

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSHCC-14
DA Number	100/2019
LGA	Midcoast Council
Proposed Development	226 lot subdivision, 1 drainage reserve, 2 public reserves, staged construction
Street Address	90 Viney Creek Road, Tea Gardens
Applicant	Tattersall Lander Pty Ltd
Owner	Wolin Investments Pty Ltd, MidCoast Council
Date of DA lodgement	4 August 2018
Total number of Submissions	19
Number of unique objections	19
Recommendation	Refusal
Regional Development Criteria Schedule 7 of the SEPP (State and Regional Development) 2011	Pursuant to Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 the proposal is subdivision of land for residential purposes into more than 100 lots, of land that is wholly or partly in a sensitive coastal location
List of all relevant s4.15(1)(a) matters	Environmental planning instruments: s4.15(1)(a)(i): • Environmental Planning and Assessment Act • Water Management Act 2000 • Rural Fires Act 1997 • National Parks & Wildlife Act 1974 • Roads Act 1993 • Hunter Regional Plan 2036 • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No 55 – Remediation of Land • State Environmental Planning Policy (Infrastructure) 2007 • Great Lakes Local Environmental Plan 2014 • Great Lakes Development Control Plan 2014 • Great Lakes Development Contributions Plan • North Shearwater Planning Agreement executed 13 November 2012

List all documents submitted with this report for the Panel's consideration	A. Draft Conditions of Consent B. Subdivision Design Plans C. Statement of Environmental Effects D. Aboriginal Heritage Due Diligence Assessment E. Geotechnical Assessment and Preliminary Site Investigation Stage 1 F. Geotechnical Assessment and Preliminary Site Investigation Stages 2 &3 G. Landscape Concept Plan H. Riparian Corridor Analysis Plan I. Restoration Plan J. Land Dedication Staging Plan K. Traffic Impact Assessment L. Stormwater Management Report M. Biodiversity Development Assessment Report N. Bushfire Threat Assessment O. Servicing Strategy P. Voluntary Planning Agreement Q. DCP Compliance Table
Clause 4.6 requests	None
Summary of key submissions	• Object to proposed residential lot size • Concerned about traffic generation • Concerned about ecological impacts • Concerned about access to services • Object to the process undertaken by Council and the applicant
Report prepared by	Lisa Proctor, Development Planner MidCoast Council
Report date	01 June 2021

Summary of s4.15 matters

Yes

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction

Yes

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 summarised, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

**Not
Applicable**

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?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not
Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.

Report Author: Lisa Proctor, Development Planner
File No. / ECM Index: DA 100/2019
Date of Meeting: 16 June 2021

DETAILS

Date Received: 24 August 2018

Applicant: Tattersall Lander Pty Ltd

Owners: Lot 1 DP 1154170 MidCoast Council
Lot 2 DP 1154170 Wolin Investments Pty Ltd
Lot 3 DP 1154170 MidCoast Council
Lot 4 DP 1154170 MidCoast Council

Land: Part Lots 1,2,3 and Lot 4 in DP1154170, 90 Viney Creek Road (East),
Tea Gardens

Area: Approximately 44ha

Property Key: 37933

Zoning: Part R2 Low Density Residential, Part E2 Environmental
Conservation, Part RU2 Rural Landscape

EXECUTIVE SUMMARY

The application seeks consent for a 226 lot Torrens title subdivision over three stages. It includes two public reserves and bulk earthworks. The land is zoned part R2 Low Density Residential, part E2 Environmental Conservation and part RU2 Rural Landscape, under the provisions of *Great Lakes Local Environmental Plan (GLLEP) 2014*.

The application is integrated development. The NSW Rural Fire Service (RFS) have provided a bushfire safety authority under the *Rural Fires Act 1997* and the Natural Resources Access Regulator (NRAR) have provided General Terms of Approval under the *Water Management Act 2000*. The application was referred to Transport for NSW (TfNSW) for comment. Comment from TfNSW has been received and considered in the assessment of the application.

The site is included on Council's Urban Release Area mapping. Clause 6.1 of GLLEP 2014 requires the developer to make satisfactory arrangements for the provision of State infrastructure to service the development. The applicant is yet to demonstrate to Council that satisfactory arrangements have been made for the provision of State infrastructure as a Satisfactory Arrangements Certificate (SAC) was not lodged with the development application. In early November 2020 the applicant was advised that they needed to lodge a SAC with the application.

DPIE have advised Council and the developer that a State voluntary planning agreement (SVPA) must be in effect prior to issuing a SAC. The developer lodged an application with DPIE to enter into a SVPA on 11 November 2020. The applicant is still in negotiations with Council about the acquisition of a parcel of land (Lot 3 DP1154170) which runs through the centre of the site. DPIE have advised the applicant that they can not proceed with finalisation

of the draft SVPA for exhibition until the land acquisition issue is resolved. Subject to the developer reaching an agreement with Council on the land value, it is likely that the acquisition will be reported to Council in May 2021. DPIE have advised that the process for making the SVPA, after the land acquisition issue is resolved, and exhibiting it, will be up to 6 months.

SUMMARY OF RECOMMENDATION

That the Panel determine Development Application 100/2019 for a 226 lot Torrens title residential subdivision over three stages pursuant to Section 4.16 of the Act by refusing consent.

FINANCIAL/RESOURCE IMPLICATIONS

Cost to Council of defending any appeal against the Panel's decision.

LEGAL IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

BACKGROUND

The development site forms part of land within the North Shearwater Urban Release Area, which was rezoned from Rural 1(a) to Residential 2(a) to accommodate future residential and tourist related development (Amendment 70 to Great Lakes Local Environmental Plan (GLLEP) 1996 gazetted on 30 December 2011). In conjunction with the amendment of GLLEP 1996, a site-specific Development Control Plan (DCP) No.66 was prepared and was effective from 28 November 2012. GLLEP 1996 and DCP 66 were replaced by GLLEP 2014 and DCP 2014 in April 2014.

Consent was granted by Council on 28 May 2015 for a 77 lot Torrens title subdivision of the site (DA 236/2014). That application has now lapsed and the applicant has not indicated that the development had physically commenced. That application complied with the minimum lot sizes (between 1,500-2,000m²) set by the Great Lakes Development Control Plan 2014. Smaller lot sizes are proposed in the current development application to address the economic feasibility and logistics of delivering water and sewer services and avoiding an ad-hoc unplanned lot layout. Whilst the smaller lot sizes do not comply with the minimum lot sizes set by the DCP, they do comply with the minimum lot size standard in GLLEP 2014.

