

PRELIMINARY ASSESSMENT MP 07_0015

THREE LOT RURAL SUBDIVISION



LOT 3 DP 1087105 GARRADS LANE
MILTON


PROPONENT: RYGATE & WEST (ULLADULLA)

OWNER: J M MISON

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SUBMISSION OF PRELIMINARY ASSESSMENT

Prepared under the Environmental Planning and Assessment Act 1979

Preliminary Assessment prepared by	
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Part 3A Activity	
Proponent Name	RYGATE & WEST (ULLDULLA)
Proponent Address	P O Box 107 Ulladulla NSW 2539
Land on which activity to be carried out	Lot 3 DP 1087105 off Garrads Lane Milton – City of Shoalhaven
Project	Three Lot Rural Residential Subdivision pursuant to Clause 38A & Schedule 8 of the Shoalhaven Local Environmental Plan, 1985.
Environmental Assessment	TO BE PREPARED UPON ISSUE OF DGR's
Declaration	<p>I declare that I have prepared this Preliminary Assessment to the best of my knowledge:</p> <ul style="list-style-type: none">▪ It has been prepared in accordance with the relevant provisions of the Environmental Planning and Assessment Regulation 2000;▪ The information which it contains is neither false nor misleading information.
Signature	
Name	Kerry Rourke
Date	April 2007

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PRELIMINARY ASSESSMENT – MAJOR PROJECT 07_0015

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1.0 Executive Summary

Introduction

A submission was made to the Department of Planning – Urban Assessments Branch in January 2007 to ascertain the Minister’s Opinion as to whether a subdivision of the subject land into more than two lots where the future dwellings would not be connected to a reticulated sewage scheme constituted a Part 3A Major Project. Discussions with the Department have indicated that this proposal is a Major Project under the provisions of the Environmental Planning & Assessment Act, 1979 as part of the subject land is located within a sensitive coastal location, though formal confirmation of the Minister’s Opinion has not yet been received.

Subject Land

The subject land is Lot 3 DP 1087105 Garrads Lane Milton in the City of Shoalhaven. The land is located approximately 2.75 kilometres by road from the centre of Milton Township which is to the south of the subject land. The land has an area of 57.04 hectares zoned Rural 1(a) and Rural 1(g) and Environmental Protection 7(d2).

It was created pursuant to the provisions of Clause 38A Fair Trading Options of the Shoalhaven Local Environmental Plan, 1985. Shoalhaven City Council included an allowance provision in Schedule 8 of the LEP as part of the Milton – Ulladulla Amendment No. 195 gazetted 13th June 2003, to permit the land to be subdivided into three rural residential allotments after the dedication of 41 hectares of land rezoned Environmental Protection 7(a) and Environmental Protection 7(d2).

That dedication has taken place and the landowner now wishes to pursue the creation of the remaining allotments under that LEP Amendment.

Proposal

This proposal is for the creation of three rural allotments all with the legal ability for the erection of a dwelling house under the provisions of Clause 14 of the Shoalhaven Local Environmental Plan, 1985.

Proposed Lot 15 has an area of 2.85 hectares, Lot 16 has an area of 1.45 hectares and the residue rural allotment (Lot 17) containing the existing dwelling house has an area of 52.68 hectares. The two proposed vacant allotments are located on the higher land to the south west of the existing dwelling house. The proposed vacant allotments are located away from the more constrained areas of the site.

Constraints

The majority of the subject land is cleared paddocks (see Figure 1- aerial photograph) and the only vegetated lands are located adjacent to the creek confluence and the public reserve boundary in the eastern section of the subject land. The land is gently undulating and contains several ephemeral water courses.



Figure 1 – Site Locality and proposed plan

Other than the small area of vegetation, the physical constraints associated with developing the land include:

- There are two main ephemeral water courses which traverse the subject land when drain into Narrawallee Inlet.
- Part of the land is flood liable (adjacent to the creek confluence of Narrawallee Inlet) and that land zoned Rural 1(g);
- There is potential for acid sulfate soils as mapped, being found on site within 1 metre of ground surface in the northern part of the subject land and between 1 & 3 metres of ground surface in the southern part of the subject land all within the residue lot;
- Part of the land is mapped by Council as being bushfire prone land – that land adjacent to the eastern boundary and the adjoining public reserve;
- The land does not benefit from the provision of a reticulated sewage scheme; therefore all domestic wastewater disposal must be managed on site.
- A number of identified SEPP 14 Coastal Wetlands are located to the north and north east, but do not abut the subject land.

