

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

1. DEVELOPMENT APPLICATION DA08/0755 - 24 LOT SUBDIVISION (18 LOTS INTO 24) AT LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, SECTION 4 DP 14895, CASUARINA WAY KINGSCLIFF

DA08/0755

Applicant: Seaside City Developments
Owner: Richtech Pty Ltd
Location: Lot 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 1 Section 4 DP 14895, Casuarina Way KINGSCLIFF
Zoning: 2(e) Residential Tourist
7(l) Environmental Protection (Habitat)
Est Cost: 0.00

BACKGROUND

The subject allotment is located in the area known as Seaside City. Seaside City consists of a subdivision comprising 204 lots which were created in 1927. The land was sand mined throughout the 1960's, 70's and 80's. The subject properties are legally described as Lots 1-18 in section 4 DP 14895 known as Lot 1 -18 Casuarina Way, Seaside City. The subject properties are zoned 2 (e) Residential Tourist. The rear of each allotment adjoins land that is zoned 7 (l) Environmental Protection (habitat). Each allotment has frontage and access to Casuarina Way, which is yet to be properly formed. The site slopes east to west toward Cudgen Creek with the southern end of the site at a slightly higher elevation.

Relevant History:

DA05/1464 was a Land and Environment Court approval granted consent order 10217 of 2006. The approved development was described as 'Staged development and concept plan incorporating civil works including clearing, vegetation removal, bulk earth works, road construction, drainage works, water supply reticulation and sewerage works.

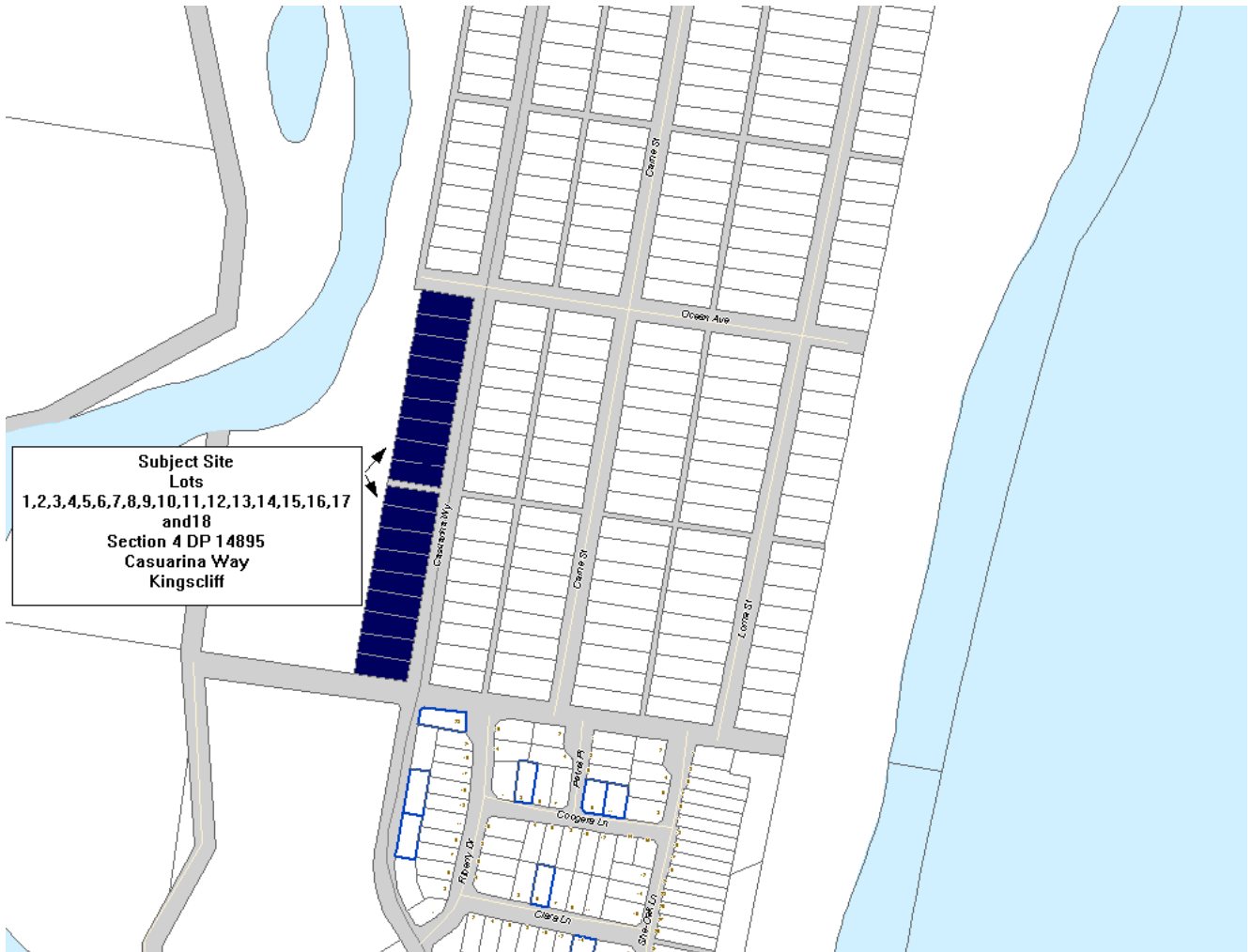
DA05/0775 for clearing and replanting of vegetation and a cycleway path and beach access was approved on the 13/3/2007.

