

COUNCIL ASSESSMENT REPORT

Panel Reference	2015NTH012
DA Number	DA2015/099
LGA	Nambucca Shire
Proposed Development	127 Lot Subdivision
Street Address	Bellwood Road, Nambucca Heads Lot 1 DP 1119830, Lot 23 DP 790194 & Lot 76 DP 832082
Applicant/Owner	Applicant: Waifap Superannuation Fund Owner: Waifap Pty. Ltd
Date of DA lodgement	2 July 2015
Number of Submissions	Four
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	Under clause 21 of the State Environmental Planning Policy (State and Regional Development) 2011, the JRPP is the consent authority for the determination of this development application because its class is included in Schedule 4A of the Environmental Planning and Assessment Act 1979 (subdivision of land for residential purposes into more than 100 lots not in the metropolitan coastal zone).
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Nambucca Local Environmental Plan 2010 • State Environmental Planning Policy No 44 - Koala Habitat Protection • State Environmental Planning Policy No 55 - Remediation of Land • State Environmental Planning Policy No 62 - Sustainable Aquaculture • State Environmental Planning Policy No 71 – Coastal Protection • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • Nambucca Development Control Plan 2010 • Environmental Planning and Assessment Regulation 2000 - Clause 92 • Coastal Zone Management Plan for the Nambucca Shire Coastline.
List all documents submitted with this report for the Panel's consideration	Attachment 1 - Schedule of Conditions Attachment 2- Development Plans Attachment 3 - Statement of Environmental Effects Attachment 4 – Ecological Assessment Attachment 5 – Supplementary Ecological and Geotechnical Assessments Attachment 6 – Bushfire Risk Assessment Attachment 7 – Peer Review of Archaeological Assessment Attachment 8 – NSW Rural Fire Service bushfire safety authority Attachment 9 – NSW Office of Environment & Heritage Comments Attachment 10 – Busways comments Attachment 11 - Essential Energy comments Attachment 12 - Submissions
Report prepared by	Daniel Walsh – Nambucca Shire Council
Report date	7 November 2016

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**



Nambucca Shire Council Development Application Assessment Report Integrated Development

SUMMARY

The proposed development includes the subdivision of Lot 1 DP 1119830 – Bellwood Road, Nambucca Heads into 127 lots. The proposal includes the construction of internal roads off Marshall Way and the extension of utility services to service the proposed lots. It also includes the creation of asset protection zones on adjoining Council owned land to the north and south of the development site.

The application is classified as integrated development under section 91 of the *Environmental Planning and Assessment Act 1979* as it requires approval under section 100B of the Rural Fires Act 1997. The application was referred to the NSW Rural Fire Service, with general terms of approval granted and incorporated into the recommended conditions of consent contained within **attachment 1**.

The application has been notified and assessed in accordance with the *Environmental Planning and Assessment Act 1979*. Key issues encountered during the assessment of the development application were the above mentioned asset protection zones on adjoining public land and the impacts of the development on endangered ecological communities. The proposal was amended and additional supporting information submitted by the applicant during the assessment period to the current point where it is considered that subject to the recommended conditions of consent, it is consistent with all of the relevant matters for consideration.

The Northern Joint Regional Planning Panel is the consent authority for the determination of this development application because its class is included in Schedule 4A of the Act.

RECOMMENDATION:

That the Northern Joint Regional Planning Panel as the consent authority, pursuant Section 80 of the *Environmental Planning and Assessment Act 1979*, grant consent for Development Application 2015/099 for a 121 lot subdivision of Lot 1 DP 1119830, subject to the schedule of conditions outlined in attachment 1 of this report.

Site Description

The development site is located off Bellwood Road, Nambucca Heads and is legally known as Lot 1 DP 1119830 (the land). It has an area of 14.045ha, is sloped towards the north-west, is vacant and contains predominantly scattered/regrowth vegetation as a result of logging activities undertaken approximately 12 years ago.

The land is located within the R1 General Residential zone under the Nambucca Local Environmental Plan 2010, with surrounding land comprising a mixture of public open space and residential land uses. The land is bounded to the west by the Nambucca State Forest, north-west by a public reserve, and north-east by detached residential dwellings. To the south and south-east the land is bounded by a 20m wide public reserve and Bellwood Road. Bellwood Road services existing detached dwelling houses before it is closed to public access after the last existing house.

