

Regional Development Committee

Meeting Date: Tuesday, 26 April, 2022

Location: Council Chambers, City Administrative Centre, Bridge Road, Nowra

Attachments (Under Separate Cover)

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4. Reports

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Planning Report – S4.15 Assessment – Island Point Rd, ST GEORGES BASIN - Lot 1 DP 1082382

COUNCIL ASSESSMENT REPORT

| | |
|--|---|
| Panel Reference | PPS-2017STH009 |
| DA Number | RA17/1000 |
| LGA | Shoalhaven City Council |
| Proposed Development | Concept masterplan for a mixed-use development (comprising of residential flat buildings, commercial premises and shop top housing) and associated minor boundary adjustment subdivision |
| Street Address | Anson Street, St Georges Basin |
| Applicant/Owner | Eastern Grey Developments Pty Ltd / David DeBattista |
| Date of DA lodgement | 30 March 2017 |
| Total number of Submissions Number of Unique Objections | Council received 250 submissions objecting to DA in 2017 and 83 submissions objecting to the amended DA in 2020 when the amended proposal was renotified as part of the LEC Court proceedings. |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021 | General development over \$30 million: Development that has a capital investment value of more than \$30 million. |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021; • State Environmental Planning Policy (Planning Systems) 2021; • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Transport & Infrastructure) 2021; • State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building; • Shoalhaven Local Environmental Plan 2014; and • Shoalhaven Development Control Plan 2014. |
| List all documents submitted with this report for the Panel's consideration | Attachment 1 - Section 4.15 Assessment Report Attachment 2 – Concept Masterplan Plans |
| Clause 4.6 requests | N/A |
| Summary of key submissions | <ul style="list-style-type: none"> • Development is out of character with the Basin area. • Traffic impacts – safety, increased volume. • Lack of public transport. • Adverse visual impact. • Appearance. • Unsuitable development that sets a precedent. • Adverse environmental impacts on the Basin and local flora and fauna. • Adverse social impacts due to significant population increase in the area • Lack of adequate utilities and facilities including water supply, sewage, transport, school and roads. • Increase and changes in flow of storm water that would adversely impact the Basin. • Does not meet the requirement of SEPP 65 in that the proposed development does not respond to or enhance the quality and identity of the area. • Does not meet the requirements of SEPP 71. • Adverse impact on the visual amenity and scenic qualities of the area. • Overshadowing on neighbouring properties. • Inadequate parking for residents and visitors. • Loss of privacy. |

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| Report prepared by | Rebecca Lockart, Lead Development Services (North) |
| Report date | 18 April 2022 |
| Summary of s4.15 matters | |
| Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? | Yes |
| Legislative clauses requiring consent authority satisfaction | |
| Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? | No |
| Clause 4.6 Exceptions to development standards | |
| If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? | Not applicable |
| Special Infrastructure Contributions | |
| Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i> | Not applicable |
| Conditions | |
| Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i> | No Recommendation of refusal |

1. Executive Summary

The subject site is located to the south of the St Georges Basin Village, some 300m to the north/north east of St Georges Basin. The land is legally identified as Lots 1 and 6 DP 1082382, Anson Street St Georges Basin.

The site is predominantly cleared with the exception of minor strands of trees and bushes including around 10m² of Commonwealth threatened plant species *Melaleuca biconvexa*. Historically, the site was heavily vegetated, with the site cleared in 2017. The site at lodgement was identified as being entirely bush fire prone land however recent change to mapping after 14 October 2021 has reduced the bushfire vegetation category applying to the site. Despite this as this application was lodged prior to this date, the old mapping applies, on which the site was not identified as 'Category 1' and 'buffer' bush fire prone land.

The site is surrounded by low density residential development to the west and east, manufactured housing estate to the south, low-rise village town centre and a new residential subdivision to the north.

The subject DA was lodged on 30 March 2017. The application is described as a staged development application (DA) per Section 4.22 of the *Environmental Planning and Assessment Act* (EP&A Act) for a concept masterplan for a mixed-use development (comprising of residential flat buildings, commercial premises and shop top housing) and associated minor boundary adjustment subdivision at Anson Street, St Georges Basin (Lots 1 and 6 DP 1082382).