The subject application seeks consent to subdivide the existing eighteen (18) allotments into twenty four (24) allotments. The proposed lots will have areas ranging from 450 sq.m to 1050 sq.m. The applicant proposes to utilise a 'right of way' access for three out of the four lots in the smaller configuration. The proposed lots with areas between 719sq.m and 1050sq.m are to have individual access to Casuarina Way. Proposed Lots 21, 23 and 24 contain a small area to the rear of the lots where the riparian zone of Cudgen Creek encroaches.

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL

HELD WEDNESDAY 17 JUNE 2009

SITE DIAGRAM



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

State Environmental Planning Policy 71- Coastal Protection

The application and supporting information have been examined to determine whether a master plan can be waived in this case. Having regard to the existing planning controls applying to the land and the level of information provided in support of this request, pursuant to clause 18(2) of SEPP 71, the need for a development control plan has been waived by the Department of Planning.

Further comment from the Department of Planning in regard to the proposal was received.

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

Comment:

The preliminary site layout is not ideal and there is no information provided by the applicant in relation to the proposed reduced asset protection zone of 5 metres which seems to be inconsistent with Council's DCP and the NSW Rural Fire Service requirements. The applicant will also need to consider the Natural Resource Commission comments relating to the implications of climate change and the intensification of use for the subject land.

With regard to comment received from the Department of Planning, it is considered that the subject proposal does not adequately address requirements of SEPP 71. The current lack of service and infrastructure provision means a satisfactory assessment of the proposal can not be undertaken.

Tweed Local Environmental Plan 2000

The subject land is zoned 2(e) Residential Tourist and 7 (I) Environmental Protection (Habitat) under the provisions of the Tweed LEP 2000.

The objectives of the 2(e) zone are as follows: -

Primary objective

- * *"to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities."*

Secondary objective

- * *"to permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use."*

Subdivision of the allotment as proposed does not contravene the zone intent as it allows for further residential development.

The objectives of the 7 (I) Environmental Protection (Habitat) are as follows:-

Primary objective

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

- *“to protect areas or features which have been identified as being of particular habitat significance.*
- *“to preserve the diversity of habitats for flora and fauna.”*
- *“to protect and enhance land that acts as a wildlife corridor.”*

Secondary objective

- *“To protect areas of scenic value”.*
- *“To allow for other development that is compatible with the primary function of the zone.”*

Subdivision of the allotment as proposed does not contravene the zone intent.

Clause 4- Aims of this plan

The aims of this plan are:

- "a) to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 200+ Strategic Plan which was adopted, after extensive community consultation by Council on 17 December 1996, the vision which is:*

“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”

Due to Council being unable to determine the suitability of the site for subdivision (refer below) the management of growth in this sense can not be guaranteed. The enhancement of economic vitality, ecological integrity and cultural fabric can not be adequately determined for the assessment of the proposal.

Clause 5- Ecologically Sustainable Development

Due to the unformed nature of the subdivision and the lack of physical infrastructure the ecologically sustainable nature of the proposal can not be determined.

Clause 8- Consent Considerations

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

Insufficient evidence is available to determine that the proposal will not result in an unacceptable cumulative impact on the community, locality or catchment.

