

## PANEL ASSESSMENT BRIEFING REPORT

### NORTHERN REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	2014NTH020 – DA 2015/0096
<b>PROPOSAL</b>	<ul style="list-style-type: none"> <li>• Subdivision of land to create 184 lots including: <ul style="list-style-type: none"> <li>▪ 175 residential lots,</li> <li>▪ 3 residue lots,</li> <li>▪ 4 public reserves,</li> <li>▪ 1 drainage reserve &amp;</li> <li>▪ 1 sewer pump station lot,</li> </ul> </li> <li>• Upgrading of Iron Gates Drive, including clearing work in the road reserve,</li> <li>• Demolition of existing structures, including a dwelling;</li> <li>• Associated subdivision infrastructure works</li> </ul>
<b>ADDRESS</b>	Lot 163 DP 831052 and Lots 276 & 277 in DP 755624 (240 Iron Gates Drive, Evans Head)
<b>APPLICANT</b>	GoldCoral Pty Ltd
<b>OWNER</b>	GoldCoral Pty Ltd
<b>DA LODGEMENT DATE</b>	27 October 2014
<b>APPLICATION TYPE</b>	Development Application (Integrated) (proposed Concept DA)
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Coastal Subdivision - Clause 9(b) of Schedule 4A of the EP&A Act (retained as Regionally Significant Development under Clause 8(b) of Schedule 7 to SEPP (State and Regional Development) 2011)
<b>CIV</b>	\$11,395,333.00 (excluding GST)
<b>TOTAL &amp; UNIQUE SUBMISSIONS</b>	565 total submissions in three (3) separate notification periods.
<b>KEY ISSUES</b>	Subdivision design and ecological, bushfire and foreshore issues
<b>DOCUMENTS FOR CONSIDERATION</b>	Proposed amendments to the DA dated 26 July 2021
<b>PREPARED BY</b>	Kim Johnston (Consultant - Regionally Significant Development, DPIE)
<b>DATE OF REPORT</b>	24 August 2021

## Executive Summary

This briefing report has been prepared to provide the Northern Regional Planning Panel ('the Panel') with further information and consideration on whether to accept the proposed amendments to Development Application DA 2015/0096 for a proposed subdivision at 240 Iron Gates Drive, Evans Head.

The power to amend development applications under Clause 55 of the *Environmental Planning and Assessment Regulation 2000* ('the Regulations') rests with the consent authority, in this case the Panel. This was outlined in the Assessment Briefing Report dated 17 August 2021 which was considered by the Panel at the briefing on 18 August 2021.

The Panel is required to consider whether to accept the proposed amendments pursuant to Clause 55. There are a number of questions and matters which will assist the Panel in making this decision.

These questions include:

- Will the amendments resolve the issues with the application?
- Will accepting the amendments have resourcing issues for Council and financial implications?
- How long has the development application been under consideration?
- Has the legislative context changed?
- Has sufficient information been provided as required by the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and Regulations?
- Is the supporting information still relevant?
- Are the changes within the scope of Clause 55?

Having considered these questions, there are a number of factors which have been assessed in further details for the Panel's consideration in section 2.2 of this report.

Consequently, it is considered that the amendments should not be accepted by the Panel for the reasons outlined in this report.

## 1. BACKGROUND

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DA 2015/0096 was lodged with Richmond Valley Council ('the Council') on 27 October 2014 for a residential subdivision comprising 184 lots, associated infrastructure, demolition of existing structures on the site and the upgrading of Iron Gates Drive. The proposal requires a master plan to be adopted pursuant to Clause 18(1)(d) of the now repealed *State Environmental Planning Policy No 71 – Coastal Protection* ('SEPP 71').

A draft master plan was lodged with the Minister on 30 October 2015 following the Minister declining to grant a request to waive the requirement for a master plan pursuant to Clause 18(1)(e) of SEPP 71 on 3 May 2015.

The applicant formally withdrew the draft master plan application on 19 July 2021 and now proposes to amend the current development application pursuant to Clause 55 of the Regulations with a Concept DA. A Concept DA satisfies the requirements for a draft master plan under Clause 18(1)(d) of the now repealed SEPP 71 pursuant to Section 4.23(2) of the EP&A Act.

## 2. AMENDED PLANS

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## 2.1 The Amended Plans

The applicant, Goldcoral Pty Ltd, has lodged with the Council a proposal to submit amended plans which will involve the proposal being for a Concept DA pursuant to Section 4.23 (3) of the EP&A Act and will be carried out in two stages as described below:

### Stage 1

1. Completion of all subdivision work for the Stage 1 and future Stage 2 lots, including but not limited to:
  - Clearing and earthworks.
  - Roadworks and drainage.
  - Sewer and water supply (including service connections to the Stage 1 lots and future Stage 2 lots).
  - Electricity and communications (including connections to the Stage 1 lots and future Stage 2 lots).
2. Embellishment of the proposed public reserves adjacent to the Evans River foreshore.
3. Creation of:
  - 135 residential lots comprising Lots 1 to 135.
  - Creation of 4 public reserve lots comprising Lots 139 to 142.
  - Creation of 1 sewer pump station lot comprising Lot 144.
  - Creation of 1 drainage reserve lot comprising Lot 143.
  - Creation of 3 super lots (comprising Lots 145, 146, 147).
  - Creation of a residue lot (Lot 138).
  - Creation of 2 Rainforest Lots 137 & 136.
4. Upgrading of Iron Gates Drive

### Stage 2

Subdivision of super lots 145, 146 & 147 to create 40 residential lots. No subdivision work is required for Stage 2 as all subdivision infrastructures will be provided with Stage 1.