Since lodgement, the application was the subject of a "Deemed Refusal" appeal in the Land and Environment Court. The proceedings were however discontinued, leaving the application undetermined. To resolve the application, the application is now reported to the Regional Planning Panel to finalise the matter.

The land is zoned R1 General Residential and B4 Mixed Use under the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), under which mixed-use and residential flat development are permitted with the consent of Council.

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As the development has a capital investment value (CIV) is more than \$30 million, in accordance with section 2 of Schedule 6 of SEPP (Planning Systems) 2021, the application constitutes a regional development application, and the Southern Regional Planning Panel is the determining authority for the application.

The proposal has failed to satisfy the critical matters for assessment and determination for the development the subject of the concept DA per Section 4.22(5) of the EP&A Act including:

- Compliance with the respective environmental planning instruments applying to the site;
- The visual compatibility of the development to surrounding development and neighbourhood character;
- Traffic impacts from the proposed parking spaces and the development's siting within the road network;
- The impact of the development on surrounding properties and the public domain;
- Social impacts of the development;
- The streetscape and urban design issues relating to the building heights, footprints and separations, traffic, accessibility and safety; and
- The shadow impacts of the development on the public domain and private properties.

The development application has been assessed against the following relevant environmental planning instruments:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)*
- Shoalhaven Local Environmental Plan 2014

There are areas of noncompliance and environmental impacts in relation to a number of these environmental planning instruments, including SEPP 65 and the accompanying Apartment Design Guidelines, and SLEP 2014 in relation to consistency with the objectives of the applicable zoning, provision of services and the maximum height of buildings.

The application has also been assessed against the following chapters of the Shoalhaven Development Control Plan 2014 (SDCP 2014):

Generic Chapters

- Chapter 2: General Environmental Considerations
- G1: Site Analysis, Site Design and Building Materials
- G3: Landscaping Design Guidelines
- G4: Removal and Amenity of Trees
- G5: Biodiversity Impact Assessment
- G6: Coastal Management Areas
- G7: Waste Minimisation and Management
- G13: Medium Density and Other Residential Development
- G17: Business, Commercial and Retail Activities
- G21: Car Parking and Traffic
- G26: Acid Sulphate Soils and Geotechnical (Site Stability) Guidelines

Specific Chapters

- N23: St Georges Basin Village Centre

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The development is considered noncompliant with a number of these SDCP 2014 particularly Chapter N23 St Georges Basin Village Centre. These matters form reasons for the recommendation of the refusal of the DA.

The DA was notified in accordance with the *Environmental Planning & Assessment Regulation 2000* (the EP&A Regs) and Council's Community Consultation Policy for Development Applications on two occasions, the first being from 12 April to 15 May 2017 (Rev A plans). In response 250 submissions were received by Council, objecting to or raising concerns with the proposal. A further notification of the amended proposal was undertaken from 11 August 2020 to 11 August 2020 (Rev B plans).

Key objections in both instances relate to:

- Development is out of character with the Basin area.
- Traffic impacts – safety, increased volume.
- Lack of public transport.
- Adverse visual impact.
- Appearance.
- Unsuitable development that sets a precedent.
- Adverse environmental impacts on the Basin and local flora and fauna.
- Adverse social impacts due to significant population increase in the area
- Lack of adequate utilities and facilities including water supply, sewage, transport, school and roads.
- Increase and changes in flow of storm water that would adversely impact the Basin.
- Does not meet the requirement of SEPP 65 in that the proposed development does not respond to or enhance the quality and identity of the area.
- Does not meet the requirements of SEPP 71.
- Adverse impact on the visual amenity and scenic qualities of the area.
- Overshadowing on neighbouring properties.
- Inadequate parking for residents and visitors.
- Loss of privacy.

These matters have been addressed in this report and form reasons for the recommendation of this application.

The site is considered unsuitable for the proposed development in its present form, out of character with the existing and desired character of the St Georges Basin village. Approval of the proposal would not be in the public interest.

This report recommends that the application is refused for the reasons outlined in this report.