Clause 15 Essential Services

Clause 15 outlines that:

"Consent must not be granted to the carrying out of development on any land unless:

- a) a water supply and facilities for the removal or disposal of sewerage and drainage are available for that land, or*
- b) arrangements satisfactory to the consent authority have been made for the provision of that supply and those facilities."*

In the case of this proposal no service provision is currently physically in place. Comment from Council's Major Subdivisions department in regards to the subject proposal is as follows:

"Lot 2 Section 2 DP 14895 will not have services such as constructed road pavement, outfall sewer, reticulated water supply and stormwater drainage until a civil works Construction Certificate has been issued for DA05/1464 and the works required under this CC completed to Council's satisfaction.

It is expected that lot 2 Section 2 DP 14895 will not be satisfactorily serviced for at least 6-8 months. Given this situation it is considered that the proposed two (2) lot application is premature and therefore the applicant should be requested to withdraw the subdivision and resubmit when the subject land is satisfactorily serviced."

The applicant was given the opportunity to withdraw the application and has not done so. Given the lack of services and roads currently available, further subdivision of the land, which is dependant on the services approved in DA05/1464 is considered premature at this time.

Subsequently the proposal is considered to be inconsistent with Clause 15.

Clause 16 Height of buildings

No structures are proposed at this point therefore Clause 16 is not applicable to the proposal.

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

Clause 19 subdivision

This clause is not applicable to the site.

Clause 35 Acid Sulfate Soils

The subject site is categorised as Class 4 for acid sulfate soils. Works 2 meters below ground level or works that would lower the watertable beyond 2 metres below the natural surface are required to be managed for acid sulfate soils. The subject application does not propose any excavation therefore no likely conflict with the ASS will occur.

Clause 39 Remediation of contaminated land

Comment made by Council's Environmental Health Officers in the assessment of DA05/1464 in regards to contamination on site is as follows:

"Depth monitoring for radiation has taken place on the site. The monitoring has not revealed any radiation contamination. In addition to this a condition has been imposed requiring surface monitoring for radiation contamination to be undertaken following clearing works but prior to any earthworks. Post earthworks validation is also required to be undertaken."

Comment from Council's Environmental Health department in assessment of this proposal raised the following points:

- The subject allotment are on the western side of Casuarina Way, adjacent to 7 (l) land and Cudgen Creek . Clearing, vegetation management and radiation validation on this 7 (l) parcel is subject of DA05/0793. Condition 3.100 of DA05/1464 requires works under DA05/0793 to be completed (including radiation validation) prior to issue of final approval for DA05/1464. **The radiation validation under DA05/0793 remains outstanding. The same principles apply to the works in the foredune under DA05/0775.**
- Condition 3.8 of DA05/1464 requires radiation monitoring and validation of the site. Surface monitoring detected three areas of radioactive material above background levels and Council had subsequently raised no objection to works proceeding in accordance with document, Radiation Investigation and Remediation Action Plan, Cardno, 23 May 2008. This work is yet to be satisfactorily completed. Importantly, it is noted that the developer is yet to completed bulk earthworks, placement of services and roads etc. Validation of suitability of the site cannot be

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

completed until these works are finalised. It is inappropriate that the current DA be processed until the works under DA05/1464 are completed, particularly radiation validation.

- It is noted that Part 2.1 of the Engineering and Environmental report, Cardno, June 2008 indicates that excess material from the site will be removed and used for filling purposes on other sections of Seaside City. This is inappropriate given that validation of the site is yet to be completed.

With regard to the above, it is not considered that Clause 39 has been adequately met.

Clause 39A bushfire protection

The subject site is bushfire prone and subsequently classified as integrated development. The subject application was referred to the NSW Rural Fire Service for comment. The response was deemed a bush fire safety authority as required under section 100B of the *Rural Fires Act 1997* and is issued subject to the following numbered conditions:

Asset Protection Zone

The intent of measures is to provide sufficient space for firefighters and other emergency services personnel, ensuring adequate radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants.

