6 of the Statement of Environmental Effects prepared by JBA (dated 16 October 2014) to allow Council to make a merits based decision for the variation, as contained in the report to the Joint Regional planning Panel.

**(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,**

We are of the opinion that Council has addressed the applicable likely impacts of the development , being threatened species, noise/odour/dust, context and setting, visual impacts. traffic/access, economic/social impacts. The merits of this assessment will be considered by the Joint Regional Planning Panel and does not form part of the current audit.

**(c) the suitability of the site for the development,**

Council has considered the suitability of the site for the development within its report, with the merits of this assessment to be considered by the Joint Regional Planning Panel.

**(d) any submissions made in accordance with this Act or the regulations,**

The report to the Joint Regional Planning Panel identifies that 292 submissions and a petition signed by 1,277 people have been submitted to Council. Section 4 of the report confirms that *"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"* and the report provides a summary of the key issues raised in submissions. We have also been advised that copies of submissions have also been provided for viewing by the JRPP.

Further, the report to the JRPP considers matters raised within agency submissions (in addition to referrals from Council officers). Whilst the merits of this assessment has not been considered attention is drawn to the following key issues:

- a) With respect to potential acoustic issues we concur with the officer's recommendation that the approach suggested by Day Design within the 'Acoustical Peer Review of Environmental Noise Impact - Assessment Revision 3' dated 27 August 2013, which recommends conditioning to address noise non compliance issues should not be utilised. We are of the opinion that acoustic compliance is a fundamental issue hinging on the suitability of the site to accommodate the proposed use and therefore believe that the ability to comply with noise levels should be demonstrated prior to approval.
- b) With respect to traffic flows it is noted that the views of Council's Traffic Engineer differ from those of NSW Police, who have raised objection to the development. We note that the comments of the NSW Police are advisory only and the Council officer has correctly confirmed that the advice of the Traffic Officer of Council may take precedence.
- c) With respect to Aboriginal heritage it is acknowledged that the Office of Environment and Heritage has confirmed that it has *"no role to play in the due diligence process"*. However, it is recommended that the consent authority ensure that it is satisfied with the officer's recommendation to not proceed with further Aboriginal heritage investigations at this time, rather than requiring the applicant to undertake further investigations prior to determination of the development application. TCG Planning consider that this is a matter of ensuring the site is suitable for the proposed development despite Council and OEH's non involvement in the due diligence process.

**(e) the public interest.**

Council has considered the public interest within its report, with the merits of this assessment to be considered by the Joint Regional Planning Panel.

**Other Issues Identified in Officer's report to the JRPP**

We have reviewed the other issues addressed within the officer's report to the JRPP, namely drainage, aboriginal cultural heritage, legal advice, bush tailed rock wallaby conservation program, landscaping, landowners consent, easements/restrictions, safety and security, energy efficiency, flooding and climate change and raise no concerns with respect to the range of issues considered by Council officers.

## CONCLUSION AND RECOMMENDATIONS

It is the auditor's opinion that the processing of RA14/1004 and the assessment under Section 79C (in the form of a report to the JRPP) meets the legislative requirements of the EPA Act, 1979, EPA Regulations and relevant environmental planning instruments including Shoalhaven Local Environmental Plan 2014, following the recent re-exhibition of the application, subject to the following being undertaken/considered:

- 1) The consent authority should ensure that it is satisfied that the homestead/residence, being a BASIX affected building, is not materially different to the design which was the subject of the BASIX certification. If the consent authority concludes that the building is now materially different, it should request the submission of a replacement BASIX Certificate to meet the requirements of clause 55A. It is noted that in the report to the JRPP, Council has confirmed that it has reviewed the submitted and amended plans for the residence and has confirmed that the development is not materially different.
- 2) As the land is *currently used for low scale farming, which is an "agricultural/horticultural activities"* listed in Table 1 Contamination of the Managing Land Contamination Guidelines (DOPE then DUAP) as an activity that may cause contamination, and a change of land use is proposed, it is recommended that a desktop Phase 1 contamination investigation be requested from the applicant to meet the requirements of subclause (4)(b) and 4)c)(i) of SEPP 55 (Managing land Contamination). Alternatively, the consent authority should ensure that it is satisfied that it has been provided with sufficient information regarding past landuse on the site to ensure that the provisions of SEPP 55 are met.
- 3) With respect to potential acoustic issues we concur with the officer's recommendation that the approach suggested by Day Design within the Acoustical Peer review of 'Environmental Noise Impact - Assessment Revision 3' dated 27 August 2013, which recommends conditioning to address noise non compliance issues not be utilised. We are of the opinion that this is a fundamental issues hinging on the suitability of the site to accommodate the proposed use and therefore believe that the ability to comply with noise levels should be demonstrated prior to approval.
- 4) With respect to Aboriginal heritage it is acknowledged that the Office of Environment and Heritage has confirmed that it has *"no role to play in the due diligence process"*. However, it is recommended that the JRPP ensure that it is satisfied that it is confident to adopt the Council officer's position to not proceed with further Aboriginal heritage investigations, rather than requiring the applicant to undertake further investigations prior to determination of the development application. It is considered that this is a matter of ensuring the site is suitable for the proposed development despite Council and OEH's non involvement in the due diligence process.
- 5) If a total or partial consent is granted (ie option b) that such consent should be in the form of a 'deferred commencement' consent. The 'deferred commencement' condition should require the submission of an updated wastewater report and details regarding the source and volumes of water supply and licensing, to ensure that the consent authority is satisfied that the disposal and management of sewerage and provision of water has been addressed prior to the issuing of development consent.

