

Planning Proposal Assessment

Proposal Summary

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| Applicant | Progressive Property Solutions | | |
| Owner | J & K Barnes | | |
| Application Number | PP 109/2020 | | |
| Description of Land subject of planning proposal | <i>Property Description:</i> 437 Wards Hill Road, Empire Bay <i>Legal Description:</i> Lot 1 DP 610629. | | |
| Site Area | 3.67 Ha | | |
| Existing Use | Caravan Park | | |
| Proposed Amendments –Central Coast Local Environmental Plan | | | |
| Provisions | Existing Provision | Proposed Amendment | Outcome (Supported/Not Supported) |
| Zoning | 7(c2) under IDO 122 | E3 Environmental Management | Supported |
| Additional Permitted Use | N/A | Caravan Park | Supported |
| Minimum Lot Size | 7(c2) - 2Ha | E3 – 20 Ha | Supported |

Proposal Report

Executive Summary

This Planning Proposal seeks to rezone Lot 1 DP 610629 from 7(c2) Conservation and Scenic Protection (Scenic Protection - Rural Small Holdings) under Interim Development Order No 122 (IDO 122) to E3 Environmental Management under the Central Coast Local Environmental Plan (CCLEP). It is unlikely that the Gosford Local Environmental Plan 2014 (GLEP 2014) will be in effect by the time this Planning Proposal is finalised. As the E3 Environmental Management zone does not permit caravan parks, it is proposed to apply an Additional Permitted Use (APU) of "caravan park" to the subject site.

The Land and Environment Court has determined that the existing caravan park development on the land has existing use rights for short-term accommodation only. The Court of Appeal confirmed this decision. Consequently, long-term or permanent accommodation is currently prohibited on the site. Therefore, the Planning Proposal seeks to include a provision for an APU of "caravan park" applying to the site. This will enable a future development application to be submitted for a "caravan park" whether it be for short-term or long-term accommodation on the site.

The Site

The subject site (Figure 1) is an "L" shaped lot, 3.67 Ha in area, with frontages to Wards Hill Road and Pomona Road, Empire Bay. The site accommodates a caravan park, comprising approximately 68 relocatable homes, laundry building, amenities building, an office and a manager's dwelling-house.



Figure 1 - Aerial Photograph of Empire Bay site

The whole site is zoned 7(c2) Conservation and Scenic Protection (Scenic Protection - Rural Small Holdings) under IDO 122 (Figure 2).



Figure 2 – Existing Zoning under IDO 122

Background

On 19 February 1980 Council granted development consent for a caravan park with 26 sites with the following condition:

- (aa) *Compliance with Council's Code for Caravan Parks; in particular, no site may be used for permanent accommodation.*

At the time the land was zoned 7(c3) Conservation and Scenic Protection (Scenic Protection – Coastal South) under IDO 122. "Caravan park" was not defined in IDO 122 but it was a use that was permissible with consent.

On 18 January 1983 Council approved a development application for 33 additional caravan sites, including the following condition:

- (i) *No site shall be used continuously for any period greater than six weeks.*

On 6 May 1983 Sydney Regional Environmental Plan No 6 – Gosford Coastal Areas (SREP 6) came into force. In effect SREP 6 amended IDO 122 and zoned the subject land to part 7(c2) Conservation and Scenic Protection (Scenic Protection - Rural Small Holdings) and part 1(d) Rural (Urban Investigation). The use of "caravan park" became prohibited in both zones. The use of the site approved under the consents of 1980 and 1983 accordingly became an "existing use" under the *Environmental Planning and Assessment Act 1979* (EPA Act).

On 26 June 1987, five (5) additional caravan sites were approved on the basis that the site had the benefit of existing use rights.

On 10 July 1998, Gosford LEP No 351 rezoned that part of the site zoned 1(d) Rural (Urban Investigation) to 7(c2) Conservation and Scenic Protection (Scenic Protection - Rural Small Holdings). This did not affect the permissibility of "caravan parks" which remained prohibited, nor the continuing existing use rights.

Until 29 March 2006 development consent could be granted for other uses not permitted in the, applicable zone, in this case the 7(c2) Conservation and Scenic Protection (Rural Small Holdings), on the basis of the existing non-conforming use on the site (i.e. short-term accommodation).