Locality Plan



Description of Proposal

The proposed development is for the subdivision of the land into 127 lots. Specifics of the proposal include:

- 127 lots ranging in area from 562m²-1,357m²; with an average area of 667m².
- A residue lot (lot 62) with an area of approximately 22,999m²; the subdivision of which is intended to be deferred until further environmental studies have been undertaken.
- Subdivision works including internal road construction, re-contouring of land, provision of essential services, and the creation of bushfire asset protection zones (APZ) around the proposed lots. This includes the creation of APZ within the adjoining 20m wide public reserve (Lot 23 DP 790194) and Bellwood Road reserve to the south and the adjoining playing fields to the north (Lot 76 DP 832082). All adjoining land on which APZ are to be located are owned by Nambucca Shire Council; who have given land owners consent for the placement and ongoing management of the APZ for the life of the development at its meeting on 31 March 2016.

The plans of the proposed development have been included within **attachment 2** and the statement of environmental effects (SEE) included within **attachment 3**. Please note that since lodgement of the development application, the proposal has been amended on numerous occasions. The annexures referenced within the SEE which have been amended during the course of the assessment period have been attached separately to this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 ASSESSMENT

The proposed development is assessed against the relevant sections of the *Environmental Planning and Assessment Act 1979* (the act) as follows:

Section 5A - Significant effect on threatened species, populations or ecological communities, or their habitats

An ecological assessment prepared by a suitably qualified person was submitted with the development application which included flora and fauna surveys of the development site. The report is

included within **attachment 4**. The results from the surveys found that there are no threatened flora species on the site. However, five threatened fauna species were found on site including Little Lorikeet, Yellow-bellied glider, Grey-headed flying fox, Little bent-wing bat, and the East-coast freetail bat. The assessment concluded that subject to the implementation of the recommended conditions, the proposal would not result in any significant impacts on threatened species, populations, communities or their habitats.

In consultation with the NSW Office of Environment and Heritage (OEH) it is considered that the proposed “deferred area” (Lot 62) and the adjoining 20m wide public reserve to the south contains key habitat resources for the Yellow-bellied glider. Please note that the home range for a Yellow-bellied glider which occupies Lot 62 would span into the adjoining Nambucca State Forest. The applicant proposes to defer the subdivision of Lot 62 until further fauna surveys have been undertaken to determine the full extent of the local population of Yellow-bellied gliders and the level of impact posed by such a development. While this approach is considered to be acceptable; it is considered that development consent should not be granted for the proposed subdivision unless the consent authority is satisfied that the subject development will not adversely impact the existing habitat values of the vegetation within and adjacent to Lot 62 or the connectivity between this vegetation and the adjoining Nambucca State Forest for Yellow-bellied gliders. Without assuring the above and due to the limited extent of fauna surveys currently undertaken; the proposal may result in significant impacts on threatened species, populations, communities or their habitats which would require a species impact statement to be submitted and concurrence obtained from OEH prior to granting any development consent.

Pages 49 and 50 of the ecological assessment illustrate the location of the hollow bearing trees and sap trees which provide habitat for the Yellow-bellied glider. Due to the previous clearing activities on the land, the connectivity for Yellow-bellied gliders between Lot 62 and the Nambucca State Forest is via the 20m wide public reserve, the Bellwood Road reserve, and forested area within privately owned land to the south of the development site. The retention of this connectivity and the habitat value within Lot 62 is considered to be essential for the proposed development to be deemed not to result in any significant effects on threatened species, populations or ecological communities, or their habitats.

In order to retain sufficient connectivity the applicant has deleted Lots 86-91 from the proposal. This will eliminate understory vegetation removal and selective tree removal within the adjoining section of the 20m wide public reserve and Bellwood Road reserve for the purposes of an APZ. This section of the corridor is considered to be vital due to it containing significant hollow bearing trees (refer to page 49 of the ecological assessment), as well as the development pressures associated with the existing residential development on the southern side of Bellwood Road and historic clearing of the development site.