2. Application Details

Applicant: Eastern Grey Developments Pty Ltd

Owner: Mr David De Battista

Capital Investment Value: \$116, 000, 000 million inc. GST (as at 2017 lodgement)

Disclosures: No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

Note: The applicant for the DA at lodgement was Cowman Stoddart Pty Ltd, and the owner was and currently is Mr David De Battista.

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The application was subject of a Class 1 Deemed Refusal appeal, filed on 28 June 2017 by Mr De Battista. As Mr De Battista commenced the appeal on the basis that he was the 'applicant' who was dissatisfied with the deemed refusal (refer s.97(1) now s.8.7(1) of the *Environmental Planning and Assessment Act 1979*), Council has assumed Cowman Stoddart Pty Ltd submitted the DA in 2017 as Mr De Battista's agent. Court proceedings were discontinued by Mr De Battista on 6 May 2021.

The same amended plans as those (Revision P2, dated 30 June 2020) were submitted by the owner on 13 May 2021 with a request to amend the applicant of the subject development application to 'Eastern Grey Developments Pty Ltd'. Confirmation has been received by Cowman Stoddart Pty Ltd confirming their agreement for the change of applicant.

3. Detailed Proposal

(a) Concept Development Application

The application as lodged sought consent for a staged development application under then section 83B of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) seeking consent for maximum building envelopes, land uses including estimated apartment unit mix, allocation of parking across the site and minor adjustments to property boundaries to facilitate the siting of proposed buildings.

Since lodgement of the DA, this section of the Act is now Section 4.22 of the EP&A Act and the application is considered a concept development application ('concept DA') as follows:

4.22 Concept development applications

(cf previous s 83B)

- (1) *For the purposes of this Act, a **concept development application** is a development application that sets out concept proposals 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.*

Comment: The application seeks consent for the Concept Master Plan (CMP) across the site for 15 new buildings as shown at **Figure 1**. The submitted Statement of Environmental Effects (SEE) states, "*detailed proposals for each of the buildings identified in the [concept DA to] be the subject of separate development applications and will contain more details associated with these subsequent stages of the application*" (p.9).

- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*

Comment: The application has not set out detailed proposals for the first stage of development nor does it seek consent for the staging of any future development for the site.

- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*

Comment: The applicant has requested that the proposal be treated as a concept DA

- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—*

- (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*

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(b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

Comment: This is further addressed later in this report, no consent is sought for the first or subsequent stages of the subsequent carrying out of the development.

(5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

Note—

The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).

Comment: The Land and Environment Court has provided guidance in the form of a Planning Principle, handed down as part of the court hearing in relation to *Anglican Church Property Trust v Sydney City Council [2003] NSWLEC 353*. The judgement states that:

“Multi-stage applications are useful for large or controversial projects as they provide the applicant with certainty about the major parameters of a proposal before it embarks on the expensive exercise of preparing detailed drawings and specifications for a development application. The critical issue is: how much detail should be provided in the Stage 1 application as against the Stage 2 application?”

The principle we have adopted is that in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal. Where traffic generation is the critical issue, Stage 1 should include information on the precise number of cars accommodated on a site. Where the floor space is critical, Stage 1 should include the precise FSR. Where the major issue is the protection of vegetation, the footprints of the proposed buildings may be sufficient.”

Accordingly, to clarify the limitations of the subject concept DA, this application includes the conceptual details for the development of the site including the distribution of proposed buildings across the site, maximum building heights and minimum setbacks and envelopes, the approximate unit mix and parking provided, landscaped areas and vehicular access/egress.

It is noted that the built forms depicted on the plans may not necessarily be the same as the final form of the buildings which would normally be considered in the subsequent ‘Stage 2 development applications’. The plans subject to this application generally indicate the building envelopes within which the future buildings will be contained. The actual shapes of the buildings, including the number of floors, the elevations, the external finishes and the colours are to be shown in the subsequent development applications which follow the approval of the concept DA consent.

The critical matters to be assessed and determined are:

- Compliance with the respective environmental planning instruments applying to the site;
- The visual compatibility of the development to surrounding development and neighbourhood character;
- Traffic impacts from the proposed parking spaces and the development’s siting within the road network;
- The impact of the development on surrounding properties and the public domain;