After March 2006 the "existing use rights" provisions under the Environmental Planning and Assessment Act and Regulations were changed to prohibit other non-conforming uses from being permitted.

On 16 November 2006 Council approved a Development Application to change the use of all existing sites from short-term to long-term accommodation including the following condition:

10 A total of 68 sites being available for long-term accommodation.

On 12 May 2017 Council refused a development application for an additional 48 long term sites on the basis that:

- 1 The proposed development of the site for the purpose of additional caravan park sites for long-term accommodation is prohibited within the 7(c2) Scenic Protection – Rural Small Holdings zone under Gosford Interim Development Order No.122.*
- 2 The site for the purpose of additional caravan sites for long-term accommodation is not consistent with the existing use rights applicable to the land, which exist only for short-term caravan park accommodation.*

This refusal was on the basis that the current existing use rights provision in the EP&A Regulations, 2000 does not permit a prohibited use to be changed to another prohibited use.

The owner took the matter to the Land and Environment Court (LEC) where the Court, in April 2018, confirmed that the site does not benefit from existing use rights for long-term accommodation.

Following this decision, the owner took the matter to the Court of Appeal, which confirmed the decision of the LEC, finding, in November 2018, that the site does not benefit from existing use rights for long-term accommodation.

The existing 68 sites are currently being used for long-term accommodation in accordance with the 2006 development consent, however as a consequence of the Court rulings, it is likely that the development consent of 2006 is invalid. Since the Court decision, Council has issued operational permits under the Local Government Act for short term accommodation only.

As a consequence of the Court decision, the owner has submitted a Planning Proposal application seeking to permit long term accommodation on the site.

The Proposal

Zoning

The Planning Proposal seeks to rezone the land from 7(c2) Rural Small Holdings under IDO 122 to an appropriate zone under the CCLEP.

When the draft CCLEP was publicly exhibited, it was proposed to zone the subject land and surrounding properties to E3 Environmental Management. A "caravan park" was not included as a permissible land use in that zone.

When Council considered the submissions received for the CCLEP on 14 December 2020, it resolved to proceed with the finalisation of the CCLEP. However, Council also resolved, in part:

1298/20 That an Environmental Lands Review and Planning Proposal to review the Deferred Matters under Gosford Local Environmental Plan 2014 (GLEP 2014) be commenced and that this project be given a high priority on the Strategic Planning Unit's work program.

Therefore, the site will remain zoned 7(c2) until the Environmental Lands Review (ELR) and Planning Proposal process is completed.

In order to bring the Deferred Matter land into the CCLEP, Council, on 27 April 2021, subsequently resolved, in part:

139/21 That Council prepare a planning proposal for the integration of Deferred Matters land under Central Coast Local Environmental Plan into Central Coast Local Environmental Plan.

Whilst it is preferable to avoid site specific planning proposals for Deferred Matter (DM) land until such time as the ELR is completed, there is adequate justification to support an isolated rezoning of this site, as discussed in the Assessment below.

Given the physical constraint of flooding affecting the subject site, it is considered that E3 Environmental Management is the most suitable zone (Figure 3).

Additional Permitted Use

It is noted that the E3 Environmental Management zone in the CCLEP does not permit "caravan parks". Therefore, to enable a "caravan park" to be a permitted use on the site, it would have to be included in CCLEP Schedule 1 Additional Permitted Uses.

The insertion of "caravan park" as an additional permitted use would allow any length of accommodation term to operate, subject to development consent (Figure 4). The definition of "caravan park" is:

Caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Most of the existing dwellings on the site are affected by flooding, however the use has been operating on this site for approximately 40 years. The caravan park has been used for long-term accommodation since, at least 2006, when consent was issued to for this type of accommodation. It was not until the decision by the Court of Appeal in 2018 that the validity of this 2006 consent was questioned.

To not support this Planning Proposal purely on the basis of the land being affected by flooding ignores the social consequences of dislocation and homelessness for those low income residents who have lived on the site for many years and consider it home.

Under the exhibited draft Central Coast Development Control Plan (CCDCP) Chapter relating to Floodplain Management it is proposed that caravan parks could be considered where supported by appropriate studies and other required information on flood liable land where the Hazard Levels in

the Probable Maximum Flood (PMF) are not considered high hazard (i.e. H1, H2, H3). It should be noted that this is a draft document only and now that the accompanying mapping has been completed is expected to be placed on exhibition later this year.