A Voluntary Planning Agreement (VPA) applies to the land that addresses the agreement between Council and the Developer, Wolin Investments Pty Ltd, for the future development of the North Shearwater Estate. That VPA requires the dedication and management of land for environmental purposes. The VPA is included in full at Attachment Q.

In December 2017 the applicant attended a meeting with Council's Development Assessment Panel to discuss the proposed 226 lot subdivision. The following issues were discussed at that meeting:

- Proposal for roads to encroach into the E2 zoned land to address asset protection zones for bushfire. This will be offset by the vegetation of additional lands. Council staff expressed no objection to this in-principle, subject to specialist assessment to support a justification for any encroachment into the E2 zone.

- Residential lot sizes will need to be smaller than prescribed by the DCP. Council staff expressed no objection to this in-principle, subject to detailed assessment, as the lot sizes will comply with the standard set by GLLEP 2014.
- Concern that the 5m wide landscaped buffer set by Viney Creek Road is not consistent with the controls on adjoining lots. Council staff confirmed that the controls are consistent.
- The applicant wishes to provide a public sporting field and facilities within the rural zoned portion of the site. Council staff expressed no objection to this in-principle, subject to on-going negotiations and further detail.

The development application (DA 100/2019) that is the subject of this report was lodged with Council on 24 August 2018. The preliminary assessment of the application identified several issues that required additional information to be submitted by the applicant prior to lodgement of the application with the JRPP. That information was lodged with Council in early 2019 and the application was registered with the Joint Regional Planning Panel (JRPP) on 25 March 2019. The application was referred to external agencies and departments within Council on 20 March 2019. Public exhibition of the application occurred between 4 April 2019 and 7 May 2019. Sixteen unique submissions objecting to the development have been received.

SUBJECT SITE AND LOCALITY

The site is known as Part Lots 1, 2, 3 and Lot 4 in DP1154170, 90 Viney Creek Road (east), Tea Gardens. It is comprised of a large area of grazing land and remnant native forest. The land is zoned part R2 Low Density Residential, part E2 Environmental Conservation and part RU2 Rural Landscape under the provisions of *Great Lakes Local Environmental Plan 2014*.

The E2 zoned land, which includes the remnant forest, is located centrally within the site. The topography is sloping and includes several steep sections, especially within the existing remnant forest. First and second order streams are located within the development footprint, with the second order stream being located centrally and running approximately west to east within the environmental zone and adjacent to the remnant forest.

Access to the development site is via Viney Creek Road. Neighbouring properties to the south are large lot residential properties containing a mix of managed lands and remnant vegetation. Ocean, Broughton Island and Port Stephens views are available from the east and south-east of the site.



Figure 1 - Location in a regional context

PROPOSAL

The proposed development seeks the Torrens title subdivision of the land, creating two hundred and twenty-six (226) residential lots and two (2) public reserves, including associated bulk earthworks. The subdivision is proposed to be undertaken in three (3) defined precincts with multiple construction stages occurring within each precinct as follows:

- Precinct 1 will provide one hundred and fifty three (153) residential lots.
- Precinct 2 will provide forty-two (42) residential lots.
- Precinct 3 will provide thirty-one (31) residential lots, a public open space area and a conservation area accessible to the public.

The application notes that there will be further stages proposed for the development of the eastern part of the land, which will be subject to separate development applications in the future. The proposed and future precincts are shown on the plan below. Future precincts 4, 5A and 5B do not form part of this application and are shown on the plan for contextual purposes only.



Figure 2 – Precinct Locations

Key components of the proposal include:

- The removal of 26,885m² of riparian corridor, which will be offset through the provision of an additional 32,455m² of rehabilitated riparian corridor in accordance with a Restoration Plan (Attachment I), and dedication of the land to Council via a VPA (Attachment Q). This component will be delivered prior to any subdivision certificate being issued for stage 3 of the development in accordance with a Planning Agreement that was executed in 2012.
- The requirement to retire credits by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator.
- A recreational area which will be constructed as active open space with a small car park. Further embellishment of the open space area will be included in the development of future precincts.
- Stormwater treatment through the construction of three detention basins, an offline biofiltration rain garden in Precinct 1, construction of roadside swales on perimeter roads and the provision of dedicated vegetated buffer strips adjacent to E2 areas.
- Bushfire asset protection zones located on residential lots.
- A fire trail along the southern boundary of the site to be dedicated to Council.
- Site landscaping to achieve streetscape amenity and habitat improvement.
- Construction of a bike path within the public lands.

REPORT

Under S4.15 of the Environmental Planning & Assessment Act 1979 (EP&A Act), a consent authority when determining a development application, *“is to take into consideration such of the following matters as are of relevance to the development the subject of the development application”*. The relevant matters for consideration are summarised below:

4.15 (1)(a)(i) the provisions of any environmental planning instrument

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

State Environmental Planning Policy (State and Regional Development) 2011

Clause 20 of this policy cross-references Schedule 4A of the Act which identifies a range of developments that due to their nature, scale, impact or location are deemed to be of regional significance. The Hunter – Central Coast Joint Regional Planning Panel (JRPP) is the determining authority for this DA as, pursuant to Schedule 7 of SEPP (State and Regional Development) 2011, the proposal is defined as:

8 Coastal subdivision:

(1) *Development within the coastal zone for the purposes of subdivision of the following kind-*

- (a) subdivision of land for any purpose into more than 100 lots, if more than 100 of the lots will not be connected to an approved sewage treatment work or system,*
- (b) subdivision of land for residential purposes into more than 100 lots, if the land—*
 - (i) is not in the metropolitan coastal zone, or*
 - (ii) is wholly or partly in a sensitive coastal location,*

In accordance with Schedule 7, the JRPP is the relevant consent authority as the proposal is a subdivision of more than 100 lots in a sensitive coastal location.

State Environmental Planning Policy (Coastal Management) 2018

The Coastal Management SEPP applies to the site. The land is mapped as being located within the Coastal Environment Area.