To ensure that Council's records are complete it is also recommended that the following occur:

- 6) With respect to the registration of the application Council should ensure that the "Office Use Only" section of the DA form is updated to reflect the date that the development application was lodged.

- 7) A copy of the receipt and clarification of the breakdown of fees should be appended to the development application file.
- 8) The 'total project value' (\$13,568,181) recorded on the DA Application form lodged by Camberlee Investments on 16 October 2014 is inconsistent with that reported in the Cost of Works Summary prepared by PTI Architects on 23 September 2014 (\$14,925,000). Council should confirm the correct project value and, if required, obtain or refund and difference in fees.

## Appendix 1

### Architectural plans provided on Council's disk prepared by Project Tourism International Architecture Pty Ltd<sup>1</sup>

<sup>1</sup> Highlighted text indicates most recent plan

Title of plan	Date	Drawing No.	Revision
Existing Site Plan	10/11/2014	1	A
Proposed Site Plan	26/09/2014	2	P
Proposed Site Plan	10/11/2014	2	Q
Proposed Site Plan	30/01/2015	2	R
Proposed Site Plan	16/04/2015	2	S
Proposed Site Plan 1:2000	10/11/2014	3	A
Proposed Site Plan 1:2000	16/04/2015	3	C
Proposed Ground Floor Plan	10/11/2014	4	M
Proposed Ground Floor Plan	16/04/2015	4	O
Site Sections	10/11/2014	5	A
Main building - ground & basement plans	10/11/2014	6	C
Main building - Level 1 & Roof Plans	10/11/2014	7	B
Main Building - Elevations & Section	10/11/2014	8	D
Gym & Pool Plans	10/11/2014	9	B
Gym & Pool - Elevations & Section	10/11/2014	10	B
Spa - Plans	10/11/2014	11	A
Spa - Elevations & Section	10/11/2014	12	B
Farm & Studio Plans	10/11/2014	13	A
Farm & Studio Plans	27/01/2015	13	B
Farm & Studio Plans (Auditors' note: poor quality photocopy)	27/01/2015	13	B
Farm & Studio - Elevations & Section	10/11/2014	14	B
Farm & Studio - Elevations & Section	27/01/2015	14	C
Wildlife/Gallery/Refuge Building - Plans	10/11/2014	15	A
Wildlife/Gallery/Refuge Building - Elevations & Section	10/11/2014	16	B
Building Type 1 - Plans	10/11/2014	17	B
Building Type 1 - Elevations & Section	10/11/2014	18	B
Building Type 1B - Plans	10/11/2014	19	A
Building Type 1B - Elevations & Section	10/11/2014	20	B
Building Type 2 - Plans	10/11/2014	21	A
Building Type 2 - Elevations & Section	10/11/2014	22	B
Building Type 3 - Plans	10/11/2014	23	A
Building Type 3 - Elevations & Section	10/11/2014	24	B
Building Type 4 - Plans	10/11/2014	25	A
Building Type 4 - Elevations & Section	10/11/2014	26	B
Building Type 5 - Plans	10/11/2014	27	A
Building Type 5 - Elevations & Section	10/11/2014	28	B
Villa - Artists Impression	10/11/2014	29	A
Function Centre - Artists Impression	10/11/2014	30	A
Materials and Character	10/11/2014	31	A
7.5MTR Truck Entry/Exit	10/11/2014	32	A
Carparking	10/11/2014	33	A



Title of plan	Date	Drawing No.	Revision
Carparking	16/04/2015	33	C
Typical Bridge	23/09/2014	34	C
Typical Bridge	10/11/2014	34	D
Entry/Exit Points	10/11/2014	35	A
Entry/Exit Points	30/01/2015	35	B
Homestead - Plans	26/09/2014	36	A
Residence Ground Floor Plan	10/11/2014	36	B
Homestead - Elevations & Section	26/09/2014	37	A
Residence Elevations	10/11/2014	37	B
Residence Sections	10/11/2014	38	A
Coversheet	Undated	-	-