The amended proposal, if accepted by the Panel, is essentially the same as a former version of the draft master plan and development application, except that the 40 lots in Stage 2 would be subject to a further DA.

## 2.2 Decision whether to Accept the Amendments

Clause 55 of the Regulation sets out the procedure for amending a development application, which states (emphasis added):

- (1) *A development application may be amended or varied by the applicant (but only with **the agreement of the consent authority**) at any time before the application is determined, by lodging the amendment or variation on the NSW planning portal*
- (2) *If an amendment or variation results in a change to the proposed development, the*

*application to amend or vary the development application must include particulars sufficient to indicate the nature of the changed development.*

(3) *If the development application is for—*

*(a) development for which concurrence is required, as referred to in section 4.13 of the Act, or*

*(b) integrated development,*

*the consent authority must immediately forward a copy of the amended or varied application to the concurrence authority or approval body.*

Importantly, this Clause requires the *agreement of the consent authority* for an application to be amended in subclause (1). Pursuant to Section 2.15(a) of the EP&A Act, the Panel is the consent authority for *regionally significant development*. Accordingly, it is the Panel's decision whether or not to accept the amendments for this development application.

While Clause 55 allows amendments or variations to development applications prior to their determination and there is case law on the scope and extent of this statutory power (as demonstrated in Ebsworth and outlined in the earlier briefing note), there are no such strict tests to be applied to the '*agreement of the consent authority*' part of this clause. The Department considers that the proposed amendments are within the scope of Clause 55, however, whether the consent authority should *agree to their lodgement* requires further consideration.

Accordingly, the consent authority must consider the relevant circumstances of the case, with several factors requiring a thorough consideration prior to accepting the proposed amendments.

The factors considered in this assessment include the following:

- Fundamental issues remain unresolved
- Council resourcing concerns
- Duration of the development application
- Legislative changes
- Insufficient information
- Age of Consultants Reports and Supporting Documentation
- Whether the proposed amendments comprise designated development.

These matters are considered below.

(a) *Fundamental issues remain unresolved*

The proposed amendments do not involve any changes to the proposal, provide any new or amended information or resolve any issues which have been raised in relation to the proposal. The proposed amendments are simply changing the section of the EP&A Act under which the application is lodged.

There are several significant and fundamental issues with the proposal which were raised by the Government Architect of NSW ('GANSW') in their design review of the draft master plan in October 2020. The advice and recommendations arising from this design review are provided at **Attachment A** for the Panel's information.

The issues raised included, but not limited to, place and context concerns, issues with the overall subdivision plan including streets/interfaces/access/connections and lot sizes, built form concerns, the lack of integration with the natural environment and green infrastructure and ongoing place management concerns. While this design review related directly to the draft

master plan, as outlined by the applicant, the development application and draft master plan were the same.

Notwithstanding the ample timeframe the applicant has been provided to address those concerns, no fundamental changes to the proposal have been undertaken. The issues of subdivision layout and the lack of lot diversity, bushfire concerns, ecological issues and foreshore matters remain largely unresolved.

Accordingly, it is considered that accepting the amendments is not supported as the proposed amendments do not resolve the fundamental issues with the application (notwithstanding that a full assessment has not been undertaken).

*(b) Council Resourcing Concerns*

A factor to consider in the decision whether to accept the proposed amendments under Clause 55 is the potential for resourcing concerns for Council. During the Panel meeting 18 August 2021, Council was asked whether the proposed amendments would impact on Council's resources. Panels are required to consult with Councils about certain decisions pursuant to Section 2.26 of the EP&A Act. In particular, this Section provides that Panels (emphasis added):

*"...must not exercise a function that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council".*

In this case, Council clearly outlined that the acceptance of the amendments would place additional burdens on Council. These burdens included, but were not limited to, staffing resources, further consultation with agencies including organising and responding to referrals, potential increased costs associated with notification as well as the likely need to engage consultants including planners and lawyers to further assist in the assessment of the development application.

Council also importantly highlighted that they will be charged with the added task of assessing the proposal under Clause 18 and 20 of SEPP 71 in relation to the draft master plan matters via Section 4.23(3) of the EP&A Act.

Clearly, Council cannot impose any additional application fees or other charges on the applicant for these amendments, apart from minor fees associated with advertising/notification (if incurred).

All of these matters raised by Council increase the financial burden on Council and other staffing implications for a development application which has been in progress for almost seven years. These matters are outlined by Council in their correspondence to the Panel included at **Attachment B**.

It is considered that this factor raises significant concerns for Council and accordingly, accepting the amendments is not supported.

*(c) Duration of the development application*

The development application was lodged on 27 October 2014, which equates to 2,493 days or almost seven (7) years and has been amended on three (3) occasions to this point. While the development application was not capable of determination given a draft master plan had not been adopted, there were significant merit issues with the draft master plan (and the DA) which prevented that application from being assessed and determined.