There are no known threatened species or endangered ecological communities located within the land. There is a known endangered ecological community located within the adjacent public reserve lands – Swamp Sclerophyll Forest on Coastal Floodplains. As previously indicated the proposed 1.45 & 2.85ha allotments will be

located within the Rural 1(a) zone away from the bushfire prone and flood prone lands reducing potential impacts upon the near by creeks and endangered ecological community.

Further, there are no known areas of Aboriginal heritage cultural significance located within the subject land and the land has not been identified by Council as being potentially contaminated by a former landuse.

Statutory constraints include:

- The land is within the NSW Coastal Zone and part of the site is within a sensitive coastal location, adjacent to the confluence of the ephemeral watercourse and Narrawallee Inlet. SEPP 71 is applicable;
- The land has multiple zonings being Rural 1(a), Rural 1(g) and Environmental Protection 7(d2) under the Shoalhaven Local Environmental Plan, 1985;
- Land is prime crop and pasture as mapped under the Illawarra Regional Environmental Plan, 1986, it has been identified as Class 3 as illustrated on the Department of Agriculture maps;
- Various Council Development Control Plans apply to the proposal, including DCP78 – On Site Sewage Management and DCP 100 – Subdivision Code.

The proposed vacant allotments are located within the land zoned Rural 1(a) to ensure they are above the 1% AEP flood recurrence level associated with the Rural 1(g) zoning and the creek and to ensure that they are outside land mapped as bushfire prone or having potential for acid sulfate soils.

Conclusion

This three lot subdivision is not likely to have a significant or detrimental impact upon the surrounding environment particularly the nearby Narrawallee Inlet and associated coastal wetlands, or the adjoining public reserve to the east of the land which is known to contain an endangered ecological community.

The proposal generally complies with the requirements of the Shoalhaven Local Environmental Plan, 1985 clause and schedule which permits the subdivision where it is not likely to be out of character with the surrounding rural residential environment.

2.0 BACKGROUND

2.1 Introduction

This preliminary assessment has been prepared in response to the discussions with the Department of Planning where it is the Minister's Opinion that a three (3) lot subdivision of Lot 3 DP 1087105 Garrads Lane Milton for Mr J M Mison constitutes a Part 3A Major Project under the provisions of State Environmental Planning Policy (Major Projects) 2005. The purpose of the subdivision is to allow the construction of residential dwelling houses on two new allotments.

The Minister's Opinion was sought in January 2007, with an informal response being received in March 2007 via email. This Preliminary Assessment provides additional information with regard to the Key Issues and Constraints for this subdivision for rural residential purposes with the issue of the Director – General's Environmental Assessment Requirements now requested.

2.2 Statutory Framework

State Environmental Planning Policy (Major Projects) 2005 identifies "*subdivision of land where the future development created by the subdivision will not be connected to an approved sewage treatment work or system into more than two (2) lots*" on land which is wholly or partly in a sensitive coastal location, as a Part 3A Major Project.

In this particular case, the proposal is for the creation of three allotments where the subject land is partly located within a sensitive coastal location within the coastal zone, being that area adjacent to the confluence of the drainage line with Narrawallee Inlet.

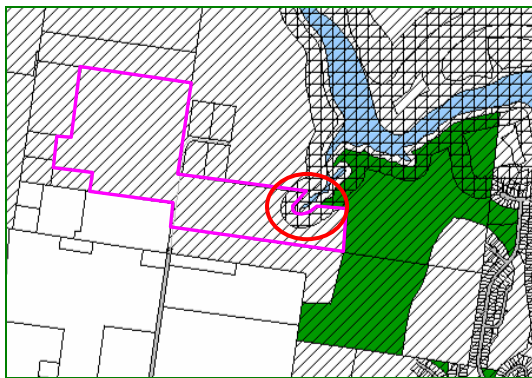


Figure 2 – SEPP 71 Coastal Zone & Sensitive Coastal Location - SCC

Shoalhaven Local Environmental Plan, 1985 contains provisions permitting the subdivision of the subject land into the three lots now being applied for. Subdivision generally is permissible with the consent of Council pursuant to the provisions of Clause 11 of that LEP. However, in this case, the SLEP85 includes a Fair Trading Option clause – Clause 38A with the detail of those provisions listed in Schedule 8 of the LEP. Schedule 8 states:

Milton - Garrads Lane, Part Portion 4, Parish of Ulladulla and Lot 4, DP 1015161:

- (a) *subdivision of the land into three lots, comprising one lot of approximately 41 hectares, one lot of approximately 6 hectares and one lot of approximately 57 hectares generally in*

accordance with plan marked with the reference number 11540, dated 20 September 2002, prepared by PW Rygate & West, and

- (b) development consent for any subdivision referred to in paragraph (a) or (c) must not be granted unless the subdivision makes provision for the dedication of the lot of approximately 41 hectares to the Council , at no cost to the Council , as public open space, and*
- (c) subdivision of the lot of approximately 57 hectares into three lots comprising one lot of approximately 53 hectares and two lots of approximately 2 hectares each, and*
- (d) the erection of one dwelling-house on each lot referred to in paragraph (c), but only if each dwelling-house and its associated effluent disposal area is located entirely within the lot on which it is erected.*

Subclauses (a) and (b) have been completed with the creation of an allotment for residential subdivision off Leo Drive Narrawallee and the dedication of 40.64 hectares of land for public open space by Hazcorp Pty Ltd (see adjoining Major Project application MP 06_0276).

2.3 Consultation

Given the nature of the proposal, its general compliance with current Council policy and the LEP provisions permitting the development, there has been no consultation with either the community, Council or any other statutory body at this time. If it were not for an area of approximately 2.2 hectares of the 57 hectare property being located within a sensitive coastal location, the proposal would have been lodged with Shoalhaven City Council for assessment and determination.

That area of sensitive coastal location is in excess of 940 metres from the proposed vacant lots 15 & 16, and it is unlikely that there will be any impact upon that land as a consequence of this proposal.

The proposal has little environmental impact, the lots are located outside of any area likely to be affected by any natural hazard such as flooding and bushfire, therefore this project is put before the Director – General for the issue of their Environmental Assessment Requirements.

3.0 Description of Development Proposal

3.1 Project Objectives

The objective of this project is to provide two additional building allotments with minimal environmental impacts while attaining a high degree of amenity for future residents in a pleasant rural environment.

3.2 Project Description

This purpose of this Major Project application is to create three rural residential allotments which will not be connected to an approved sewage reticulation scheme on land that is partly within a sensitive coastal location. Proposed Lot 15 has an area of 2.85 hectares, Lot 16 an area of 1.45 hectares and the residue of the property – Lot 17 has an area of 52.68 hectares.

The project would involve the extension of an existing right of carriageway through the subject land to the new allotments, which benefits Lot 3 DP 1015161 to the south of proposed Lots 15 & 16. The right of carriageway currently extends from the end of the Council owned and maintained road reserve to the south of the subject land, through Lot 6 DP 1087106 to benefit the subject land, Lot 3 DP 1015161 and Lots 101 – 105 DP1085951 to the north of the subject land.

3.3 Development Options

There are limited options for the development of this land as the lot sizes are generally prescribed by Council in the Shoalhaven Local Environmental Plan, 1985 and the site constraints allow little scope for lot relocation due to natural hazard or zoning provisions.

Proposed Lots 15 & 16 were not be located east of the right of carriageway extension of Garrads Lane as the subject land to the east is mainly zoned Rural 1(g) Flood Liable and there is a risk of acid sulfate soils. Further, part of that land to the east of the right of carriageway is mapped as bushfire prone land. There is a section of Rural 1(a) zoned land on the hill adjacent to the southern boundary of the eastern section of Lot 3, and that land was considered as a potential location for one of the proposed lots. However that was not pursued due for visual amenity reasons and the lots were both then located in the south western corner of Lot 3 as access already existed to that part of the land.