Clause 13 of the SEPP states that development consent must not be granted to development on land that is within the Coastal Environment Area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

Control	Assessment
a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	The development does not unreasonably impact the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.
b) coastal environmental values and natural coastal processes,	The development does not unreasonably impact on coastal environmental values or natural coastal processes.
c) the water quality of the marine estate,	Due to the location of the subject land and the adoption of water quality controls to achieve Council targets, the development will not impact on the waters of the marine estate.

Control	Assessment
d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	There are impacts on some native vegetation, but these are within acceptable limits and have been avoided, mitigated and residual impacts are offset. The development does not impact marine vegetation, undeveloped headlands or rock platforms.
e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The development does not negatively impact on public open space or safe access to any foreshore, beach, headland or rock platform.
f) Aboriginal cultural heritage, practices and places,	An Aboriginal Cultural Heritage Assessment was lodged with the application. The report confirms that no impact is likely. This has been accepted by BCD.
g) the use of the surf zone	The development does not affect the surf zone.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The development has been designed to include measures to ensure that the biophysical, hydrological and ecological attributes of the site will be protected or offset. The development is not adjacent to any existing public beach, sensitive coastal lake, headland, rock platform, foreshore and surf zone and does not impact on any Aboriginal cultural heritage matter. An Aboriginal Cultural Heritage Assessment was lodged with the application and is included at Attachment D.

The site of the proposed development does not contain gazetted Coastal Wetlands. Surface run-off from the site of the proposed development may eventually flow into gazetted Coastal Wetlands associated with the Lower Myall River. The adoption of water quality controls of a standard to address Council's requirements will mean that downstream Coastal Wetlands should not be impacted by the development.

The development as proposed will not significantly or unreasonably affect the mapped Coastal Environment area or Coastal Wetland area.

State Environmental Planning Policy 44 (Koala Habitat Protection)

The MidCoast Local Government Area is listed within Schedule 1 of SEPP 44 and the site is over 1 hectare in area. Pursuant to clause 6 of the SEPP this policy applies.

Investigations in 2008 into the presence of Koala Habitat on the site, as defined by SEPP 44, concluded that Core Koala Habitat, as defined by the SEPP, does occur in the North Shearwater Release Area based on the presence of tree species listed on Schedule 2 of the

SEPP. These areas were protected through the implementation of the E2 zone and are not impacted by the proposed development.

More recent investigations for the proposed subdivision however failed to detect koala presence on the subject land. Nonetheless, the development proposes to restore areas of high conservation value where Koalas were previously detected.

A Koala Plan of Management prepared pursuant to SEPP 44 is not required for this DA.

State Environmental Planning Policy (Infrastructure) 2007

The aims of State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) are to facilitate the efficient delivery of infrastructure across the State. The relevant clauses of the Infrastructure SEPP are set out below.

Part 3 Development Controls

Division 20 Stormwater management systems

Clause 111A of the SEPP provides that development for the purpose of a stormwater management system may be carried out by any person with consent on any land.

Clause 104 - Traffic-Generating Development

Pursuant to Clause 104 of the Infrastructure SEPP, development defined in Schedule 3 as 'Traffic Generating Development' must be referred to Transport for NSW (TfNSW) within 7 days of the application being made for their consideration.

The proposed use is listed under Schedule 3 of the ISEPP:

"subdivision of land with 200 or more allotments where the subdivision includes the opening of a public road"

The proposal was referred to TfNSW. Their response stated that there will be an impact, from this and other residential developments within the area, affecting the Pacific Highway and Myall Way and the intersection of the two roads. TfNSW recommended that Council undertake an update of its S.7.11 plans, informed by a traffic impact assessment in consultation with TfNSW, to determine appropriate upgrades to the state road network and funding mechanisms as a result of the cumulative impacts of known developments within the Tea Gardens and Hawks Nest catchment.

Whilst Council is currently undertaking a review of its S.7.11 plans, which will include traffic impact assessments where required, Council does not intend to introduce a s7.11 contribution plan to raise funds for State government infrastructure. It is acknowledged that there will be a cumulative impact as a result of increased residential development and its associated traffic volumes which will ultimately require upgrades of surrounding roads and intersections.

TfNSW would have been aware of the future growth of Tea Gardens when planning the duplication of the Pacific Highway and its intersection with Myall Way. It is assumed that TfNSW would have designed the intersection of the Pacific Highway and Myall Way to cater for forecast growth upfront or have developed trigger points for the upgrade of the intersection. Relevant to this, the site is included on the GLLEP 2014 Urban Release Area map which, in accordance with Clause 6.1 of the LEP, requires satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land. The applicant is currently in negotiations with Council and the State for the provision of satisfactory arrangements.

The Tea Gardens District Section 94 Contributions Plan considers the impact that residential growth will have on Council's road network in Tea Gardens and proposes appropriate upgrades as a result. It is Council's intention to review this contribution plan, together with all contribution plans from the previous councils, to inform development of a MidCoast Contributions Plan, ideally developed parallel to the new MidCoast LEP & DCP.

State Environmental Planning Policy No 55 – Remediation Of Land (SEPP 55)

Under the provisions of this SEPP, a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Geotechnical, Preliminary Site Investigation (Contamination) and Salinity Investigations for Stages 1, 2 and 3 of the proposal, prepared by Douglas Partners and dated May 2018 were submitted with the development application and are included at Attachments E and F.

The reports identify that soil chemical analysis results were within the health-based criteria for residential land use and that the potential for gross contamination across the site is considered to be low. Contaminant concentrations of the samples tested were also within the adopted ecological-based assessment criteria. Contaminant concentrations of the samples tested were within 'General Solid Waste' criteria for disposal to landfill.

The report does note inspection and possible additional testing of stockpiled filling within the south-eastern portion of stage 1 should be conducted during development to confirm the geotechnical and contamination suitability for reuse. A condition has been included in Attachment A for this testing.

In relation to contamination it is considered that the site is suitable for the proposed development. The relevant provisions outlined within SEPP 55 have been satisfied and conditions of consent have been imposed where required.

State Environmental Planning Policy No 64 – Advertising and Signage (SEPP 64)

The SEE lodged with the application states that the proposal will include a "*permanent estate gateway entry sign and also temporary signage relating to the sale of the resulting lots, all of which will be visible from public places*". No plans of the proposed signage have been lodged with the application and no assessment against the provisions of SEPP 64 were included in the SEE, therefore any proposed signage will be subject to a separate development application. A condition has been included in Attachment A for this.