It is considered that the applicant has had sufficient time to address the concerns raised with the draft master plan and this development application over the course of the past almost seven years. It is considered that accepting the amendments is not supported on this basis.

(d) *Legislative changes*

There have been numerous legislative changes since the lodgement of the development application. The main changes include the following:

- *State Environmental Planning Policy No 71 – Coastal Management* has been repealed and replaced with *State Environmental Planning Policy (Coastal Management) 2018*;
- *State Environmental Planning Policy No 14 – Coastal Wetlands* has been repealed and generally incorporated into the Coastal Management SEPP;
- *Threatened Species Conservation Act 1995* has been repealed and replaced with the *Biodiversity Conservation Act 2016* including but not limited to, the changes in listings of threatened species, endangered species, key threatening processes, how offsets are calculated and assessed and similar matters
- The *Planning for Bushfire Protection 2006* guidelines, which guided the preparation of the bushfire assessment reports, has been replaced with *Planning for Bushfire Protection 2019*;
- The *Richmond Valley Local Environmental Plan 2012* has been amended in relation to flood planning with the replacement of Clause 6.5 with Clause 5.21 and the subsequent replacement of the *NSW Floodplain Development Manual 2005* with the *Considering Flooding in Land Use Planning Guideline* dated July 2021.

While these legislative amendments do not strictly apply to DA 2015/0096, the technical changes to the assessment of issues such as flood risk, bushfire, coastal management and biodiversity, result in the proposal being considered under guidelines and assessment tools which no longer reflect best practice. It is also unknown as to the certainty with which the proposed offsets can be imposed given the changed legislative regime surrounding biodiversity.

The extent of these legislative changes also demonstrates that the legislative context under which the development application is currently being considered no longer reflects the Government's policy context on many of the issues which arise in this assessment.

The complex issues on this site should be considered and assessed under the most recent guidelines. Having regard to the differing legislative context within which the proposal now sits, it is considered that the proposed amendments should not be accepted.

(e) *Insufficient information*

There are various legislative requirements an amended development application proposing a concept DA must satisfy in order for there to be sufficient information to assess the application. These requirements include the following:

- Clause 55(2) of the Regulation;
- Section 4.22(1) of the EP&A Act; and
- Section 4.23((3) of the EP&A Act.

These requirements are considered in **Table 1**. It is evident that the proposed amendments have not provided sufficient information.

**Table 1: Consideration of Information Requirements**

REQUIREMENT	PROPOSED AMENDMENT	RESOLVED
Clause 55(2) – <i>“If an amendment or variation results in a change to the proposed development, the application to amend or vary the development application must include particulars sufficient to indicate the nature of the changed development”</i>	The proposed amendment to the development application relies on information that has been previously lodged for the proposal. It is considered that this is insufficient and has often relied on summaries of past reports or commentary stating that only certain components of the report are relevant. The presented information with the amendment is insufficient to address this requirement.	<b>No</b>
Section 4.22(1) – <i>“For the purposes of this Act, a concept development application is a development application <b>that sets out concept proposals</b> for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications”.</i>	The proposed amendment outlines that proposed Stage 2 is for concept approval only and that it will require a future development application.	Yes
Section 4.23(3) - <i>Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.</i>	This Section requires that the matters outlined in Clause 20(2) of SEPP 71 are adequately addressed in the DA given the proposed amendments are for a concept DA. This requirement is to satisfy Clause 18(1)(d) of the now repealed SEPP 71. Following a thorough consideration of these matters, it is considered that the proposal provides insufficient information as outlined below in Table 2.	<b>No</b> - refer below

Since the amendments propose to replace the current DA with a Concept DA pursuant to Section 4.22 of the EP&A Act, the requirements of Clause 20(2) of SEPP 71 must be satisfactorily addressed in the application pursuant to Section 4.23(3) of the EP&A Act.

Clause 20(2) of SEPP 71 states:

*A draft master plan is to illustrate and demonstrate, where relevant, proposals for the following:*

- (a) design principles drawn from an analysis of the site and its context,*
- (b) desired future locality character,*
- (c) the location of any development, considering the natural features of the site, including coastal processes and coastal hazards,*
- (d) the scale of any development and its integration with the existing landscape,*
- (e) phasing of development,*
- (f) public access to and along the coastal foreshore,*
- (g) pedestrian, cycle and road access and circulation networks,*
- (h) subdivision pattern,*

- (i) infrastructure provision,
- (j) building envelopes and built form controls,
- (k) heritage conservation,
- (l) remediation of the site,
- (m) provision of public facilities and services,
- (n) provision of open space, its function and landscaping,
- (o) conservation of water quality and use,
- (p) conservation of animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,
- (q) conservation of fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.

The applicant contends in their *Concept Proposal Outline* prepared by DAC Planning Pty Ltd dated July 2021 ('Concept Outline'), which accompanied the proposed amendments, that these matters have been addressed in the draft master plan. As has often been the case, the applicant is relying on previously submitted information, which is largely significantly out of date (considered further below) and contained in multiple annexures and versions of past lodgement documents.