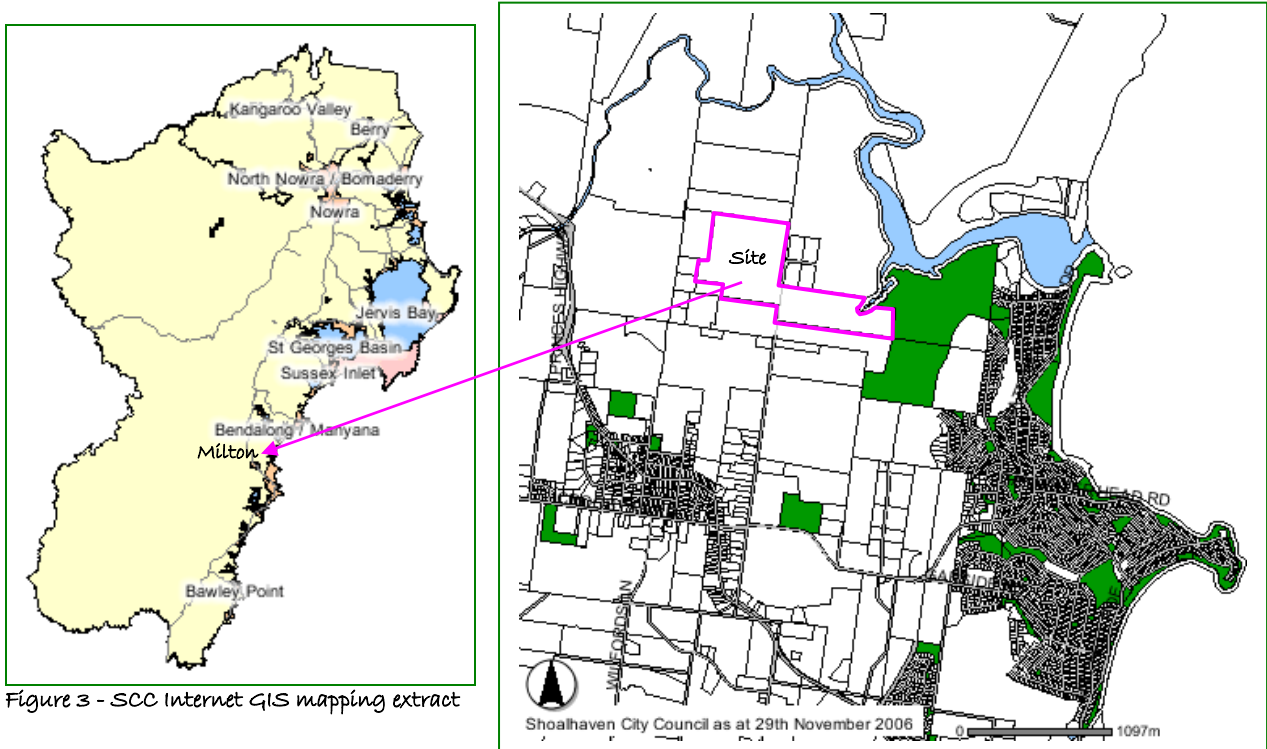
The two vacant lots proposed are located away from main farming practices to ensure minimal conflict between rural residential and agricultural activities and located near existing rural residential development. Due to the topography of that locality, the lots are either larger or smaller than the LEP indicated 2 hectares to ensure amenity and minimal environmental consequences.

Locating the lots to the north or west of the existing dwelling house on the subject land would result in fragmentation of the prime crop and pasture land, which would not further the aims of the zone and would likely result in conflict with agricultural uses.

4.0 Site Analysis

4.1 Location

The subject land is located approximately 2.75km north of the township of Milton in the southern Shoalhaven, as illustrated on Figure 3:



4.2 Site Description

The subject land – Lot 3 DP 1087105, has an area of 57.04 hectares where the land contains an existing dwelling house and rural outbuildings. The property is currently used for agricultural purposes with cattle grazing being the primary use.