In addition to this, it is recommended that conditions be included within the consent which result in:

- The required 42m southern APZ encompassing 12m of the rear of Lots 92-106 and 5m of the rear of Lot 107. This will result in a 10m wide unmanaged vegetated corridor within the Bellwood Road reserve, which in addition to the forest to the south and scattered trees to the north, will retain connectivity. Please note that while the remaining areas of the 20m wide public reserve and Bellwood Road reserve will be managed in perpetuity as an APZ; there is limited tree removal required in this area due to previous logging activities. A condition requiring the revegetation of the Bellwood Road reserve not required to be managed as and APZ has been included within the recommended conditions of consent.
- Permanent fencing of the required APZ so that clearing is kept to a minimum.
- Permanently close the existing track within the Bellwood Road reserve between the end of the existing bitumen seal (rear of former Lot 88) and the Nambucca State Forest with durable fencing. This will result in the only disturbance in this area being from intermittent APZ management activities and use of the fire trail in emergency situations. Vehicular access to the Nambucca State Forest can be maintained for emergency purposes via a gate on the development sites western boundary off the proposed internal road.

It is considered that the above will provide sufficient buffers to habitat trees and maintain existing connectivity and separation for Yellow-bellied gliders which occupy the site. Please note that the submitted ecological assessments assessment of significance acknowledged that potentially one sap tree within Lot 62 will be removed as a result of the construction of the road. Having regard to OEH comments regarding the significance of the sap trees to the local population, the location and width of the proposed road pavement, and the separation of the identified sap trees; a condition has been included within the consent requiring the road to be constructed so that no sap trees within Lot 62 are removed.

Reference is made to the area identified as *Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast bioregion Endangered Ecological Community* (SSF EEC) within **attachment 5** and the OEH comments regarding SSF EEC in their letter dated 4 November 2016 within **attachment 9**. The proposed development will result in over half of the SSF EEC being removed for the creation of proposed lots 11-15 and their associated APZ. Having regard to the information provided by the applicant; the OEH position regarding the extent of the proposed removal of the SSF EEC requiring a Species Impact Statement (SIS) is supported as the proposal includes the removal of over half of the local occurrence of the SSF EEC. Furthermore, the assessment of significance required to be undertaken under section 5A(1)(b) of the act is insufficient due to it not addressing Part C of the assessment of significance requirements.

As such, in order to avoid impacts on the SSF EEC it is not considered appropriate for approval to be granted to lots 11-15; unless the applicant obtains a BioBanking Statement for the biodiversity impacts of the proposal from OEH. This will mean that lots 11-15 are consolidated with lot 10, 21m APZ are provided for surrounding lots as per the NSW Rural Fire Service general terms of approval (**attachment 8**), and the fire trail and stormwater infrastructure are located to avoid the SSF EEC and are connected to the adjoining playing fields via former lot 11. A condition to this effect has been included within the recommended conditions of consent.

Having regard to the above, it is not considered that the proposed subdivision will result in any significant effects on threatened species, populations or ecological communities, or their habitats subject to the implementation of the recommended conditions of consent.

Section 79C(1) In determining a development application a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a)(i) The provisions of any environmental planning instrument (EPI)

NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010

The proposed development is assessed against the relevant clauses of the *Nambucca Local Environmental Plan 2010* in the following table:

Clause	Complies	Comments
2.3 - Zone objectives and land use table	Yes	The proposed development is permissible with consent and is not considered to be contrary to the objectives of the zone.
4.1 – Minimum subdivision lot size	Yes	The proposed subdivision is consistent with this clause because all proposed allotments exceed the 450m ² minimum lot size.
5.5 - Development within the coastal zone	Yes	Subject to the recommended conditions of consent, the proposed development will not result in any significant impacts on the coastal environment because: <ul style="list-style-type: none"> • It will not impede or diminish existing public access to and along the foreshore. • The site is considered to be suitable for the proposed development due to its consistency with the surrounding subdivision pattern and location within a residential zone which is not visible from the coast. • There is no built form proposed or permissible on the land which would result in any overshadowing on the coastal foreshore or any