It is considered that the proposed amendments do not satisfactorily address the following matters, which have largely been raised with the applicant previously, particularly through the GANSW design review of the proposal in October 2020:

**Table 2: Consideration of the Matters under Clause 20(2) of SEPP 71**

REQUIREMENT	PROPOSED AMENDMENT	RESOLVED
(a) <i>design principles drawn from an analysis of the site and its context</i>	<p>The proposed subdivision lacks clear design principles which arise following a thorough site analysis. The GANSW assessment clearly articulated this lack of design principles drawn from a site analysis and contextual site study, stating that there were a number of significant issues which remained unresolved and that these issues could be generally attributed to a lack of integrated urban and landscape design.</p> <p>The GANSW further commented that, cumulatively, the draft Master Plan did not demonstrate a response to the special qualities of place, presenting as a generic subdivision.</p> <p>It is considered that the proposed amendments do not adequately address this requirement for a master plan/DCP.</p>	<b>No</b>
(b) <i>desired future locality character</i>	<p>The proposed subdivision lacks an adequate consideration of the likely future built form on the site (refer below), which combined with the absence of design principles for the proposed subdivision arising from a thorough site analysis results in the proposal being</p>	<b>No</b>



	unable to achieve a desired future locality character consistent with tis setting.	
(c) <i>the location of any development, considering the natural features of the site, including coastal processes and coastal hazards</i>	<p>The site is flood affected; however, has been the subject of limited consideration, with the exception of a letter report from BMT WBM dated July 2015. This issue has not been adequately addressed through a consolidated response with mapping and recommendations. Flood evacuation as an example is currently proposed to the west of the site via Blue Pools Road which is understood not to be of a satisfactory standard.</p> <p>Similarly, the site is bushfire prone land and it is considered that this issue has not been satisfactorily resolved.</p>	<b>No</b>
(d) <i>the scale of any development and its integration with the existing landscape</i>	As outlined for (a), there is a general lack of an integrated approach to the design of the subdivision with the site conditions (also as outlined in the GANSW design review).	<b>No</b>
(e) <i>phasing of development</i>	This has been adequately addressed.	Yes
(f) <i>public access to and along the coastal foreshore</i>	<p>The Concept Outline states that “<i>Embellishment of the proposed public reserves adjacent to the Evans River Foreshore</i>” is included in the proposed Stage 1 works (last line on page 5), however, it is then stated that “<i>In summary, no embellishment of the Crown Foreshore reserve adjacent to the Evans River is proposed</i>” (top of page 11).</p> <p>It is unclear what, if any works, are proposed in the foreshore reserve and therefore public access to and along the foreshore is unresolved. This is despite the length of time that has elapsed since lodgement of the DA and previous draft master plan. This issue has not been adequately addressed.</p>	<b>No</b>
(g) <i>pedestrian, cycle and road access and circulation networks</i>	<p>The circulation network is not clearly outlined. While the Landscape Plan refers to footpaths and street tree planting and the engineering reports refer to road hierarchies, there is a lack of an overarching hierarchy of structuring elements to enhance the legibility of the precinct.</p> <p>This issue was also highlighted by the GANSW advice and needed to include</p>	<b>No</b>

	vehicle and pedestrian networks, among other matters.	
(h) <i>subdivision pattern</i>	The proposed amendments provide the proposed subdivision pattern, notwithstanding it is unsatisfactory as outlined in the GANSW advice.	Yes
(i) <i>infrastructure provision</i>	Infrastructure provision is outlined in the proposed amendments, relying on previously submitted information.	Yes
(j) <i>building envelopes and built form controls</i>	<p>The proposed building envelopes have been provided (albeit with no documented dimensions particularly with regard to setbacks), however, built form controls have not been adequately addressed.</p> <p>The lack of built form controls was also raised by the GANSW in their design review, stating that limited information was provided on the holistic intent for the built form across the master plan, recommending that the applicant develop Built form design guidelines. This has not been provided.</p> <p>In relation to built form controls, the document prepared by RPS dated 23 November 2020 which purported to address the GANSW advice, stated:</p> <p style="text-align: center;"><i>“The built form guidelines are not required by the State Environmental Planning Policy No 71 process but will be prepared once the approval and conditions are granted”.</i></p> <p>This is simply incorrect given Clause 20(2) of SEPP 71 requires that a draft master plan illustrate and demonstrate proposals for, among other things, <i>built form controls</i>.</p> <p>In any event, the RPS document provides generic controls in relation to built form which have not been developed following an analysis of the site.</p>	<b>No</b>
(k) <i>heritage conservation</i>	This has been demonstrated.	Yes
(l) <i>remediation of the site</i>	This has been demonstrated.	Yes
(m) <i>provision of public facilities and services</i>	This has been demonstrated.	Yes
(n) <i>provision of open space, its function and landscaping</i>	This has not been demonstrated given the proposed use, embellishment,	<b>No</b>

	ownership and management of the coastal foreshore reserve is unknown.	
(o) <i>conservation of water quality and use</i>	This has been demonstrated.	Yes
(p) <i>conservation of animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats</i>	This has been demonstrated (this does not include the merits of this issue).	Yes
(q) <i>conservation of fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats</i>	This has been adequately addressed.	Yes

The proposed amendments are considered to fail the test under Section 4.23(3) of the EP&A Act in that there are significant matters (around half) which have not been adequately demonstrated or illustrated pursuant to Clause 20(2) of SEPP 71.