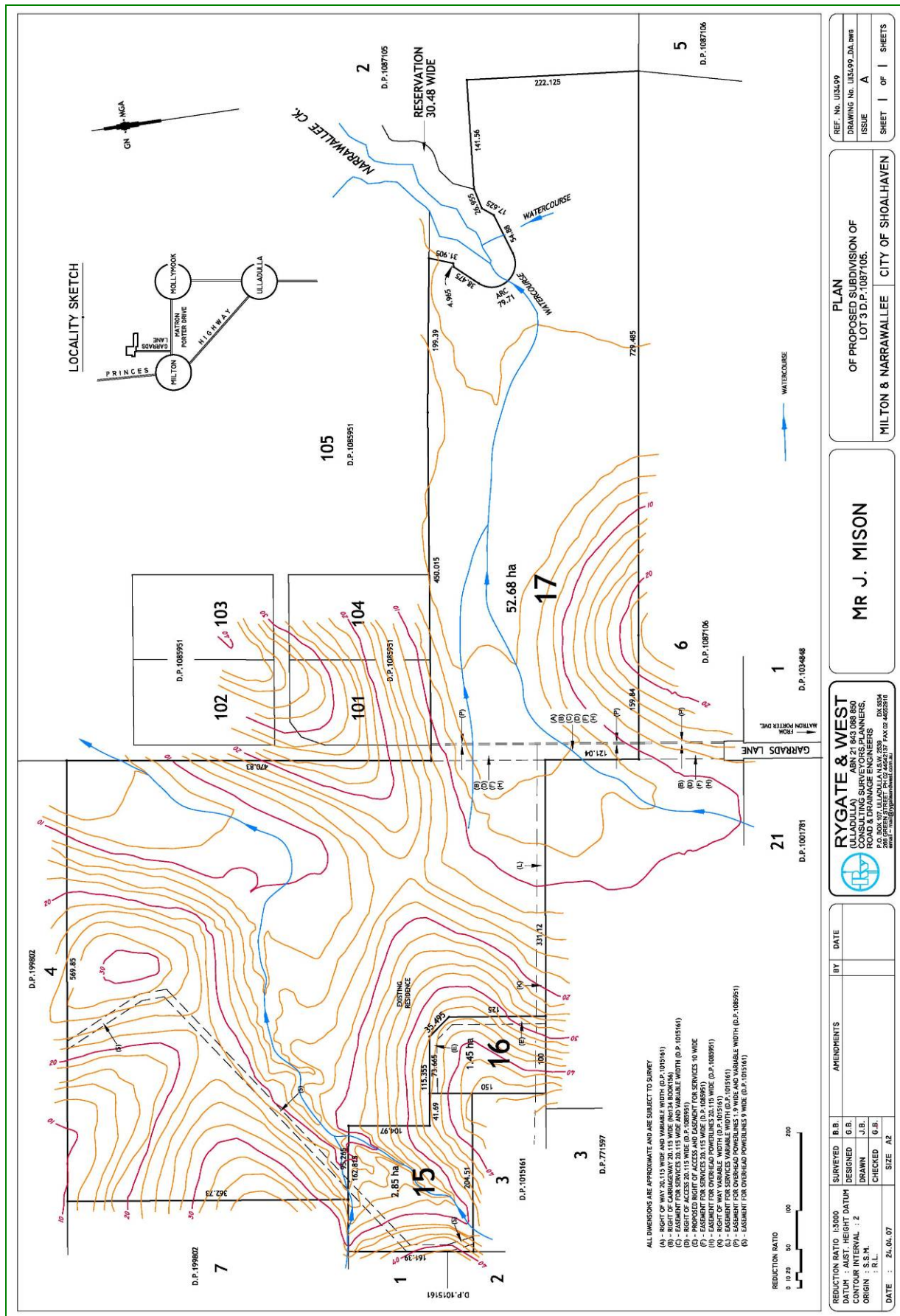
The land was created in Shoalhaven City Council Subdivision File – SF9416 pursuant to Clause 38A – Fair Trading Option and Schedule 8 of the Shoalhaven Local Environmental Plan, 1985.

The site is bound to the south, west and north by privately owned lands and to the east by Council owned public reserve dedicated under the abovementioned Fair Trading Option by Hazcorp Pty Ltd with regard to their adjacent residential subdivision project.

4.3 Topography

The subject land is gently undulating with slopes ranging from 3 – 8 degrees. There are a number of drainage lines that traverse the land from south west to north east, with the headwaters of one ephemeral watercourse being within proposed Lot 15.

The land to the east of the right of carriageway is low lying and subject to periodic inundation by floodwaters as indicated by the zoning Rural 1(g) Flood Liable. That area is also characterised by potential for acid sulfate soils within 1 – 3 metres of ground surface.