Great Lakes Local Environmental Plan (GLLEP) 2014

Under the GLLEP 2014 the site is zoned:

- R2-Low Density Residential;
- E2-Environmental Conservation; and
- RU2-Rural Landscape.

The proposal is permissible with consent in these zones, including the proposed roads, which are permitted with consent in all three zones. Although stormwater management systems are not included in any of the zones as a permitted use, the Infrastructure SEPP permits development for the purpose of a stormwater management system to be carried out by any person with consent on any land (see above).

The proposed development complies with the relevant objectives of the zones as follows:

Zone	Objectives	Compliance
R2	- To provide for the housing needs of the community within a low-density residential environment. - To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Complies. The development will provide standard low-density residential lots with facilities and services to meet the needs of future residents.
E2	- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. - To prevent development that could destroy, damage or otherwise have an adverse effect on those values.	Complies. The E2 land will be protected and restored. Although part of the E2 land includes a stormwater detention basin, it will be constructed as a wetland and is not expected to have an impact on the values of the E2 land.
RU2	- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. - To maintain the rural landscape character of the land. - To provide for a range of compatible land uses, including extensive agriculture. - To provide for rural tourism in association with the primary industry capability of the land which is based on the rural attributes of the land. - To secure a future for agriculture in the area by minimising the fragmentation of rural land and loss of potential agricultural productivity.	Partially complies. Although it is not intended to undertake primary production on the RU2 land, the rural landscape character will be retained as the area will be dedicated to Council as a passive recreation area in the first instance and for active recreation in future stages of the development. It is likely that the area will be rezoned for public recreation in the future. The surrounding residential land makes the parcel of RU2 land unsuitable for primary production.

The relevant matters to be considered under GLLEP 2014 for the proposed development are outlined below.

Relevant Clause	Compliance
4.1D Minimum subdivision lot size: R2 - 450m² E2 – 40ha RU2 – 40ha	All residential lot sizes are greater than 450m² and comply with the minimum lot size for the R2 zone. Although the proposed E2 area is only 17ha, it is not proposed to further subdivide any part of the E2 land. Notably Clause 4.1B of <i>Great Lakes Local Environmental Plan 2014</i> facilitates subdivision that will result in the improvement and protection of high value conservation land. In accordance with Part 4.1B(2)(c) the land is the subject of a planning agreement that makes provision for the conservation or enhancement of the natural environment. The area of RU2 land is already below the minimum lot size. It is not proposed to further subdivide this area.
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones.	The proposed subdivision is unlikely to result in any land use conflicts as the development has been designed to mitigate and manage any potential incompatibilities.
6.1 Arrangements for designated State public infrastructure	Does not comply. The land is included on the URA map. This clause requires satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land if the land is to be developed intensively for urban purposes. The applicant has not demonstrated that satisfactory arrangements have been made for the provision of designated State public infrastructure.
6.2 Public utility infrastructure	Complies. Adequate arrangements have been made to ensure that essential public utility infrastructure will be available.
6.3 Development Control Plan	Complies. A staging plan, structure plan and development control plan have been prepared for the site (Great Lakes DCP 2014 Part 16.20).
7.1 Acid sulphate soils	Complies. Council's records identify the site as having Class 4 and 5 acid sulphate soils. The area where the proposed subdivision is located (Stage 1) is partially identified as no occurrence of ASS and partially Class 5. The Geotechnical Reports lodged with the application concludes that " <i>Reference to the NSW Acid Sulfate Soil Risk map for the area produced by the NSW Department of Land and Water Conservation indicates that the site is in an area mapped as having no known occurrence of acid sulfate soils</i> ". A preliminary assessment of the proposed works prepared in accordance with the <i>Acid Sulfate Soils Manual</i> indicates that an acid sulfate soils management plan is not required for the works.
7.2 Earthworks	Complies. The application proposes substantial earthworks across the entire site as well as the establishment of bio-retention swale drains, cut and fill associated with batter works and the establishment of

Relevant Clause	Compliance
	building pads for the proposed allotments contained within the site. Council's Development Engineer has reviewed the application, and the proposed earthworks are satisfactory. Conditions have been included to ensure that the provisions of this clause are met.
7.5 Stormwater Management	Complies. The Stormwater Management Report lodged with the application satisfactorily addresses this clause. Council's Water Quality Coordinator has reviewed the application, and the proposed stormwater management measures are considered to be satisfactory. Conditions have been included to ensure that the provisions of this clause are met.
7.6 Drinking Water Catchments	Complies. The land is located on the drinking water catchment map. The proposal adheres to the principles of the <i>Stormwater Management Strategy</i> (Worley Parsons 2010) which was prepared in relation to the North Shearwater Urban Release Area. Treated runoff is proposed to be directed into the riparian zones and then used to enhance the riparian corridors. Council's Water Quality Coordinator has reviewed the application, and the proposed stormwater management measures are considered to be satisfactory. Conditions have been included to ensure that the provisions of this clause are met.
7.21 Essential Services.	Complies. Electricity, reticulated water, sewerage, and Council's waste collection will service the site. Adequate arrangements have been made to ensure that essential services will be available.

4.15 (1)(a)(ii) the provisions of any draft environmental planning instrument

Not applicable.

4.15 (1)(a)(iii) any development control plan

Great Lakes Development Control Plan 2014

The aims of this Plan are to ensure high quality, sustainable development outcomes that maintain a high level of environmental amenity. The Plan is designed to allow flexibility in the application of its controls where strict compliance is considered unreasonable or unnecessary provided the relevant objectives of the Plan have been achieved.