		<p>loss of views from a public place to the coastal foreshore.</p> <ul style="list-style-type: none"> • The sites screening from vegetation and topography ensures that future development will not impact on the visual amenity or scenic quality of the coast. • It will not result in any significant impacts on any native coastal vegetation or wildlife corridors, rock platforms, water quality of coastal water bodies, or native flora or fauna or their habitats. • It will not result in any detrimental cumulative impacts on the coastal catchment. • Councils reticulated sewer network will be extended to each lot. • Untreated stormwater will not be discharged into the sea, beach, estuary, lake, creek, or onto a rock platform. • The subject site is not subject to coastal hazards and will not impact on coastal hazards or increase the risk of coastal hazards on any other land.
5.9AA – Trees or vegetation not prescribed by a development control plan	Yes	The <i>Nambucca Development Control Plan 2010</i> (NDCP) is the only Development Control Plan applicable to the proposed development. The NDCP does not prescribe for the purposes of clause 5.9 any tree or other vegetation.
7.4 - Public utility infrastructure	Yes	Subject to the recommended conditions of consent, each proposed allotment will be connected to reticulated sewer and water, power and telecommunications.
7.6 - Earthworks	Yes	The proposed earthworks will not impact significantly on surface water flows, will facilitate the future uses on the land, will not impact any contaminated soil or the amenity of surrounding properties, is unlikely to disturb any relics, and appropriate erosion control measures have been included within the recommended conditions of consent.

STATE ENVIRONMENTAL PLANNING POLICIES

The proposed development is assessed against the relevant State Environmental Planning Policies (SEPP) in the following table:

State Environmental Planning Policy	Complies	Comments
SEPP 44 - Koala Habitat Protection	Yes	Having regard to the submitted ecological assessment, the site is not considered to be core koala habitat. As such, in accordance with clause 8, the consent authority is not prevented by this policy from granting consent to the development application.
SEPP 55 - Remediation of Land	Yes	After inspection of the development site and review of the applicants preliminary investigation addressing the matters raised in clause 3.5.2 of the Managing Land Contamination Planning Guidelines; it is not considered that the land is contaminated as there is sufficient information available which demonstrates the previous use of the land and that it is suitable for the proposal.
SEPP 62 - Sustainable Aquaculture	Yes	It is not considered that the proposed development will result in any adverse effects on oyster aquaculture development or a priority oyster aquaculture area because of the sites location from any of these areas, with earthworks and stormwater flows resulting from the development being appropriately managed by the recommended conditions of consent.
SEPP 71 – Coastal Protection	Yes	As assessed above under clause 5.5 of the NLEP 2010, the proposal is considered to be consistent with the matters for consideration outlined in Clause 8 and the development controls within Part 4 because it will not contradict the aims of the policy or result in any significant impacts on the coastal environment having regard to scenic qualities, access,

		archaeological significance, ecosystems, coastal processes, wildlife corridors; water quality; or result in conflict between land-based and water-based coastal activities. Furthermore, in accordance with clause 18(1)(e) the minister waived the need for a master plan for the whole land on 28 April 2015.
SEPP (Infrastructure) 2007	Yes	In accordance with clause 45, the application was referred to Essential Energy for comment because the proposal includes the placement of power lines underground. The response received included recommended safety measures which have been included within the recommended conditions of consent.
SEPP (State and Regional Development) 2011	Yes	Under clauses 20 and 21 of this SEPP, the JRPP is the consent authority for the determination of this development application because its class is included in Schedule 4A of the Act (subdivision of land within the coastal zone for residential purposes into more than 100 lots and the land is not in the metropolitan coastal zone).

(a)(ii) The provision of any draft environmental planning instrument (EPI)

There are no draft environmental planning instruments applicable to the proposed development.

(a)(iii) The provision of any Development Control Plan

NAMBUCCA DEVELOPMENT CONTROL PLAN 2010

The proposed development is assessed against the relevant clauses of the *Nambucca Development Control Plan 2010* in the following table:

Part	Complies	Comments
Notification and advertising (Part A)	Yes	The application was notified and advertised in accordance with Part A of the DCP. Four submissions were received and are addressed later in this report.
Environmental context (Part A)	Yes	Subject to the recommended conditions of consent and as assessed throughout this report, the proposed development is considered to be satisfactory having regard to the relevant matters for consideration under clause A5.0.
Subdivision (Part B)	Yes	<p>The proposed development is considered to be consistent with this part for the following reasons:</p> <ul style="list-style-type: none"> The design is consistent with the design principles set out in this part. All lots have frontage to a road. Although lots 92-108 back onto a 20m wide public reserve and Bellwood Road, as outlined earlier in this report; this section of Bellwood Road is closed and screened from the surrounding area. This is reinforced by the recommended conditions of consent which require the road and public reserve to be permanently fenced to restrict vehicular and pedestrian access. As such, it is not considered that these lots will result in an unattractive streetscape or create an insecure pedestrian environment. Furthermore, Nambucca Shire Council has resolved to undertake continued management of the reserve. A greater proportion of the proposed lots are orientated so as to maximise energy conservation in future dwellings. This is aided by the topography of the land. A condition has been included within the recommended conditions of consent requiring the proposed access/local roads to be constructed in accordance with the relevant standards, with their proposed layout