4.4 Site Constraints

The main physical constraints which impact upon the development of the subject land are described as follows, where legislative constraints will be discussed in Section 5.0:

Water Courses: the location of ephemeral water courses within the subject land impact upon wastewater disposal as the site does not benefit from the provisions of a reticulated sewage scheme. This impact is upon Lot 15 however the required buffer distances to that intermittent water course can be met and maintained within the lot with no adverse environmental consequences. Therefore the ephemeral water courses are not considered to be a detrimental constraint to the development of the subject land.

Flood Liable Land: the land to the east of the right of carriageway is mapped as flood liable land through Council's land use zone maps. The proposed vacant lots 15 and 16 are located on higher ground that is not impacted by any potential inundation. Therefore the flood prone nature of the subject land is not considered to be a significant impediment to the development of the subject land as proposed in this project.

Bushfire Prone Land: Council has mapped part of the land as bushfire prone land. This is illustrated below on Figure 5, an extract of Council's map, which clearly indicates that the land to the east of the subject land, formerly part of the subject land but now Council owned public reserve, is mapped as Category 1 vegetation, with an associated 100m buffer.

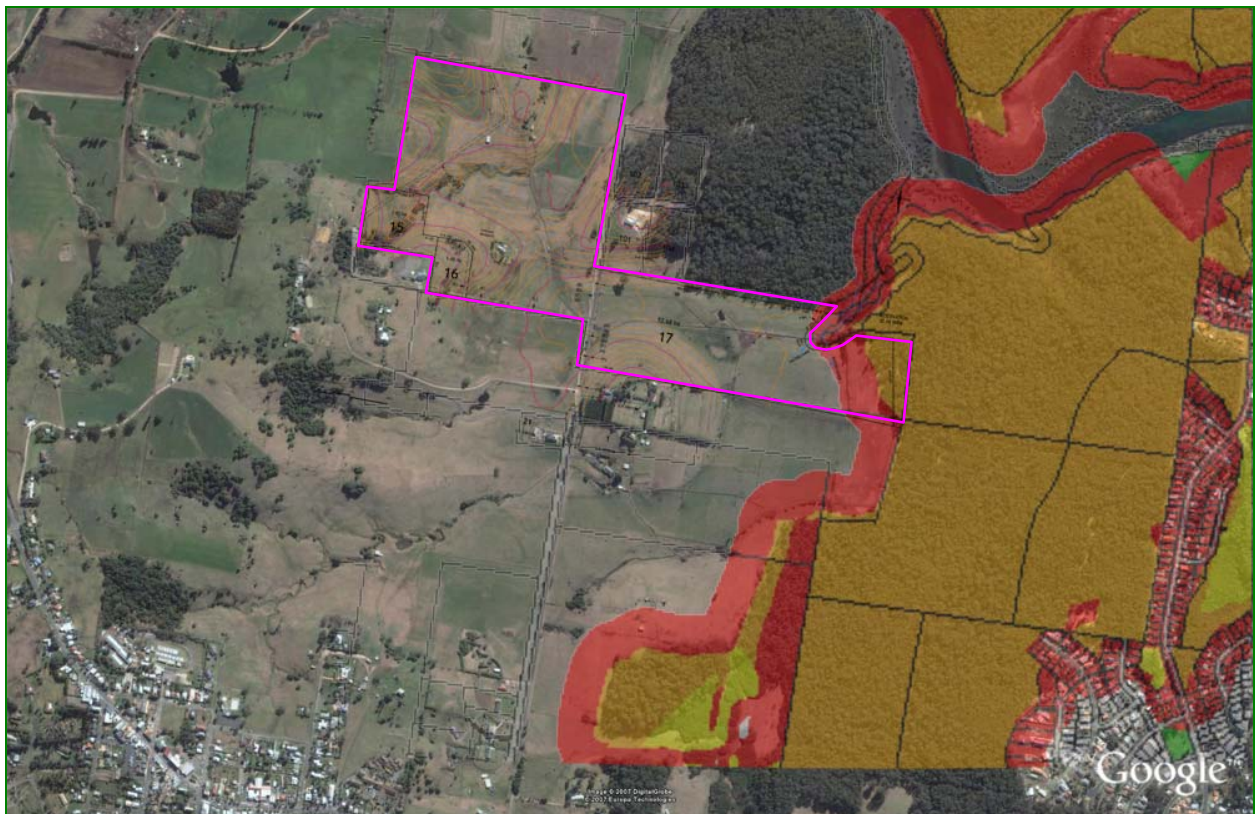


Figure 5 - Bushfire Prone Land Map - SCC internet GIS

The land to the north east of the subject land has not been mapped as bushfire prone land despite it being contiguous coastal forest with that to the east and south therefore having the potential for the carriage of a bushfire.