The application is required to include sufficient information for the consent authority to make a thorough assessment of the proposal and in effect is an assessment of both a development application and a draft master plan/DCP. It is considered that the proposed amendments have not achieved this requirement and has failed to provide sufficient information.

The proposed amendments fail to satisfy Sections 4.22(1) and 4.23(3) of the EP&A Act and Clause 55(2) of the Regulations arising from the lack of information as outlined in Tables 1 and 2 above. Accordingly, it is considered that there is insufficient information upon which an assessment of this application can be carried out and therefore the amendments should not be accepted.

*(f) Consultants Reports and Supporting Documentation*

The proposed amendments generally rely on Consultants reports and documentation that were prepared between 2014 and 2019, some of which are now almost more than seven (7) years old. The applicant has relied on previously submitted material without submitting it as a complete revised package, consolidating submitted information or updating the contents of those reports. The applicant has also previously relied on components of older reports and then provided commentary on the relevant sections of those reports. This results in a piecemeal assessment of issues and lacks an integrated review of the complex matters involved in this assessment.

The following reports are still being relied upon which are detailed in **Attachment C**:

- Bushfire Assessment prepared in March 2017 and July 2019;
- Flora and Fauna reports largely prepared in August 2014 with numerous annexures being added over time and most recently in July 2019;
- Engineering report substantially updated in July 2019
- Aboriginal Cultural Heritage report revised in July 2019;
- Contamination Reports in May and August 2014 and acid sulphate soils report dated October 2014 relying on field investigations undertaken in 1995;
- Biting insects report dated July 2019;
- Landscaping master plan dated July 2019; and
- Social and economic impact assessment dated July 2019.

The lack of any updating of these reports results in the proposal being assessed on largely out of date information. The amendments are not supported given this extends the life of these reports which require significant and comprehensive revision.

(g) *Designated development*

The proposal may include works which are considered to be designated development pursuant to then Section 77A(1) of the EP&A Act (unamended) under *State Environmental Planning Policy No 14 – Coastal Wetlands* ('SEPP 14'). Whether the proposal is for designated development in this instance is contained in Clause 7 of SEPP 14 and is in relation to the proposed road works along Iron Gates Drive.

While this SEPP has since been repealed and replaced with the Coastal Management SEPP, SEPP 14 is applicable to the current application as it was lodged prior to its repeal on 3 April 2018.

The proposed works include trimming of vegetation/trees which overhang Iron Gates Drive within the SEPP 14 wetland. The Council accepts the applicant's advice that "*trimming*" does not involve the *destruction or removal in any manner of native plants* growing on the land and/or that the trimming may be classified as 'routine maintenance' under the Infrastructure SEPP. If carried out on behalf of the Council and kept to the minimum extent possible to allow safe use of the road, development consent would not be required.

This issue was discussed at the Panel Briefing and should be considered in any decision concerning whether to accept the amendments as this matter has the potential to significantly change the entirety of the application. The Panel would need to be satisfied that the proposal was not designated development for it to accept the proposed amendments under Clause 55 as it is considered that such a change is not within the scope of Clause 55.

It is concluded that there is currently insufficient information to ascertain whether the proposal involves works which are classified as designated development and therefore this issue remains unresolved.

### **3. Recommendation**

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It is recommended that the Panel does not accept the proposed amendments pursuant to Clause 55 of the Regulation to DA 2015/0096 for the following reasons:

- The proposed amendments do not resolve the fundamental issues with the application (notwithstanding that a full assessment has not been undertaken);
- Acceptance of the amendments would place additional financial burdens on the Council which cannot be recovered;
- The development application has been under consideration for almost seven (7) years and it is considered that the applicant has had sufficient time to address the issues;
- The legislative context under which the development application is currently being considered no longer reflects the Government's policy context on many of the issues which arise in this assessment. The complex issues on this site should be considered and assessed under the most recent guidelines;
- The proposed amendments fail to provide sufficient information to satisfy Sections 4.22(1) and 4.23(3) of the EP&A Act and Clause 55(2) of the Regulations, particularly having regard to Clause 20(2) of SEPP 71;
- The proposed amendments generally rely on Consultants reports and documentation prepared between 2014 and 2019, being more than seven (7) years old and therefore

lacking an integrated and updated review of the complex matters involved in this assessment; and

- There is currently insufficient information to ascertain whether the proposal involves works which are classified as designated development, which if it is the case is outside the scope of Clause 55.

#### **4. Attachments**

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**A:** GANSW Advice

**B:** Council's correspondence dated 24 August 2021

**C:** Summary of Relevant Information lodged for Iron Gates (Table 1)

## Attachment A: GANSW Advice

# GOVERNMENT ARCHITECT NEW SOUTH WALES

19 October 2020

Graeme Ingles  
Goldcoral Pty Ltd  
PO Box 3441  
Australia Fair QLD 4215  
Via email –  
graeme@inglesgroup.com.au

PROJECT: Iron Gates Residential Release, Evans Head  
RE: SDRP SESSION 64 – 07.10.20

Dear Graeme,

Thank you for the opportunity to review the above project. Please find a summary of advice and recommendations arising from the design review session held on 07.10.20.