The proposed development is partially consistent with the requirements of the Great Lakes Development Control Plan 2014. The following non-compliances are noted:

Part 4 - Environmental Considerations	
Designs and locates the development appropriately in relation to agricultural sustainability, ecological integrity, topography, landform, native vegetation, wildlife habitat, wetlands and watercourses	The development has not been appropriately designed and located in relation to topography and landform. The lots and roads proposed along the southern portion of the site (south of Durness Drive) are located

	such that they will have an impact on the privacy and amenity of existing residences in Shearwater Estate to the south.
Part 16.20 - Site Specific Development Controls - North Shearwater	
16.20.3 Structure Plan	The Structure Plan requires allotments of 1500 – 2000m² along the interface with the development to the south. The development proposes lots significantly less than this, with most lots sized at 590m² along Flannel Flower Circuit and 600m² along Hakea Lane. Lots running along the Fire Trail are generally between 1100m² and 1300m². None of the allotments contain the 15m easement for landscape mounding, drainage and services required by the Structure Plan. The non-compliance with the proposed structure plan and development controls for lot sizes and landscaping results in potential privacy and amenity impacts to residents of the North Shearwater Estate to the south as lots within the proposed development are generally 10-15m upslope of the existing dwellings. The development proposes that access to some of the lots directly adjoin Viney Creek Road. It is proposed to place a restriction on the rear of some of those lots to incorporate a 5m wide landscape mound. Bushfire hazard and prohibitive construction costs were cited as reasons. The departure from this control is considered acceptable. Lapped and capped fencing is noted as required for Precinct 1. This is also considered to increase the bushfire threat and is therefore inappropriate in this Precinct. A rural fence is proposed instead, which is considered to be acceptable. Access arrangements and landscaping along Viney Creek Road within Precinct 3 do not comply with the Structure Plan.

A full assessment of the proposal against the requirements of Great Lakes DCP 2014 is contained in the compliance table held at **Attachment Q**.

4.15 (1)(a)(iiia) any planning agreement or any draft planning agreement

A Voluntary Planning Agreement (VPA) between the developer and Council was made on 13 November 2012 as part of the rezoning process and has been registered on the Title of the land. The agreement applies to the dedication of land and works and embellishments on the dedication land, as well as a monetary contribution. The time for the dedication of the land is

before a subdivision certificate is issued for a plan that when registered would create a dwelling house lot within stage 3 of the development.

A condition is included in Attachment A that refers to the Agreement and requires the achievement of the works at the relevant stages. The VPA is included in full at Attachment P.

4.15 (1)(a)(iv) any matters prescribed by the regulations

Council Policy

The proposed development is consistent with relevant Council Policies.

4.15 (1)(b) the likely impacts of that development

Context and Setting

The Hunter Regional Plan 2036 guides the NSW Government's landuse planning priorities and decisions in the region. It provides an overarching framework to guide subsequent and more detailed land use plans, development proposals and infrastructure funding decisions. The proposal is generally contextually consistent with the provisions of the Plan, in particular Goal 4, which aims to provide for the orderly and economic release of urban land to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region's growing population.

The proposed subdivision is located in a prominent elevated ridgeline position in a setting that is primarily rural. There are significant views across Port Stephens from some of the lots located on the highest parts of the site. The existing development to the south consists of lots zoned R5 – Large Lot Residential, generally sized between 1 and 2 hectares.

The development is located over 2 kilometres from the nearest commercial area. There are no footpath or cycleway connections between the proposed development and the nearest commercial area. The proposal will be developed as an isolated pocket of residential land within a rural setting.

The development is not considered to be contextually appropriate. Although there is no exception being sought to any development standard, the proposed development deviates from the DCP lot size controls and landscaping solutions that are proposed in the DCP to minimise the impacts of the proposed residential development on adjoining development and on the landscape and setting. The intensity of the proposed development and the way that the proposed development responds to the topographical constraints of the subject land are the primary contributors to the negative contextual impacts.

Site Design and Internal Layout

The layout of the subdivision is considered functional, providing future residents of North Shearwater with a reasonable level of residential amenity. The development however has not been designed to adequately minimise or mitigate impacts on existing development to the south. The setbacks, landscaping outcomes and lot sizes proposed by the DCP to preserve amenity for residents to the south have not been complied with.

The proposed development is located significantly higher than the developed area to the south. Precincts 1 and 2, in particular, will overlook adjoining properties. In Precinct 1, Roads 3 and 9 are located between the proposed development lots south of Durness Drive and the existing development to the south. These roads are likely to have impacts on privacy and amenity,

which is discussed in further detail below. A large drainage reserve provides some amenity and relief from the density of the proposed development in Precinct 1.

Although Precinct 2 is located at a slightly lower level, it also overlooks development to the south, and is separated by a fire trail and Road 10, which will have impacts on privacy and amenity. A line of trees is proposed along the southern boundary to soften the interface with the existing development, however it is unlikely that a single row of trees will adequately mitigate potential privacy and amenity impacts, as discussed below.

Privacy (Aural and Visual) and Amenity

The proposal would be likely to have a significant impact on the privacy and amenity of the residential properties to the south in Shearwater Estate. This was a common theme in the objections that were received to the application. The proposed subdivision will create residential lots that are located upslope of existing large lot residential development. In addition, public roads are proposed along the boundaries of some of the existing lots, resulting in noise, amenity and light intrusion impacts.

Potential impacts on larger lots to the south have only been partially mitigated through the inclusion of a drainage reserve along the southern boundary, providing a small amount of separation between existing residences to the south and future dwellings on the subject site. The design falls short of providing adequate screening and in some locations there is a difference in height of around 14m between the proposed lots and the existing dwellings in Shearwater Estate as shown in the diagrams below:

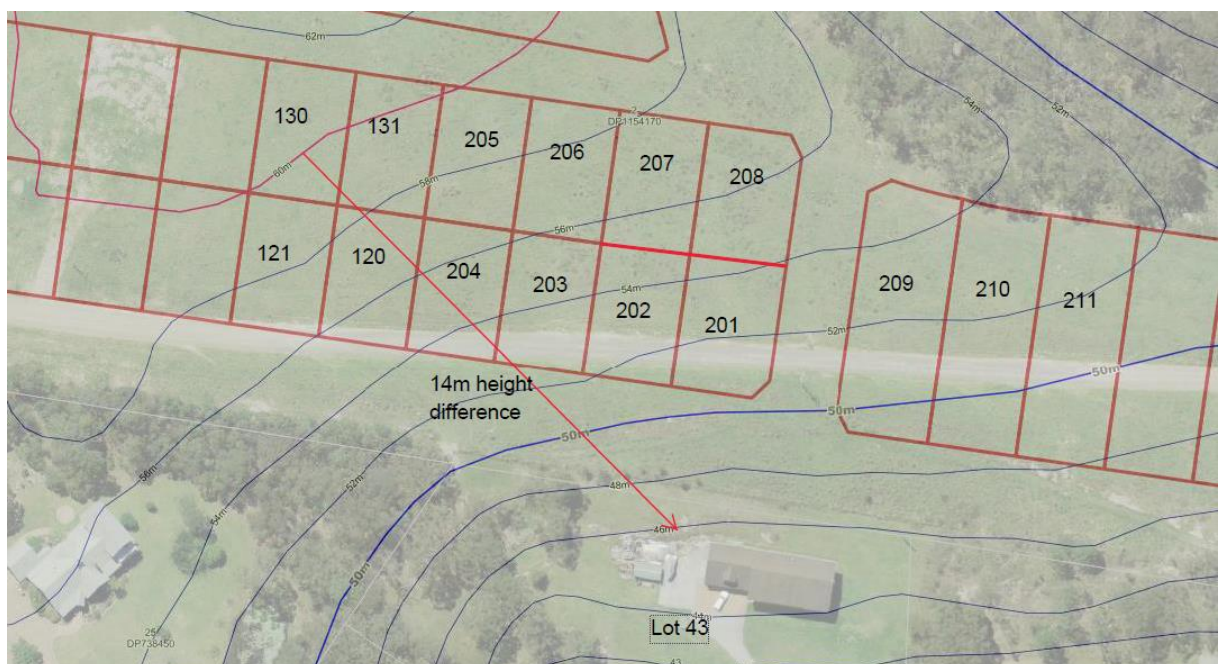


Figure 3 – Example of potential impacts of site design and topography on adjoining properties

It is likely that the potential for negative privacy and amenity impacts would be significantly reduced if the lots south of Durness Drive were more consistent with the DCP controls, or the intent of the controls, to achieve a transition from the adjoining large lot residential development.

Visual Impact

There is likely to be a negative visual impact for residents of the Shearwater Estate located to the south of the site, primarily due to the intensity of the proposed development and the height difference between the proposed and existing developments (see above). The impacts on the view will be partially softened through the inclusion of a drainage reserve and boundary planting, however the development intensity and the inclusion of roads along the southern boundary mean that there will still be a negative visual impact on adjoining development. No visual impact assessment has been lodged in support of the proposed development and the application is lacking a detailed analysis of the topographical relationship of the existing dwellings to the proposed lots.

A landscape concept plan has been submitted with the development application and is included at Attachment G. The landscape plan includes a schedule outlining suitable plant species and is considered to be sympathetic to the surrounding environment. Landscaping of the site, combined with the conservation of a large portion of conservation lands through the middle of the site, will ensure a reasonable level of amenity and streetscape for future residents of North Shearwater.

Access, Transport and Traffic

A common theme in the objections to the application was concern about the intersection of Viney Creek Road East and Myall Way and the impact that additional traffic would have on this area as drivers currently entering Myall Way from Viney Creek Road do not have adequate Safe Intersection Sight Distance (SISD) for the posted speed limit of 80km/h, with the available SISD falling short of the required 181m by 75m. However, the Traffic Impact Assessment (TIA) lodged with the application notes that there is adequate Stopping Sight Distance (100m required within the 80km/h posting for the Myall Way) for vehicles travelling along Myall Way to avoid collision with other vehicles at the intersection.

The TIA assessed the intersection of Myall Way/Tea Gardens Road and Viney Creek Road East, accounting for 2% growth along Myall Way with a design horizon of ten years (2028). The increased flows were found to have a minimal impact upon the local road network, with all turning movements maintaining a Level of Service A. Allowing for the additional right turning traffic from Viney Creek Road East it was considered that this intersection can continue to operate at its current safety standard and that the potential traffic impacts were minor. Conditions for new line marking at the intersection and advanced warning signs on Myall Way will be required along with a reduction of the speed limit in the vicinity of the intersection.

All proposed internal road design widths and footpath allocations were assessed to comply with Council's requirements. A 4m wide dedicated fire trail along the southern boundary is proposed and has been assessed by Council and the RFS as acceptable.

An open space area is to be provided as part of the construction of Precinct 3. There are only 10 car parking spaces proposed to cater for the use of the field prior to the development of the future precincts. Further car parking would be required as part of Precinct 5. Council's Manager of Community Spaces has advised that although the open space area will be constructed as part of Precinct 3, it will not be used as an active recreation area until such time as the amenities and additional car parking included in the future precinct 5A are constructed. It has been considered appropriate to include one accessible car park within the spaces to cater for the usage rate anticipated for the fields/recreation areas.

Utilities

The site will be serviced by reticulated water, sewer and electricity. A servicing strategy for reticulated water and sewer was lodged with the application. The Strategy was determined by Council's Water Services section to be adequate.

Drainage

A stormwater strategy incorporating detention and water sensitive urban design principles was submitted with the application. That strategy proposes to address water quality and quantity objectives of the DCP via a combination of:

- Construction of three stormwater detention basins.
- Construction of an offline end-of-pipe biofiltration rain garden in Precinct 1.
- Construction of roadside swales where grades allow on perimeter roads.
- Provision of vegetated buffer strips adjacent to E2 where grades do not allow swale construction.
- Installation of 3kL (average) rainwater tanks with each future dwelling.
- Removal of existing farming practices and active rehabilitation of significant areas of E2 land, including significant replanting efforts and large-scale contour banks.

It is expected that the development will have a neutral or beneficial impact on both the stormwater pollutant levels and peak flow-rates leaving the site, compared to the existing situation. The Precinct 3 basin is included in the eastern part of the E2 zoned land. This basin is being constructed as a wetland and is not expected to reduce the biodiversity values within the E2 land. This location was determined to be the most appropriate for the Precinct 3 basin as it is online on a second order stream. Once the catchment is mature and stabilised, minimal sedimentation in the basin is expected, and a storage volume in excess of ten years of accumulated sediment will be provided below the permanent water level. Final engineering plans, maintenance plans and monitoring plans prepared for the stormwater management system are required to be submitted with subdivision certificates.

Flora and Fauna

A Restoration Plan has been prepared for the parts of the subject land zoned E2 and a Planning Agreement (included at Attachment P of this report) requiring certain weed management actions, fencing, seed collection, monetary contributions for maintenance, and land dedication, is registered on the land. The planning agreement was executed in 2012 as part of the rezoning of the land. The E2 zoned land and drainage reserves are to be established and dedicated to Council as public land.