A bushfire report has been prepared by Planscapes Town Planning Consultancy, as the bushfire prone land mapping is a trigger to require consideration by the NSW Rural Fire Service, which will be submitted with the Environmental Assessment. However, proposed lots 15 and 16 are not likely to be impacted by bushfire due to the nature of the intervening lands and its maintenance as grazing lands. Therefore there are no asset protection zones or minimum construction levels required for those lots in terms of Planning for Bushfire Protection 2006 and AS3959 – Construction of buildings in bushfire prone areas, as the lots are of sufficient distance from the hazard not to warrant any particular protective measures. The bushfire prone land mapping therefore is not considered to be a detrimental constraint to the development of the land as proposed.

Potential for Acid Sulfate Soils: Figure 6 below taken from Shoalhaven City Council's State of the Environment Report illustrates those parts of the subject land which have been mapped by the former Department of Land & Conservation as being at risk of containing acid sulfate soils. The red area in the upper north east corner of the subject land is an area at high risk of acid sulfate soils within 1 metre of ground surface (mapped as HAp1). The yellow area across the right of carriageway extension of Garrads Lane and beyond to the east is of low risk, within 1 – 3 metres of ground surface (mapped as LAP2). The locality of the existing dwelling house and proposed Lots 15 and 16 are clear of likely risk, and therefore acid sulfate soils are not considered to be a constraint to development.