		<p>being consistent with the clauses within this part.</p> <ul style="list-style-type: none"> • Conditions have been included within the recommended conditions of consent ensuring stormwater drainage measures, street names, and street lighting are consistent with this part. Please note that street lighting is not recommended within the road through Lot 62 to limit potential impacts on Yellow-bellied gliders. • A condition has been included within the recommended conditions of consent requiring a footpath to be constructed on at least one side of the proposed roads, between the two intersections of Road 1/Spring Street and the existing footpath in Marshall Way, and within the proposed public walkway between lots 8 and 9. • Busways referral response for this proposal stated that they would not deviate the existing bus service off Marshall Way into the proposed subdivision as the existing bus service covers approximately 85% - 90% of the proposed subdivision from a walking distance to bus route perspective. Furthermore, if it were to be used as a school bus route, indented bus bays or formalised bus stop infrastructure would not be required. As such, conditions requiring the installation of bus stops have not been included within the recommended conditions of consent. • The development site adjoins Farringdon Fields to the north (over 3ha of cleared open space) which were constructed by the land owner of the subject site and dedicated to Council as part of the development of surrounding land. As such, Council has acknowledged that credits apply to the developer for the provision of public open space. In this regard, the proposal is considered to be consistent with this part. • Conditions have been included within the recommended conditions of consent requiring all residential lots to be connected to reticulated water, sewer, electricity, telecommunications, and stormwater infrastructure in a manner which is consistent with this part. • As outlined earlier in this report, wildlife connectivity will be maintained through the existing public reserve and Bellwood Road reserve adjoining the site to the south and within Lot 62. • Even with the implementation of the recommended condition of consent requiring APZ to be incorporated within proposed lots; each lot has room for a 10 x 15m building envelope and still comply with the building setback requirements contained within Part H. Furthermore, each lot (excluding the battle-axe lots) have frontages which exceed 12m; with the proposed battle-axe handle dimensions consistent with this part.
Sediment and erosion control (Part D)	Yes	Conditions have been included within the recommended conditions of consent ensuring all works to be undertaken as part of any consent will be consistent with this part.
Waste Minimisation And Management (Part N)	Yes	<p>Conditions have been recommended to be included within the consent regarding the management of waste during construction.</p> <p>Furthermore, it is considered that there will be sufficient access for waste collection vehicles to service the development once residential accommodation is established on the proposed lots.</p>

(a) (iia) Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F.

There are no planning agreements applying to the subject site.

(a)(iv) Any Matters prescribed by the Regulation

The proposed development is assessed against the relevant matters for consideration prescribed by the regulation in the following table:

	Complies	Comments
Clause 92(1) (a) - For the carrying out of development on land to which the Government Coastal Policy applies, the provisions of that Policy.	Yes	Matters for consideration to implement the NSW Coastal Policy are provided in Clause 5.5 (Development within the coastal zone) under the NLEP 2010. These are similar to Clause 8 (Matters for Consideration) under SEPP 71. It is considered that the matters for consideration under Clause 5.5 of the NLEP 2010 and Clause 8 of SEPP 71 have been satisfactorily addressed, therefore, satisfying the requirements of the NSW Coastal Policy.

(a) (v) any coastal zone management plan

It is not considered that the nature or location of the proposed development will be contrary to any of the management actions outlined within the *Coastal Zone Management Plan for the Nambucca Shire Coastline*.

(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.