The proposed development is generally located in an area of cleared exotic pasture grassland that has had a substantial history of grazing. However, the proposal will remove some areas of remnant native vegetation in Precincts 2 and 3. A Biodiversity Development Assessment Report (BDAR) was submitted with the application and was found to be adequate by Council's Senior Ecologist. The key findings of the BDAR are:

- Seven threatened fauna species, four endangered ecological communities and one endangered population were recorded across the North Shearwater Release Area during the rezoning investigations.
- Approximately 2.5 hectares of a regionally significant vegetation type occur within the development footprint.
- 2008 investigations into the presence of Koalas on the site identified Core Koala Habitat on the subject land. These areas have been included in the E2 zoned land. More recent

investigations (Wildthing 2018) however failed to detect koala presence on the subject land and it was concluded that core koala habitat is no longer present on the land.

- The land is partly mapped as being within the Coastal Environment area.
- Surface run-off from the subject land will flow to a gazetted Marine Park associated with the Lower Myall River. The runoff will be treated to a neutral or beneficial level and is not expected to have an impact on the Marine Park.
- The subject land does not adjoin any existing or proposed National Park or Nature Reserve.

Cultural Heritage

An Aboriginal Heritage Due Diligence Assessment (AHDDA) was submitted with the application and is included at Attachment D. Recommendations included following previous reports from Insite Heritage (2009) and ABMS (2009 & 2010) with findings such as test pitting in consultation with the local Aboriginal representatives. Given the continued discovery of potential cultural heritage items across the entire development site, applying for an AHIP and undertaking a full Aboriginal Cultural Heritage Assessment was recommended for expediting future development for Stages Four and Five.

Consultation and a site visit with the Karuah Local Aboriginal Land Council was undertaken in December 2018. Following consultation with Karuah LALC and their representatives, the December 2018 field survey, and the previous findings of the cultural heritage reports it was recommended that further investigation be undertaken through test pitting and an Aboriginal Heritage Impact Permit (AHIP) be sought accompanied by an Aboriginal Cultural Heritage Assessment Report (ACHAR).

In April 2020 the Department's Biodiversity Conservation Division advised that the AHIMS sites identified in the due diligence assessment for Precincts 1 to 3 had been changed to "not a site/s". Nonetheless, the western PAD identified in the ACHDDA report appears to encroach slightly upon Precinct 2 and no cultural heritage assessment report has been lodged with Council to assess the potential impacts upon the PAD.

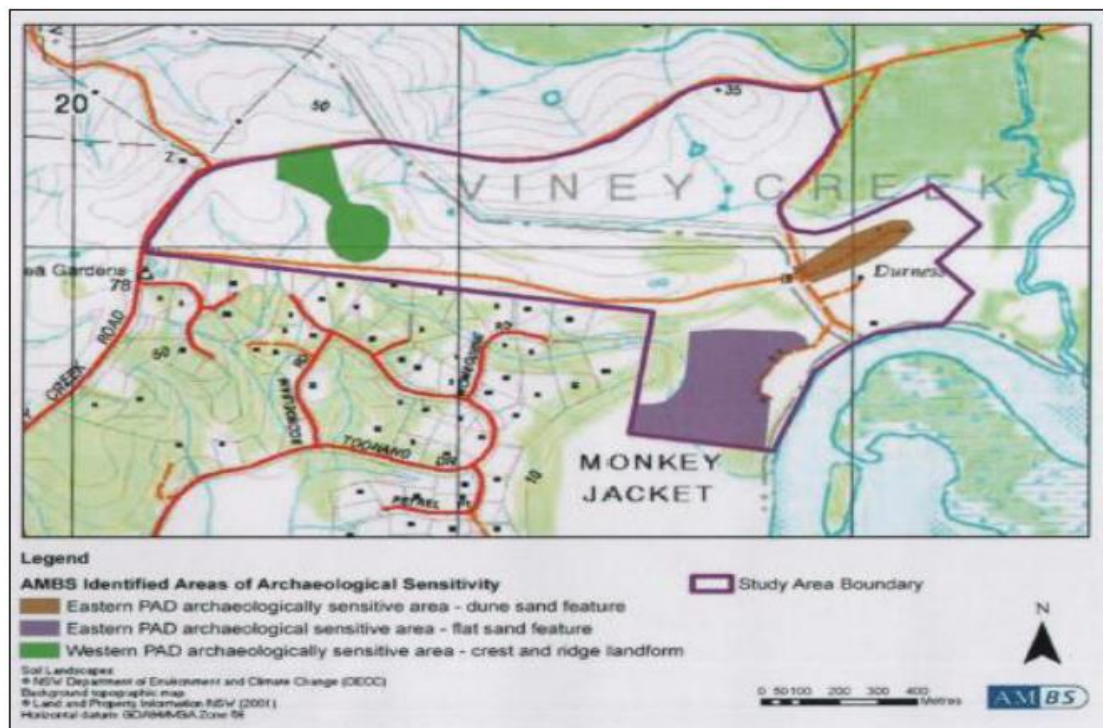


Figure 4 – Extent of PADs identified on site

Cumulative Impacts

The Parry's Cove development application located south of the site, on the outskirts of Tea Gardens, is proposed to deliver over 700 residential lots in 16 stages. If this development at North Shearwater and the Parry's Cove development are constructed simultaneously there are likely to be construction-related impacts on road condition and congestion and noise and amenity for neighbours.

4.15 (1)(c) the suitability of the site for the development

The southern portion of the site is not considered suitable for the proposed density of development due to potential impacts on the privacy and amenity of the adjoining development. The site is located at a significant distance from the nearest commercial area and is not connected by footpaths or cycleways. The site is not considered suitable for the proposed development.