GANSW acknowledges that a Development Application has been lodged with Richmond Valley Council for the subdivision of Lots 163 DP 831052, Lots 276 and 277 DP 755624, Crown Road reserve between Lots 163 DP 831052 and Lot 276 DP 755724, and Iron Gates Drive, Evans Head to establish a residential community comprising 175 lots, and that the Masterplan is currently being assessed by the Department of Planning, Industry and Environment under the provisions of SEPP 71. It is understood that the Master Plan does not seek approval for built form, and that approval of individual dwellings will take place by individual lot owners under standard local DA approval processes.

The master plan is proposed on a sensitive coastal site of regional significance. The presentation to the Panel lacked detail on a range of matters, however, on the basis of the information provided it is clear that a number of significant issues remain unresolved. These can be generally attributed to a lack of integrated urban and landscape design.

Cumulatively the Master Plan does not appear to deliver appropriate urban design outcomes in its current form. Please note the following recommendations for improving the urban design and amenity of the precinct:

#### Place and Context

Generally, the Master Plan does not currently demonstrate a response to the special qualities of place, presenting as a generic subdivision. An opportunity exists to design a precinct that responds to the richness of the site, for example in relationship to:

- its coastal setting
- the ecological significance of its surroundings
- Aboriginal and cultural heritage
- the coastal river setting on the North Coast, which is characterised by climate, ecological and topographic conditions
- topography - drone footage provided as part of the presentation assisted with understanding of the site, however there was a lack of information provided on the existing topography and how this relates to and has informed the design outcome
- Evans Head, with the proposal currently presenting as a gated community

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Good urban design will ensure a response to these unique qualities and enhance the preservation of Indigenous and European cultural heritage, landform and ecological systems. This will create a connection to place and a sense of identity, helping to ensure the future protection of these assets. Recommendations:

1. Provide a Vision Statement that:
  - a. includes site and context analysis, and makes reference to the special qualities of the place,
  - b. identifies design principles informed by the specific qualities of the place, and
  - c. includes a set of design evaluation criteria to ensure the design principles are achieved.
2. Articulate a clear and meaningful approach to Indigenous and European cultural heritage, including:
  - a. an understanding and acknowledgement of Country, including the local stories which could help inform the character of the precinct.
  - b. a narrative about Evans River, and its role. Overland flow and flooding can also form part of the story.
3. Revisit the subdivision pattern to demonstrate that it responds to the underlying topography and specific characteristics of the environment, natural elements, patterns and processes. Clearly identify and justify any significant changes to the topography.
4. Develop the hierarchy of structuring elements to enhance the legibility of the precinct. These should include vehicle and pedestrian networks, lot shapes and sizes and landscape treatment.
5. Provide relevant case studies and an analysis of them to inform and distil the precinct wide approach to issues such as: cultural and historic heritage, environmental protection, climate resilience and social cohesion.

#### Overall Subdivision Plan including

##### Streets/interfaces/access/connections/lot sizes

The overall approach to the street layout is considered to be generic and suburban in nature and appears to have been driven by an engineering approach to vehicle and standard drainage solutions, rather than an approach which seeks to balance these requirements with the needs of people on foot or bicycle.

The single access point for a scheme of this size is concerning, particularly so in the context of bushfire prone land. Whilst it is noted that the fire trail to the east of the site has RFS approval, it is considered a risk as it backs onto rear gardens. APZ requirements should not impinge on backyards.

Implementation of a singular lot size of 600m<sup>2</sup> (minimum allowable) will limit diversity in built form and response. Encouraging dual occupancy on some lots was noted and is supported.

Reconsideration of the street network and the lot sizes to respond to these issues will ensure a well-connected development. This will have the benefit of reducing risk from bushfire hazards,

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encouraging active transport modes such as walking and cycling, reduce reliance on vehicles and contribute to the health and wellbeing of residents. Recommendations:

6. Ensure the access road into the site from Iron Gates Drive can accommodate active transport.
7. Ensure allowance for connections with future public transport networks.
8. Ensure and demonstrate that pedestrian connectivity through the precinct is maximised.
9. Review the lot sizes proposed and integrate a variety of sizes which relate to the street typology and conditions.
10. Review the current fire trail indicated to the east of the site, in consultation with the RFS, to ensure that no rear gardens abut this trail. Consider replacing the trail with a street and adjusting the location of development lots accordingly.

#### **Built Form**

Limited information was provided on the holistic intent for the built form across the master plan. It was indicated that design guidelines were in development to be provided as part of the contract for sale for individual lots. This is supported. A well-considered approach to a high-quality built form contributes to positive environmental outcomes, and the creation of healthy, safe and liveable communities by contributing to the character of the area, achieving an appropriate density, scale and bulk, and providing optimal safety and amenity.

Recommendations:

11. Demonstrate how aspect and orientation has been considered in the re-design of the subdivision pattern.
12. Develop Built form design guidelines to:
  - a. identify the future desired character of the area in terms of built form, include further analysis of Evans Head and surrounding north coastal housing vernacular models. Current analysis identifies general house builder dwellings but does not as yet reference design elements which characterise north coast dwellings
  - b. manage bulk through articulation and the provision of minimum setbacks
  - c. allow for spatial variety
  - d. maximise internal amenity (i.e. by establishing minimum side setbacks)
  - e. establish the desired future landscape character of the precinct through street and rear setbacks, street trees, deep soil provision, landscape species, rear private open space etc.
  - f. establish a public domain interface that supports opportunities for social interaction for street entry front fences and gates. Limit fencing extents and heights and maximise transparency
  - g. manage vehicle access including: location, form, materiality and visibility from the public domain of driveways and off-street parking,
  - h. embed high quality design, including guidance for façade and rooves (i.e. pitch, detailing), and the use of robust and durable materials and finishes



- i. embed housing diversity i.e. identify duplex sites and where different house types might be allocated to certain locations, for example, along the riverfront, adjacent to rainforest interface and the entry to the site.