Issue	Comments
Context and Setting	It is not considered that the proposed development will result in any significant impacts on the existing character of the surrounding area due to its consistency with the surrounding subdivision pattern.
Access, Transport and Traffic	The proposed access roads are consistent with the controls outlined within Councils Development Control Plan and considered acceptable by Council's Development Engineer.
Public Domain	The layout and size of the proposed lots will facilitate a public domain within the land which is consistent with the desired character of the area as outlined within Councils Development Control Plan. While it is not desirable having the rear fences of lots 1-15 backing onto the adjoining playing fields, the existing subdivision pattern of the surrounding area doesn't easily facilitate a perimeter road design. The potential negative impacts associated with this are mitigated by a recommended condition of consent requiring these lots to be fenced prior to the issue of a subdivision certificate with one style of fencing. In addition to this, the topography of the land enables future dwellings within the proposed allotments to overlook the playing fields, while a future extension of Marshall Way as part of DA2012/011 past the playing fields will increase casual surveillance.
Utilities	Conditions have been included within the consent to ensure that the development has access to all necessary utilities.
Heritage	Having regard to the potential impacts of the development on Aboriginal heritage; in accordance with section 8 of the <i>'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales'</i> : <ul style="list-style-type: none"> There are no relevant confirmed Aboriginal site or place records or other associated landscape feature information on the Aboriginal Heritage Information Management System (AHIMS).

- There are no other sources of information of which a person is already aware. Field surveys have previously been undertaken with no objects found.
- The development will not impact on any landscape features that are likely to indicate the presence of Aboriginal objects. Please note that the land has been previously 'disturbed' by logging activities which remain to be 'clear and observable'.

As such, a condition has been included within the recommended conditions of consent requiring works to cease and the relevant authorities notified in the event Aboriginal objects are discovered within the work zone during subdivision works.

Having regard to the above, the proposed development is not considered to be contrary to the *'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales'*.

However; as outlined in the submitted archaeological assessment, the development site is within proximity to the 'Diamond Tree' gazetted Nambucca Aboriginal Area which is located over 250m to the north of the development site boundary on the opposite side of the adjoining Farrington Playing Fields. The Diamond Tree is listed on the AHIMS.

The Diamond Tree is a significant ceremonial site and in traditional aboriginal culture, Aboriginal women and children are not permitted to be in the area within the distance that a Bull Roarer can be heard if sounded from the Diamond Tree site. Furthermore, it is understood that there is an Aboriginal belief that Aboriginal people who live in proximity to the tree will get sick. It is further noted that due to proximity to the Diamond Tree, the local Aboriginal community does not currently use the Farrington Playing Fields as they are an area deemed to be within earshot of a Bull Roarer if sounded from the Diamond Tree.

In assessing this development application, consideration needs to be given to direct and indirect impacts on the cultural value of the Diamond Tree. In this regard the following points are made:

- The separation of the development site from the Diamond Tree is consistent with that of the residential allotments approved as part of development application DA2012/011 and existing dwellings at the end of Marshall Way.
- The Diamond Trees location is screened from the development site by existing vegetation to the north of the playing fields on land created for the purpose of providing a buffer around the tree. That land is in the ownership of National Parks and Wildlife Service.
- It will be open to the Aboriginal community to not live in or access the proposed subdivision. Furthermore, a condition has been included within the recommended conditions of consent requiring a warning to persons of Aboriginal descent to be included within the s88B instrument for the land, stating that land within the hearing range of a "bullroarer" from the "Diamond Tree" site.

Having regard to the above, it is not considered that the proposal will result in any significant impacts on the cultural value of the Diamond Tree ceremonial site.

	Furthermore, the development site is privately owned and is zoned R1 General Residential under the NLEP 2010. Precluding the development of the land when there are negligible impacts on the cultural significance of the Diamond Tree is considered to result in unreasonable economic impacts on the land owner.
Water	Conditions relating to the provision of reticulated water and stormwater drainage infrastructure have been included within the recommended conditions of consent.
Soils	Conditions relating to the installation and maintenance of erosion and sedimentation controls have been included within the recommended conditions of consent.
Flora and Fauna	As outlined earlier in this report; subject to the recommended conditions of consent, it is not considered that the proposal will have any significant impacts on threatened species, populations, communities or their habitats.
Waste	The proposal facilitates road side waste collection for each lot.
Noise and Vibration	Conditions relating to construction hours have been included within the recommended conditions of consent.
Natural Hazards	A bushfire safety authority has been issued by the RFS.
Safety, Security and Crime Prevention	Subject to the recommended conditions of consent, it is considered that the design of the proposed development is consistent with the safer by design principles because all proposed roads will have uninterrupted sight lines from dwellings on the proposed lots, the 20m wide public reserve and Bellwood Road reserve directly adjoining the southern boundary will be fenced off and made un-trafficable for the purposes of maintaining the existing wildlife corridor, and the existing playing fields will be overlooked by future dwellings as a result of the topography of the land and future extension of Marshall Way to the north of the existing cul-de-sac.
Social Impact in the Locality	Having regard to the above and subject to the conditions of consent, it is not considered that the proposed development will result in any significant social impacts on the locality.
Economic Impact in the Locality	Considering the minimal social impacts posed by the development it is not considered that it will result in any negative economic impacts on the locality.