Therefore it is proposed that the APU will seek to relocate those existing dwellings out of high hazard areas (i.e. H4, H5, H6) and not permit new dwellings or structure within these high hazard areas.

The proposed wording of the APU would likely be:

Use of certain land at 437 Wards Hill Road, Empire Bay

- (1) This clause applies to land at 437 Wards Hill Road, Empire Bay, being Lot 1, DP 610629, identified as "Caravan Park" on the Additional Permitted Uses Map.
- (2) Development for the purposes of a caravan park is permitted with development consent subject to the following criteria being satisfied:
 - (i) any new dwellings, moveable homes, caravans or associated structure such as amenities blocks or carports are to be located outside the area of the Probable Maximum Flood Hazard Levels H4, H5, H6 as identified by the council or a professional engineer who specialises in hydraulic engineering has certified, for the purposes of the issue; and
 - (ii) any existing dwellings within the area of the Probable Maximum Flood Hazard Levels H4, H5 or H6 are to be relocated to an area not affected by these Hazard Levels identified by the council or a professional engineer who specialises in hydraulic engineering has certified, for the purposes of the issue; and
 - (ii) residents be able to safely evacuate the site without negotiating floodwaters in Flood Hazard Levels H4, H5 or H6.
- (3) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.



Figure 3: Proposed zone under CCLEP

Figure 4: Proposed APU under CCLEP

Assessment

The rezoning of the subject land to E3 Environmental Management under the CCLEP with an Additional Permitted Use of "caravan park" has strategic merit on the basis that:

- The proposed zone of E3 Environmental Management is considered suitable for this site due to it being affected by the physical constraint of flooding. The minimum lot size applicable to the E3 zone is 20Ha which will not permit further subdivision of the land.
- An alternative zone under the CCLEP which permits "caravan parks" is RE2 Private Recreation and was considered. However, this zone permits such uses as entertainment facilities, function centres, recreation facilities (major) and registered clubs which are incompatible with the character of this locality and the physical constraints of the site.
- The APU within the Planning Proposal will not seek to regularise existing development which is located in high hazard flood levels but will enable the relocation of these buildings, and any new development, to areas outside the high hazard flood levels.
- The CCLEP includes APUs for "caravan parks" on certain lots accommodating existing caravan parks which are zoned E2 Environmental Conservation and E4 Environmental Living. This Planning Proposal is consistent with this approach.
- The subject land is serviced with water and sewer which can service any future development of the site for long-term accommodation.
- The Planning Proposal does not adversely impact on the existing vegetation on the site.
- The Planning Proposal will permit long-term affordable accommodation on the land, thus assisting with meeting the needs of the local community in this locality.
- To not proceed with this Planning Proposal may result in Council having to undertake action against an unauthorised use which will cause displacement of 68 economically vulnerable households.
- Even though the land is currently affected by flooding, the Planning Proposal and accompanying DCP, will ensure no new dwellings would be adversely affected by floodwaters.

Current Status

Until 2018 the subject land was operating under a development consent permitting 68 long-term sites. However, since it has been determined by the Court of Appeal that the site does not have existing use rights for long term accommodation, there is no certainty for the use to continue operation or to expand the number of long-term sites without a Planning Proposal. The subject Planning Proposal seeks to permit a caravan park for long-term accommodation to operate on the site and permit future expansion of the caravan park subject to development consent provided that all existing and new dwellings are located out of the high hazard levels in the PMF.

Internal Consultation

Internal consultation for the Planning Proposal has been undertaken as summarised below.

Environmental Strategies

Council's Environmental Strategies Section supports the planning proposal in its current form. The proposal does not trigger entry into the Biodiversity Offset Scheme (BOS). It is recommended that appropriate threatened microbat surveys be conducted targeting hollow-bearing trees and shed/building structures at the DA stage.

Water and Sewer

Sewerage services to the site were recently provided in 2015 as part of a backlog sewer program that was subsidised by the State Government. Adequate capacity has been built into the network for long term occupation at the caravan park. At the time of connection, the caravan park would have paid developer charges as well as a priority sewer plan contribution. The Water Assessment Team will need to confirm the basis of the previous payment (long-term or short-term) under the previous Development Servicing Plan which applied at the time of connection.