4.15 (1)(d) any submissions made in accordance with this Act or the Regulations

The application was notified to adjoining owners in accordance with Council's Notification Policy and nineteen submissions were received. The submissions all objected to the proposal and referred to the following issues:

Issue	Detail	Comment
Layout and Design		
	The previously approved development (DA 236/2014) was a preferable design as it included larger lots and was more aligned with the Viney Creek area and semi-rural setting.	The application proposes lot sizes that are consistent with the minimum lot size requirement of the R2 zone. The applicant has advised that the lot sizes approved in DA 236/2014 are financially unsustainable as the servicing provision costs are high, however this is not a relevant matter for Council's consideration of the potential impacts of the development. The R2 zone allows lot sizes of 450m ² , therefore it is likely that many individual landowners will apply to subdivide lots greater than 900m ² , resulting in gradual unplanned sporadic subdivision in the future.
	Lots 45 and 46 should be reduced to 1500m ²	These blocks are larger to incorporate an APZ, along with a suitable building area.
	Lots should not be less than 1000m ²	The development standards for the site set the minimum lot size at 450m ² .

Issue	Detail	Comment
	450m ² in a rural area will: • lead to slum conditions • require extensive excavation • not allow people to access their gutters • be an over-development of the site • Result in a lack of views	The land is not zoned for rural purposes it is zoned R2 – Low Density Residential.
	No detail provided on fencing along the southern boundary. Request a solid fence.	A solid fence would be out of character with the existing and proposed developments and has not been recommended.
	Impacts on existing residents have not been considered.	It is noted in this report that impacts on some existing residents will be significant.
	The development is not consistent with the rural setting.	The development is proposed in land zoned for residential purposes.
	The utilities easement should be relocated along Road 2.	The easements for services have been appropriately located.
	Small lots will create water, sewerage and environmental problems due to topography.	Impacts on services and the natural environment have been satisfactorily addressed.
	Larger lots will have a higher market value	This is not a consideration for the DA.
	Site is too distant from town centre	This report notes that the site is located at a significant distance from the town centre.
	The development does not comply with the future vision for the area	This report notes that the development only partially complies with the DCP Structure Plan.
Construction Impacts		
	No assessment of construction impacts has been undertaken.	Conditions have been included to manage construction impacts
	There will be dust, noise and vibration during construction	Conditions have been included to manage construction impacts
Process		
	Not satisfied with Council notification procedure	The notification procedure was undertaken in accordance with Council's policy.
	Developer undertook no consultation with adjoining properties.	There is no requirement for the developer to undertake consultation with neighbours.
	Lack of response from Council staff on enquiries	Council staff responded when available.
	The SEE is inadequate	Noted
	Council should uphold the large lot requirements of the DCP	The larger lot requirements of the DCP are not legislated, though this report notes that the potential impacts of the development would be reduced if the design complied with the DCP.

Issue	Detail	Comment
	The veracity of the consultants' findings is questionable as they were engaged by the developer	Applicants are required to fund their own studies in support of development applications within the NSW Planning System.
	Infrastructure required for subdivision will ruin the topography requiring cut and fill.	A cut and fill plan has been lodged with the application which is considered to be adequate.
	Generally the area attracts people moving towards retirement, so steep blocks are not appropriate.	A variety of blocks over differing topography will be available.
	Will require new pump station for water. What happens in power outage-properties have no water supply.	Standard water reticulation arrangements will be in place.
	The development should be a State Significant Development (SSD)	The development is not a SSD under the relevant legislation.
	The development does not align with the Community Strategic Plan	The Community Strategic Plan commits to protection of the natural environment which is achieved through the implementation of the Restoration Plan and the Planning Agreement.
	The application has not addressed climate change.	Although the SEE has not directly addressed climate change, the water quality assessment and modelling considers climate change parameters.
	No urban design features are included.	The development is for a subdivision only.
Planning for Bushfire Protection		
	The development will increase the bushfire risk to existing residents	The RFS has issued a bushfire safety authority for the development.
Biodiversity		
	Concern for fauna movement.	Protection of fauna movement corridors is achieved through the implementation of the Restoration Plan and the Planning Agreement.
	Decision to pipe water course is ill conceived. Watercourses are proposed to be filled and built over having a profound impact on wildlife.	The potential impacts of the development on watercourses have been adequately mitigated. Potential biodiversity impacts have been assessed
	Biodiversity assessment is inadequate and inaccurate.	The Biodiversity Assessment is technically adequate and complies with the relevant legislation.
Roads and traffic		
	Traffic report is erroneous and under-estimates the traffic flow and impacts. The survey was undertaken during prolonged rainy periods, thereby lessening traffic flows.	The traffic report complies with the relevant standards, guidelines and legislation and is considered to be adequate for assessment of potential impacts.

Issue	Detail	Comment
	Access to Myall Way from Viney Creek has limited vision to the north and south and is dangerous.	Conditions are proposed to reduce this impact.
	No public transport - new residents will rely entirely on cars, which is unacceptable.	Bus stops are proposed.
	The proposed single lane one-way road is not appropriate.	The proposed roads meet the relevant standards.
	The DA refers to an existing cycleway, however there is none	Noted.
	Proposed road 9 will affect neighbours to the south and is not of an appropriate width	It is agreed that the road location will affect neighbours to the south. The width is considered appropriate.
	Waste collection vehicles may not be able to use Road 9	The road width is suitable for waste collection vehicles.
	A traffic plan should have been lodged with the DA	A traffic impact assessment was lodged with the DA.
Water Quality and Hydrology		
	Extra houses/paved areas will create stormwater drainage to an inadequate retention area.	The proposed stormwater management will have a neutral or beneficial effect.
Services		
	No explanation of how the power would be continued to be supplied to existing residents.	The necessary relocation of power poles is likely to cause short-term, temporary disruption to local power supplies.
	Excessive infrastructure will be required.	The amount of infrastructure required will be standard.
	Concerned about provision of water to existing residents	The proposed development will not impact upon the supply of services to existing residents.

The proposal was referred to:

- Transport for New South Wales
- NSW Rural Fire Service
- Natural Resources Access Regulator
- Planning Industry and Environment-Biodiversity and Conservation Division

Each of these Agencies has the development as provided comments and/or conditions that have been included in the Conditions to this report where relevant.

4.15 (1)(e) the public interest

Having regard to the assessment contained in this report, it is considered that approval of the development is not in the public interest.

RECOMMENDATION

It is recommended that Development Application 100/2019 for a 226-lot subdivision on Part Lots 1,2,3 and Lot 4 in DP1154170, 90 Viney Creek Road (E), Tea Gardens be refused as the application has not been lodged with the required information.