#### Integration with the natural environment and Green Infrastructure

The project site and the surrounding area has significant vegetation, riparian corridors and biodiversity. The current master plan compromises the preservation of the natural environment and has limited opportunities to fully celebrate it. Engaging with and protecting the natural environment provides ecosystem benefits and enhances the landscape amenity for residents and visitors. Recommendations:

13. Review the vehicular network to ensure that access roads are provided along all interfaces with existing vegetated areas. This will also assist in removing Asset Protection Zones (APZs) from within private property.
14. Enlarge the Riverfront park to increase and improve the buffer conditions between the Riparian corridor and the adjoining road.
15. Provide information on planned tree canopy coverage for the entire developable master plan both public and private open space.
16. Consider the potential for greater connectivity between protected rainforest zones and provide strategies to mitigate the impact of the east-west access road on habitat. Specifically, review the need for the western vehicular street that currently severs the central rainforest area from the larger rainforest area to the west – consider replacing with a pedestrian only pathway to facilitate connection between these two sensitive areas.
17. Provide details of the stormwater treatment basin, including an assessment of visual impacts from the public domain and how impacts to the adjoining protected rainforest zone will be mitigated.
18. Demonstrate that infrastructure, access networks and lots comply with Flood Planning requirements.
19. Provide details of the proposed sustainability mechanisms. A sustainability strategy, which exceeds baseline standards, is required.
20. Ensure generous landscape provision in the public domain, for example verges to maximise tree canopy.
21. Consider mechanisms to manage feral and domestic animals.

#### Ongoing Place Management

Greater clarity is required on the future management of the public domain of the site, in particular the areas of rainforest, streets and street trees. Responsibility for construction of streets and landscape planting was not clear. The approach to place and preservation management of this site over the long term is required to ensure that ecological preservation continues during the construction phase and once the scheme is complete. Recommendations:

22. An ecological and place management strategy which outlines how natural and built assets within the public domain will be preserved during construction and post completion.

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A further presentation to the SDRP is recommended to allow presentation of an amended scheme to address the issues above. The following material should be provided:

1. Vision Statement
2. Updated subdivision plan and landscape strategy
3. Demonstrated approach to Indigenous and European cultural heritage
4. Large site sections illustrating how development responds to the underlying topography and specific characteristics of the environment including natural elements.
5. Analysis of precedent studies
6. Built form Design Guidelines
7. Information on planned tree canopy coverage for the precinct
8. Details of the stormwater treatment basin
9. Sustainability Strategy
10. Other items as outlined within the GANSW SDRP Precinct Requirements document.
11. Resolution of the items 1-22 noted above.

It is recommended that a design team - comprising an Urban Designer and Landscape Architect who have experience of working on this scale of development and within this setting - is engaged to carry out the review and adjustments to the Master Plan to ensure the right urban design outcome for the site. This team should present the material at any subsequent presentations to the SDRP.

Please contact GANSW Principal Design and Guidance Jane Threlfall ([jane.threlfall@planning.nsw.gov.au](mailto:jane.threlfall@planning.nsw.gov.au)), if you have any queries regarding this advice and to schedule the next meeting.

Sincerely,



Olivia Hyde  
Director Design Excellence, Government Architect NSW

Distribution to SDRP, DPIE and Richmond Valley Council participants:

NSW SDRP Panel members	Roger Jasprizza, Kim Crestani, Tony Caro
GANSW Chair	Olivia Hyde
GANSW Design Advisor	Jane Threlfall
DPIE	Jeremy Gray, Director Northern Craig Diss, Manager Local and Regional Planning Jon Stone, Senior Planning Officer Dimitri Young, Senior Planning Officer, Biodiversity and Conservation

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## Attachment B: Council's correspondence dated 24 August 2021



**Richmond  
Valley  
Council**

Council's Reference: DA2015/0096  
Northern Planning Panel Case No: PPS-2014NTH020

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24 August 2021

Mr Paul Mitchell (Chairman)  
Northern Regional Planning Panel

[enquiry@planningpanels.nsw.gov.au](mailto:enquiry@planningpanels.nsw.gov.au)

Dear Paul

**DA2015/0096 Iron Gates Subdivision – re proposed Clause 55 Amendment to Concept DA**

I refer to the Northern Regional Planning Panel's (the Panel) briefing session of 18 August 2021 discussion of a proposed amendment/variation request, pursuant to clause 55 of the EP&A Regulation, for Development Application DA2015/0096 to be made a Concept Development Application.

The Panel is understood to be the consent authority for this Regionally Significant Development and therefore responsible for whether the amendment/variation will be accepted.