## Appendix 2

### Other Consultant Reports, Plans and Correspondence

Document Title	Author	Version	Date
SEE	JBA Urban Planning Consultants Pty Ltd		16.10.14
Sketch plan showing levels and contours over Lot 13, DP 707955	SET Consultants Pty Ltd	13/74	13.06.2013
Landscape Masterplan	Site Image Landscape Architects	Issue C	Sept 14
Landscape Plans	Site Image Landscape Architects	Sheets 000, 100-101, and 121-132	
Architects Statement, incorporating Visual Impact Statement and Plan of Management	PTI Architects		15.09.14
Bushfire Hazard Assessment Report	Building Code & Bushfire Hazard Solutions		12.3.14
Bushfire Evacuation Plan	Building Code & Bushfire Hazard Solutions	Issue 1	17.03.14
Bushfire Supplementary Correspondence	Building Code & Bushfire Hazard Solutions	130924b	8.10.14
BASIX Assessment Report (incorporating a BASIX Certificate for the 'Rockfield Lodge Residence')	ESD Synergy	Certificate No. 579732S	2.10.2014
BASIX Stamped Plans, Building Energy Efficiency Certificate and NatHERS Thermal Performance Specification	ESD Energy	Sheets DA36 and DA 37 Issue A and Certificate No. 1006932691	Stamped 2.10.14
Area Schedule and Costing Calculation	PTI Architects		23.9.14
Due Diligence Aboriginal Heritage Assessment	Oz Ark Environmental and Heritage Management Pty Ltd		13.10.14
Response to OEH Comments on the Due Diligence Aboriginal Heritage Assessment	Oz Ark Environmental and Heritage Management Pty Ltd		30.01.2015
Noise Impact Assessment	Acoustic Logic	Version 4 (supersedes Version 3)	7.4.15 (supersedes Version 3, dated 28.5.14)
Acoustic Logic	Correspondence titled "Review of Day Design Comments"	20140424.1/0704A/RO/BW	07.04.2015
Acoustic Logic	Correspondence titled "Review of Acoustics"	20140424.1/2201A/RO/BW	22.01.2015
Rockfield Lodge Eco-resort, Kangaroo Valley, NSW: Programme for the Conservation of the Brush-Tailed Rock Wallaby	Taronga Conservation Society Australia, and 1 Earth		20.10.2014
Flora and Fauna Assessment	Travers Bushfire and Ecology	Watermarked draft	27.08.2014

Document Title	Author	Version	Date
Travers Bushfire and Ecology	Flora and Fauna Assessment	A13119F2 (Response to SCC comments)	27.08.2014
Travers Bushfire and Ecology	Flora and Fauna Assessment	A13119F2 (Response to OEH comments)	27.08.2014
Soil and Water Management Plan: Erosion and Sediment Control Measures' is dated 05/02/2014 (	Diversi Consulting	Project No. 13135, DA301, rev. C).	5.2.2014
On-Site Wastewater Management Report	Diversi Consulting	Revision B	Date unclear - July 2014
Section 68 Application	Diversi Consulting	Revision B	13.10.2014
Soil and Water Management Report	Diversi Consulting	Revision B	Date unclear - 22.9.2014
Stormwater Management Plan and Flood Assessment Report	Diversi Consulting	Revision B	22.9.2015
Peer Review Response	Diversi Consulting		14.7.2015
Economic Assessment	JBA Urban Planning Consultants Pty Ltd	13463	1.6.2015
Ecotourism Report - Rockfield	Tony Charters and Associates	-	January 2015
BCA Section J - DST Assessment Report	Thermal Environment Engineering Pty Ltd	S-R2015011800	23.01.2015
Sustainability Initiatives and Strategy Report	Thermal Environment Engineering Pty Ltd	S-R2015011500	23.01.2015
Thermal Environment Engineering Pty Ltd	BCA Section J - DST Assessment Report	S-L2015041400	15.04.2015
Traffic and Parking Assessment Report	VARGA Traffic Planning Pty Ltd	13597	24.09.2014
VARGA Traffic Planning Pty Ltd	Traffic and Parking Assessment Report	13597	30.01.2015
VARGA Traffic Planning Pty Ltd	Traffic and Parking Assessment Report	13597	26.03.2015
VARGA Traffic Planning Pty Ltd	Traffic and Parking Assessment Report	13597	14.08.2014
Response to Submissions Report	JBA Urban Planning Consultants Pty Ltd	13463	30.1.2015
Correspondence	JBA Urban Planning Consultants Pty Ltd	13463	21.4.2015
Correspondence	JBA Urban Planning Consultants Pty Ltd	13463	20.3.2015
Comments on Bore Operation and Possible Interaction with Irrigation Areas	Hydroilex	HG 15.3.5SH	24.3.2015
Correspondence and photomontages	PTI Architecture	-	2.9.2015