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| **From:** | William Clark |
| **To:** | William Clark |
| **Subject:** | FW: [#CC180099] PPSHCC-281 - Central Coast - DA/161/2024 - 305 Pacific Highway, Lake Munmorah 2259 - Subdivision - Record of Deferral |
| **Date:** | Monday, 28 April 2025 10:30:01 AM |
| **Attachments:** | image001.png<br>image002.png<br>image003.png<br>image004.png<br>image005.png |

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**From:** Ivan Brcic <ivan.brcic@corrs.com.au>
**Sent:** Wednesday, 23 April 2025 4:10 PM
**To:** Martin Ball <Martin.Ball@centralcoast.nsw.gov.au>
**Cc:** Louise Camenzuli <Louise.Camenzuli@corrs.com.au>; Nathan Burr <Nathan.Burr@centralcoast.nsw.gov.au>; Peter Francis <peter@pjfrancis.com.au>; Ian Stewart <Ian@brs.com.au>
**Subject:** RE: [#CC180099] PPSHCC-281 - Central Coast - DA/161/2024 - 305 Pacific Highway, Lake Munmorah 2259 - Subdivision - Record of Deferral

Dear Martin

Thank you for your time on the phone earlier today and your below email.

We will need to seek instructions on the funding mechanism proposed below. However, we note that Council's Grant Guidelines for the administration of the trust indicate that applicants for funding "must be a legally constituted not-for-profit organisation or auspiced by a legally constituted not-for-profit organisation". Any potential landholder is unlikely to meet this threshold requirement. Further, the guidelines also state that "applications for purchases or expenses related to private owned items" are ineligible for funding under the trust. Therefore, it seems unlikely that the proposed arrangement would be permissible under the terms of the trust deed.

For the benefit of the Applicant and Council, set out below are three possible solutions discussed with you today:

1. Imposing a condition requiring a financial assurance under section 4.17(4B) of the EPA Act. However, this does not work for two reasons:
    a. pursuant to section 78 of the EPA Regulation, section 4.17(4B) applies only if the development is State significant development; and
    b. even if section 4.17(4B) applied, it does not address the issue of who would be responsible for administering the financial assurance. However, we understand from your comments that Council is unlikely to agree to take on the obligation of administering the security.

2. Amending the development to community title subdivision to enable the Conservation Land to be managed by the Community Association as community property. We do not consider this to be an appropriate solution as:
    a. there is no requirement under clause 4.1G for the subdivision to be undertaken as community title subdivision; and
    b. it is unreasonable for the Council to require the subdivision to be converted to community title at this late stage of the DA process.

3. Imposing a condition requiring entry into a VPA for the developer to provide a security to fund the maintenance works at Year 11. However, we do not consider this to be an appropriate solution as it requires the developer to administer the security for successive landowners, which is not an ideal planning outcome. Further, we understand that Council is unlikely to be willing to administer the security.

As discussed, whilst the Applicant is not necessarily opposed to a mechanism to provide for the ongoing funding of the Conservation Land, the Applicant does not consider such funding is required to satisfy the consent authority as it is neither contemplated nor required by the express terms of clause 4.1G of the *Central Coast Local Environmental Plan 2022*. Paragraph (4)(a) requires only that the consent authority be satisfied that the subdivision will facilitate the management and protection of the environmental values of the land.

If the legislature had intended that funding was necessary to the meet the requisite level of satisfaction under clause 4.1G then it would have expressly included drafting to this effect (see, for example, section 27(2) of the *Coastal Management Act 2016*).

The Applicant remains of the view that the consent authority can be satisfied that the proposed subdivision satisfies clause 4.1G(4)(a) as the management of the Conservation Land is facilitated via the registration of the Biodiversity Certification Agreement (BCA) on title to the land, which imposes requirements for the management and maintenance of the land in perpetuity.

Each successive landowner will be required to comply with the requirements of the BCA. The BCA also requires the landowners to provide notice of the BCA to the purchaser of any land to which the BCA relates. Therefore, any subsequent sales (beyond the initial sale) would be subject to a proportionately discounted sale price to enable the ongoing management of the land by successive landowners. To the extent there is any non-compliance with the BCA, the Minister may take action rectify the contravention, including by entering the land to carry out the required work (s 8.18(3)(a) *Biodiversity Conservation Act 2016*).

In addition, we remind Council and the Panel that a consent authority is confined in relation to the imposition of conditions requiring the provision of security by section 4.17(6) of the *Environmental, Planning and Assessment Act 1979* (**EPA Act**). We note that a condition requiring financial assurance under section 4.17(4B) of the EPA Act is not available as it applies only if the development is State significant development (section 78 of the EPA Regulation).

Given the above, we implore Council's planning team to act reasonably and recommend that the development be approved, as the requisite level of satisfaction under clause 4.1G(4) is achieved by the BCA, which Minister and Council are both parties to.

Kind regards

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**From:** Martin Ball <Martin.Ball@centralcoast.nsw.gov.au>
**Sent:** Wednesday, 23 April 2025 3:55 PM
**To:** Ivan Brcic <ivan.brcic@corrs.com.au>
**Cc:** Louise Camenzuli <Louise.Camenzuli@corrs.com.au>; Nathan Burr <Nathan.Burr@centralcoast.nsw.gov.au>
**Subject:** [External] RE: [#CC180099] PPSHCC-281 - Central Coast - DA/161/2024 - 305 Pacific Highway, Lake Munmorah 2259 - Subdivision - Record of Deferral

Dear Ivan / Louise,

Following our without prejudice telephone discussion today, I have had some further thoughts (also provided on a without prejudice basis).

The Council is trustee of a trust called the Protection of the Environment Trust (POET) established in the 1990s I think under the former Gosford CC. I have not seen the trust deed for some years and would need to check what the trust can do.

Assuming POET can accept the money and invest it appropriately, perhaps a condition of consent could require that a s.88E instrument be registered on the title to lots 1 and 70 providing that the lot burdened cannot be used for residential purposes unless there is a deed in place between the owner from time to time and the council under which:

- the first purchaser must pay the amount of the discount on the purchase price to POET
- each owner from time to time must undertake the works required under the BMP
- the council pays the owner the cost of that work annually from POR\ET funds on provision of invoices and satisfactory performance
- POET has the original payment invested for that purpose (at least until the capital and earnings on it are exhausted).
- Council is given a caveatable interest so it can lodge a caveat, so each time there is a sale of either lot, the purchaser has to enter into the same deed.

If you would like this to be investigated further I will try to locate the POET trust deed and discuss with council officers.


**Martin Ball**
Solicitor on Secondment
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Central Coast Council

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Council on LinkedIn


*"We acknowledge the Traditional Custodians of the land on which we live, work and play. We pay our respects to Darkinjung country, and Elders past and present. We recognise the continued connection to these lands and waterways and extend this acknowledgement to the homelands and stories of those who also call this place home. We recognise our future leaders and the shared responsibility to care for and protect our place and people."*


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