1. *At the commencement of building works and in perpetuity a minimum 15 metre asset protection zone (APZ) is required along the entire length of the western boundary. The APZs must comply with the guidelines contained with the NSW Rural Fire Service's document 'Standards for asset protection zones'.
Where this requirement is proposed on council land (to the west) the relevant plan of management shall be formally implemented and the relevant APZ's in place prior to building works.*
2. *Proposed Lot 1 and 24 shall not be developed until the commencement of future proposed residential development on the adjacent lots to the south and north respectively, but only if the hazard is removed as part of the proposal.*
3. *A restriction to the land pursuant to section 88B of the Conveyancing Act 1919 shall be placed on all lots within the subdivision that the lots cannot be*

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

sold until they are hazard reduced so that all proposed lots have the vegetation managed as an outer protection area (OPA) as outlined within section 4.1.3 and appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'. The restriction to the land use shall also require that the land be maintained as an asset protection zone (APZ) until development occurs that removes the hazard.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire and to locate gas and electricity so as not to contribute to the risk of fire to a building.

4. *Water, electricity and gas as to comply with section 4.2.7 of Planning for Bush Fire Protection 2006.*

Clause 53C - Seaside City

- (1) *This clause applies to land known as Seaside City as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No 3)".*
- (2) *This clause aims:*
 - "(a) to ensure that development of the land to which this clause applies is undertaken within an appropriate planning framework, and*
 - (b) to ensure that relevant environmental issues are considered before consent is granted to development of the land, and*
 - (c) to facilitate the development of the land having regard to the subdivision and ownership patterns of the land."*
- (3) *Despite the Table to clause 11, development for the purposes of a dwelling or a dual occupancy may be carried out with consent on land to which this clause applies.*
- (4) *Development must not be carried out on land to which this clause applies unless a development control plan has been prepared for the land.*

Note. *See clause 39 in relation to the issue of contaminated land.*

The development control plan referred to in subclause (4) has been prepared and is addressed below.

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

(a) (ii) **The Provisions of any Draft Environmental Planning Instruments**

There is no draft EPI that is applicable to the subject site or proposal.

(a) (iii) **Development Control Plans (DCP's)**

A5- Subdivision Manual

This proposal is dependant on completion of the master subdivision and civil works approved in DA05/1464, including services and roads. It is considered that until service and civil requirements of the master layout are complete, this proposal is premature.

A subdivision of the site can not be adequately considered at this point due to infrastructure provision and contamination issues not having been resolved.

B11 - Seaside City

B11 includes requirements for management plans dealing with issues including stormwater, drainage, landforming, environment, open space and roads. The DCP requirements for stormwater and roads were addressed in DA05/1464. Construction Certificate for civil works in Seaside City will ensure that infrastructure & civil works are undertaken in accordance with the approval and the DCP.

The subdivision proposal depends on this infrastructure and is considered premature until such infrastructure is satisfactorily in place.

(a) (iv) **Any Matters Prescribed by the Regulations**

Not applicable to this proposal.

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

The impacts of the proposal can not be adequately determined at this point as previous conditions on consents for Seaside City have not been implemented.

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

Given that remediation works have not been completed, there is no certainty that potential impacts from radiation and contamination will not arise.

(c) Suitability of the site for the development

The subject site is considered to be unsuitable for the proposed development. Lots 1-18 Section 4 DP 14895 will not have constructed road access, outfall sewer, reticulated water supply or stormwater drainage. Due to the unknown timeframe in terms of when services will be constructed it is not considered appropriate to grant consent to the proposal.

Radiation investigation and remediation action has not yet been complete and validation of the sustainability of the site can not be confirmed.

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

The subject application was notified from Wednesday 16 July 2008 to Wednesday 30 July 2008. During the timeframe no submissions were received in regards to the proposal.

(e) Public interest

The subject application is not considered to be within the public interest due to the uncertainty with service provision and unresolved remediation issues.

CONCLUSION

The subject application seeks consent for the subdivision of eighteen (18) lots into twenty four (24). The parcels are located in Seaside City which is currently an unformed urban area; no infrastructure is currently in place. A subdivision of the site which is dependent on civil works and services previously approved, can not be adequately considered at this point due to insufficient infrastructure provision and contamination issues not have also not been resolved. Subsequently, the subject application is recommended for refusal.

RECOMMENDATION:

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD WEDNESDAY 17 JUNE 2009

That Development Application DA08/0755 for a 24 lot subdivision (18 lots into 24) at Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, Section 4 DP 14895, Casuarina Way KINGSCLIFF be refused for the following reasons:

1. Pursuant to Section 79 (1) (b) the development proposal has not demonstrated due consideration to the likely impacts on the natural and built environment.
2. Pursuant to Section 79C(1)(c) the subject site is not considered suitable for the development as proposed at this point in time.
3. The proposal does not meet Clause 15 or Clause 39 of the Tweed LEP.