There is adequate water supply available in Council's network for long-term usage however existing water supply Equivalent Tenement (ET) credits would have been based on the use at the time of connection to water supply in the early 1980s as well as any subsequent payments associated with the later intensification of development on the site described in the planning proposal.

Developer charges would be determined and made payable when the applicant lodges the relevant change of use documentation for the change from short-term to long-term sites.

Flooding and Drainage

The Flood Study has been assessed and is considered to contain information satisfactory for the assessment of the Planning Proposal.

Generally, the majority of the site is what could be considered low hazard (H1 – H3) in the PMF however the areas of higher hazard (H4 – H6) are currently in locations where there is risk to people and light structures. This is not optimal. A redesign of the site flow paths, may lead to a dispersing of hazard, reducing the overall hazard plume.

Indeed, designing to accommodate the flow with reduced hazard, is in the interest of the site development. It is understood that this may be an iterative process. Minor reshaping of terrain, roadway levels and structure locations can all aid in the reduction of hazard.

It is recommended that:

- a rain on grid analysis with the inclusion of all buildings as obstacles be undertaken for 1% and PMF hazard analysis.
- the hazard should be mapped H1-H6.
- intensification of use of the caravan park in areas of high hazard should not be supported.

- the site should be planned to account for the flow path and minimise its impact through the site.

The intent is to ensure that no dwellings are to remain in High Hazard areas, and no new structures of any type be placed in the High Hazard areas.

The Planning Proposal will stipulate that no new dwellings or associated structures are to be placed in high hazard areas and that existing structures in high hazard areas are to be relocated. The proposed accompanying Development Control Plan will set out Council's requirements regarding flooding.

Social Planning

The Social Impact Assessment (SIA) submitted with the Proposal demonstrates that the need for more diversity of housing exists within the area due to predominance of detached dwelling houses. There is also a relatively low percentage of rental dwellings in the area and few Manufactured Housing Estates (MHEs) in the southern part of the Central Coast LGA. This development would add to the diversity of housing options available through provision of rental and smaller dwellings.

Affordable housing should be in accessible localities so residents can access employment opportunities, services and facilities. The SIA provides evidence on transport disadvantage for low income people and identifies that the site has relatively infrequent public transport. There is a requirement to travel to Ettalong or Woy Woy for most shops and services. It is likely that the majority of residents will own a car as there are high car ownership rates on the Central Coast, however, for older people, those on lower incomes and people with a disability, car ownership may not be feasible and these are groups that are likely to reside in a long term caravan park.

Therefore, there are concerns that the location of the caravan park may not be appropriate (if no mitigations are implemented e.g. community bus) due to the inadequate bus service and distance from services and shops. However, the extent to which this is a problem is difficult to ascertain without consultation with existing residents. Therefore, for any future Development Application the issue of transport and access to services, needs to be addressed adequately, including through engagement with existing residents on the issue and identification of mitigations to address the matter.

Traffic and Transport

The transport network has the capacity to cater for the additional traffic generated as a result of the Planning Proposal. The Pomona Road / Wards Hills Road intersection is considered to have extensive spare capacity. There are bus stops on both sides of Ward Hill Road and Empire Bay Drive. There are also pedestrian refuges in Empire Bay Drive and Wards Hill Road which provide access to the bus stops.

External Consultation

Government agency and public consultation requirements will be detailed in the Gateway Determination and conducted accordingly. It is anticipated that due to the existing development

surrounding, and the location, that a number of government agencies may be required to be consulted, such as the following:

- Department of Family and Community and Justice (former NSW Rural Fire Service), regarding bushfire matters;
- Transport for NSW, regarding transportation and road networking matters; and
- NSW Biodiversity Conservation Division (BCD) on vegetation and biodiversity matters.
- Darkinjung Local Aboriginal Land Council and Guringai Tribal Link (also known as Wannangini), regarding Aboriginal heritage values.

Statutory compliance and strategic justification

The proposal has been assessed having regard for all State Environmental Planning Policies (SEPPs), Ministerial Directions and relevant guidelines set out within the Central Coast Regional Plan 2036 (CCRP) as detailed in Attachment 2.

The proposal is considered to be consistent with these considerations, therefore is suitable for forwarding to the Minister of Planning requesting an amended Gateway Determination.