(c) The suitability of the site for the development

Subject to the recommended conditions of consent, the development site is considered to be suitable for the proposed subdivision having regard to the zoning of the land, surrounding subdivision pattern and land uses, topography of the land, proximity to services, and that it will not result in any significant impacts on the natural, social, or economic environments.

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

Four submissions were received during the notification of the development application with the following matters raised:

Summary of Matters Raised	Reporting Officers Comment
<p>There are major traffic concerns posed with this proposal which will add another 133 new lots in addition to the 330 lots approved under DA 2012/011 which will all use Marshall way for access.</p> <p>If approved, the potential safety risks need to be mitigated against and managed with appropriate traffic calming measures installed to improve road user's safety, reduce vehicle congestion, driver frustration etc.</p>	<p>DA2012/011 was determined by the JRPP on 5 August 2014. As part of that development consent a condition was included which required the applicant to engage an independent Traffic Engineer to carry out a Road Safety Audit of Marshall Way and implement the measures to Councils satisfaction.</p> <p>During consultation with Councils Manager of Technical Services it was concluded that Marshall Way is sufficient to cater for the additional traffic</p>

	<p>created by the proposal, subject to the implementation of the above safety measures.</p> <p>As such, a condition has been included within the recommended conditions of consent requiring the traffic safety audit to be undertaken and implemented prior to the issue of the subdivision certificate.</p>
We do not want Spring Street to be changed from a cul-de-sac to a two way main street as it is not wide enough if a vehicle is parked on the side of the road which will be dangerous.	<p>The width of the existing section of Spring Street is compliant with Planning for Bushfire Protection 2006 and Councils road design standards contained within the DCP.</p> <p>Spring Street is not currently a cul-de-sac as it was constructed as a dead end which terminates within the development site, which has always been intended to be used as a through road as part of the development of the subject land.</p> <p>Furthermore, the above mentioned condition requiring the traffic safety audit includes addressing the existing section of Spring Street.</p>
In heavy rain Spring Street and Marshall Way are covered in water due to the blocked drains and dwellings have been inundated.	<p>The connection of Spring Street to the proposed internal roads of the subdivision will not adversely alter the existing drainage within Spring Street.</p> <p>Any blocked drain is not a matter for the proposed development but for Councils maintenance program. This matter was referred to Councils works crew and is understood to have been resolved.</p>
Comprehensive background to the Aboriginal significance of the area was provided.	Historic significance of the site and surrounding area has been addressed elsewhere in this report.
Matters raised by OEH	Addressed later in this report.

(e) The public interest

Subject to the recommended conditions of consent, it is not considered that the proposal is contrary to the public interest because it will not result in any significant impacts on the natural, social, or economic environments.

Section 91 - Integrated Development

The proposal is integrated development because a bushfire safety authority is required to be obtained from the RFS under section 100B of the Rural Fires Act 1997. The RFS have issued their general terms of approval which have been incorporated into the recommended conditions of consent.

Section 94 - Contribution towards provision or improvement of amenities or services

Development Contribution Plan	Contribution Amount
Community Facilities and Open Space	<p>A search of council records as part of the assessment of DA2012/011 revealed that Council has previously acknowledged credits for 551 lots from the applicants past developments which included the construction of community facilities. Given DA2012/011 includes 330 lots, 221 credits remain.</p> <p>As such, contributions are not proposed to be charged under this plan in accordance with section 94(6) of the act.</p>
Surf Lifesaving Equipment	121 lots x \$114 per lot = \$13,794.00
Local Roads & Traffic Infrastructure	121 lots x \$3,974.00 per lot = \$480,854.00
Administration	10% of the above contributions = \$408.80 per lot x 121 lots =

	\$49,464.80.
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Section 64 – Construction of Works for Developers (Local Government Act 1993)

Section 64 of the *Local Government Act 1993* enables council to levy developer charges for water supply, sewerage and stormwater. This derives from a cross-reference in that Act to Section 306 of the *Water Management Act 2000*.