To assist the Panel, Council contends that:

1. it is reluctant to assume the Ministerial responsibilities for assessment of the SEPP71 master plan heads of consideration which come with this amended/varied development application.
2. acceptance of the amendment/variation will increase required resourcing by Council, and the Integrated Development approval bodies, as the application will require re-notification and re-assessment of another amendment/variation, to an already complex application, with the added responsibility to assume the Department's former role assessing the SEPP71 master plan heads of consideration. All this extra work does not attract additional application fees.
3. the master plan application was withdrawn by the applicant on 19 July 2021, an action taken by the applicant without prior consultation with Council.
4. the master plan application was lodged with the Department on 25 October 2014 and, despite ongoing negotiations with the applicant and various agencies, was undetermined due to several outstanding issues. The prospects of Council continuing these negotiations to achieving a different outcome are unlikely and will exhaust further resources.
5. the clause 55 amended/varied Concept Development Application has not been supported by sufficient information to satisfactorily address all the SEPP71 heads of consideration. Council's expectation is that the entire suite of documentation from the 6.5-year master plan process would be submitted. Yet the Concept DA Report accompanying the amendment/variation request only contains summarised content from the master plan application and is not supported by additional information to address outstanding issues.

Yours sincerely,

Angela Jones  
Director Community Service Delivery

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**Attachment C: Table 3: Reports and Documents lodged for Iron Gates**

<b>TOPIC</b>	<b>TITLE OF REPORT</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>PROVIDED IN</b> <i>(DMP = Draft Master Plan)</i>
Bushfire Management	Bushfire Safety Authority Report	Planit Consulting	September 2014	DA (original)
	Bushfire Threat Assessment Report	Bushfire Certifiers	14 August 2015	DA (original)
	Bushfire Assessment – Additional Information Response Re: Iron Gates Drive Evans Head NSW	Bushfire Risk (Melanie Jackson)	<b>8 March 2017</b>	Annexure 3 - revised DMP (October 2019)
	Revised Consolidated Bushfire Report	Bushfire Risk (Melanie Jackson)	<b>12 July 2019</b>	Annexure 3 - revised DMP (October 2019)
Flora & Fauna	Terrestrial Flora & Fauna Assessment	Planit Consulting P/L	August 2014	Annexure 1 - original DMP (30/10/15)
	Terrestrial Flora & Fauna Assessment as amended July 2019 by JWA Pty Ltd	Planit Consulting P/L & JWA P/L	August 2014 & <b>July 2019</b>	Annexure 12 of revised DMP (October 2019)
	Emails from JWA Pty Ltd and OEH	JWA P/L	4 March 2020	Annexure 1 - Responses to Submissions to DMP (March 2020)
Engineering	Engineering Services & Civil Infrastructure Report	Hyder Consulting P/L	3 October 2014	Annexure 2 - original DMP (30/10/15)
	Engineering Plans – Access Road	Arcadis	21 August 2017	Annexure 4 - revised DMP (October 2019)
	Revised Engineering Services & Civil Infrastructure Report	Arcadis	<b>23 July 2019</b>	Annexure 2 - revised DMP (October 2019)
	Stormwater Management Plan (Iron Gates Drive)	Arcadis	20 March 2020	Annexure 5 - Responses to Submissions to DMP (March 2020)
	Response to NSW State Government Agency Comments	Arcadis	20/03/2020	Annexure 6 - Responses to Submissions to DMP (March 2020)
Aboriginal Cultural Heritage	Aboriginal Cultural Heritage Assessment	Everick Heritage Consultants P/L	31 August 2015	Annexure 3 - original DMP (30/10/15)
	Revised Aboriginal Cultural Heritage Assessment	Everick Heritage Consultants P/L	<b>July 2019</b>	Annexure 9 - revised DMP (October 2019)
	Expert Response to Submissions	Everick Heritage P/L	24 March 2020	Annexure 4 -Responses to Submissions to DMP (March 2020)
Land contamination	Stage 1 Preliminary Contamination Assessment	Hyder Consulting P/L	29 August 2014	Annexure 6 - original DMP (30/10/15)

	Preliminary Radiation Site Assessment	Hyder Consulting P/L	22 May 2014	Annexure 7 - original DMP (30/10/15)
	Acid Sulphate Soils Letter (relying on field investigations from 1995).	Hyder Consulting P/L	9 October 2014	Annexure 7 - original DMP (30/10/15)
Biting Insects	Biting Insect Impact Assessment	Darryl McGinn	24 March 2015	Annexure 4 -original DMP (30/10/15)
	Revised Biting Insect Impact Assessment	Darryl McGinn	<b>10 July 2019</b>	Annexure 12 - revised DMP (October 2019)
Landscaping	Iron Gates Development – Landscape Statement of Intent	Plummer & Smith	<b>17 July 2019</b>	Annexure 6 - revised DMP (October 2019)
Crown Lands	Crown Road Reserves	Crown Lands	March 2019	Annexure 10 - revised DMP (October 2019)
Social & Economic Impact	Social & Economic Impact Assessment	Hill PDA Consulting	<b>July 2019</b>	Annexure 11 - revised DMP (October 2019)
Coastal Design	-	-	Undated	Annexure 11 - revised DMP (October 2019)
	Waterfront Layout	Planit Consulting	Undated	Annexure 13 - revised DMP (October 2019)