Development Servicing Plan	Contribution Amount
Water Supply	\$12,782.00 per lot x 121 lots = \$1,546,622.00
Sewerage	\$9,656.00 per lot x 121 lots = \$1,168,376.00

Note: Lots 11-15 are not included in calculations as a condition for their removal has been included within the recommended conditions of consent.

Consultation

Manager of Technical Services - Council's Manager of Technical Services has no objections to the proposed development subject to the recommended conditions of consent.

NSW Rural Fire Service - The application was referred to the NSW Rural Fire Service (RFS) for general terms of approval in accordance with section 91 of the *Environmental Planning and Assessment Act 1979*. General terms of approval were received from the RFS with the recommended conditions included within the consent.

NSW Office of Environment and Heritage (OEH) – After review of the proposed development, OEH provided comments to Council on 21 September 2015. In response to this letter and other outstanding issues, Council requested the applicant provide additional information addressing the matters raised. After receiving amended information on 21 June 2016, the application was referred back to OEH to provide the opportunity to comment on the applicant's response. OEH responded on 11 July 2016. In response to the matters raised, the applicant submitted amended ecological and heritage assessments on 10 October 2016 and was forwarded to OEH to provide additional comment. OEH provided their final comments on 4 November 2016. Copies of the OEH letters have been included within **attachment 9**.

The following comments are provided in response to the matters raised by OEH:

Swamp Sclerophyll Forest Endangered Ecological Community

Addressed earlier in this report under section 5A of the act, with conditions recommended to be included within the consent to avoid impacts as per OEH recommendation.

Yellow-bellied glider

Addressed earlier in this report under section 5A of the act. Please note that subject to the implementation of the recommended conditions of consent; there will be over 50m buffer between any disturbance associated with the development and the den tree (and all others within lot 62), undisturbed connectivity between lot 62 and the Nambucca State Forest, and no reduced separation between development and the connectivity route.

It is also noted that the proposed road through lot 62 is aligned with an existing track and is over 50m from any den site. Given its width is only 8m (16m reserve) and will not impact food sources, its proposed location is considered acceptable subject to the recommended conditions of consent.

Inconsistent Statements Regarding the Deferred Lot (Lot 62)

The applicant has made it clear that it is intended to subdivide proposed lot 62 in the future as part of a separate development application. The submitted ecological assessment has considered the effects of the proposed development. As such, its statement that the proposal will retain the open forest within lot 62 (excluding tree removal for the proposed road) is not considered to be misleading as the future intentions of the applicant is not relevant to the assessment of the development application.

Biodiversity offsets

As outlined earlier in this report, it is not considered that the proposed subdivision will result in any significant effects on threatened species, populations or ecological communities, or their habitats subject to the implementation of the recommended conditions of consent. Having regard to this and that there is no statutory requirement for the applicant to offset the removal of biodiversity; it is not considered appropriate to implement as part of any development consent.

Aboriginal Cultural Heritage (ACH)

Given the submitted ACH (**attachment 3**) assessment clearly identified the areas of the development site which were physically surveyed by a suitably qualified person and stated that there was no sites of archaeology found; it is not considered that any clarification needs to be sought to determine if the land has been surveyed.

The submitted ACH assessment is the same assessment submitted as part of DA2012/011 for the subdivision of surrounding land. As was supported by Council and determined by the JRPP in 2014 when DA2012/011 was determined; it is considered that the information contained within the assessment and its age is sufficient for the determination of this development application.

Furthermore, the applicant has submitted a peer review of the ACH which reaffirms this position (**attachment 7**).

Mitigation of Impacts

A condition requiring the implementation of an Environmental Management Plan has been included within the recommended conditions of consent.

Busways - The application was referred to Busways for advice as to whether or not they would use any of the proposed roads as a bus route or if they would continue to only service Marshall Way. Busways responded by stating that the current bus route, which terminates at the cul-de-sac bulb end of Marshall Way, covers approximately 85% - 90% of the proposed subdivision from a walking-distance-to-bus-route perspective.

As such, they would not propose to deviate the existing bus route service off Marshall Way. They said that while there may be a chance that a school bus service might use the roads of the new subdivision; this would not create a demand for indented bus bays or formalised bus stop infrastructure.

Essential Energy - In accordance with clause 45 of SEPP (Infrastructure) 2007, the application was referred to Essential Energy for comment because the proposal includes the placement of power lines underground. The response received included recommended safety measures which have been included within the recommended conditions of consent.