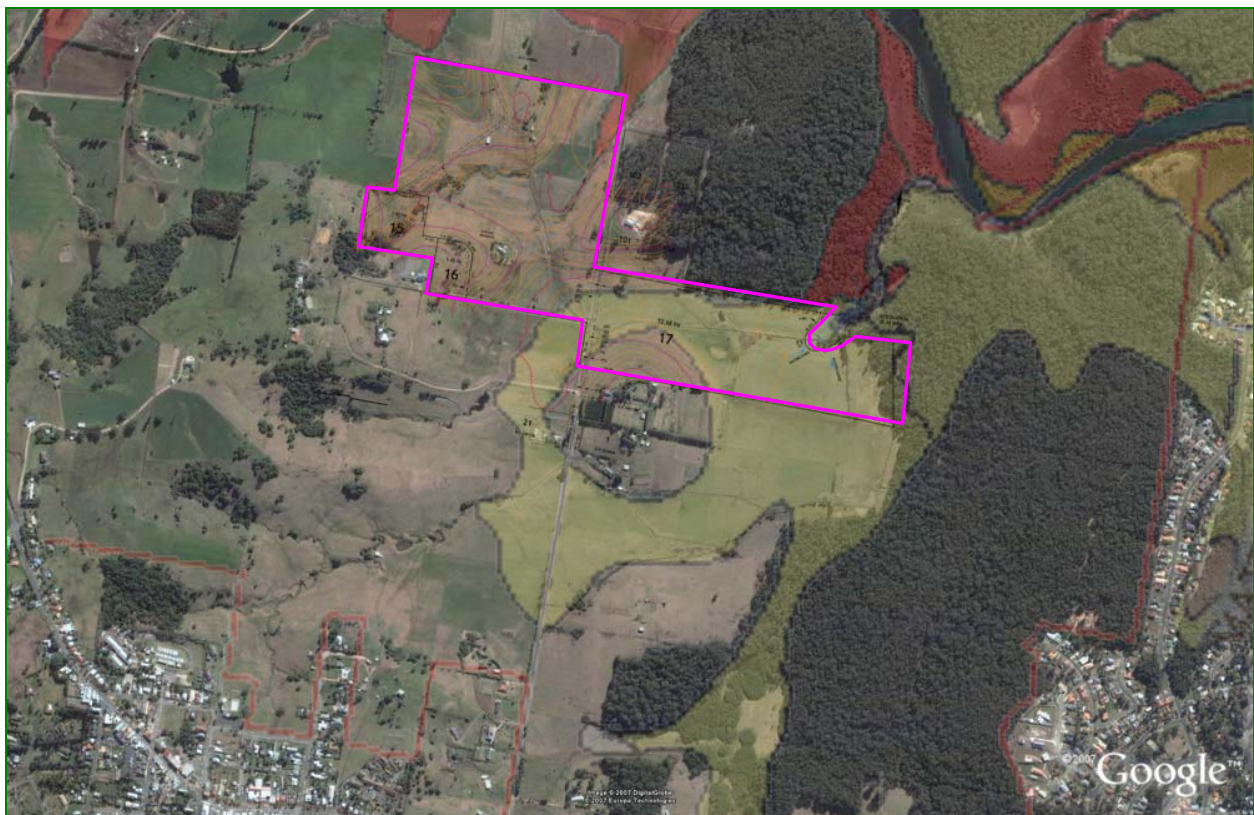


Figure 6 - Acid Sulfate Soil Risk Map (SCC State of Environment Report) Yellow - Low, Red - High

The land to the north east of the subject land in the vicinity of the confluence of the water course and Narrawallee Inlet contains State Environmental Planning Policy No 14

– Coastal Wetlands as identified on Figure 7 from Council's State of the Environment Report.



Figure 7 - SEPP 14 Wetland (SCC State of the Environment Report)

Those wetlands are not considered to be a significant constraint to development but must be considered with regard to any stormwater management and wastewater management for the proposed new lots and future dwelling houses. The new lots are located more than 1 kilometre by flow line and by horizontal distance from the wetlands and should pose no environmental risk to the integrity of the wetlands or of the Inlet system.

It is not anticipated that threatened species or endangered ecological communities will be a constraint to development as a review of the NSW Wildlife Atlas as available on the Department of Environment & Conservation website has indicated that there have been no species identified on the subject land or within 1 kilometres of the proposed lots 15 and 16. There have been a number of threatened species and at least one endangered ecological community identified within a five kilometre radius of the subject land, including Powerful Owl, Gang Gang & Glossy Black Cockatoos, Hooded Plovers and others. However, as the proposed new lots and the majority of the subject land are cleared pasture lands, it is unlikely that any of the species found within the vicinity of the land are likely to be found on the land due to lack of suitable habitat and feeding resources, particularly within and adjacent to Lots 15 & 16.

Further, there are no known items of Aboriginal Archaeological heritage or European heritage associated with the land. In that regard, the subject land or any buildings upon it are listed as items of environmental heritage in either the SLEP85 or IREP86.

5.0 Statutory & Non Statutory Framework

The extent of legislation that covers this proposal is quite broad and will be addressed in detail in the Environmental Assessment; however for the purposes of this Preliminary Assessment the pertinent statutory legislation and non statutory documents will be addressed.

5.1 Environmental Planning & Assessment Act, 1979

The proposal constitutes a Major Project under part 3A of the EP&A Act and is therefore lodged with the Department of Planning as the consent authority, for the issue of the Director – General’s Environmental Assessment Requirements.

5.2 Rural Fires Act, 1997

Council have mapped part of the subject land as bushfire prone land therefore the potential threat of bushfire must be taken into consideration in this project and the hazard mitigated if it is warranted. However, it is unlikely that there will be any significant threat to the existing dwelling house or either of the new lots and they are of sufficient distance from the hazard to not need any specific bushfire protection measures such as Asset Protection Zones or minimum Level 1 Construction under AS3959.

These comments are made on the basis of the current management of the subject land as a grazing property, and provided the current management regime is continued there is unlikely to be any carriage of bushfire to the proposed new lots.

5.3 State Environmental Planning Policy No 71 - Coastal Protection

The whole of the subject land has been mapped as being within the NSW Coastal Zone due to its proximity to Narrawallee Creek and Inlet, and approximately 2.2ha of the site in the vicinity of the water course confluence with Narrawallee Creek is mapped as being within a sensitive coastal location as illustrated on Figure 8 below.

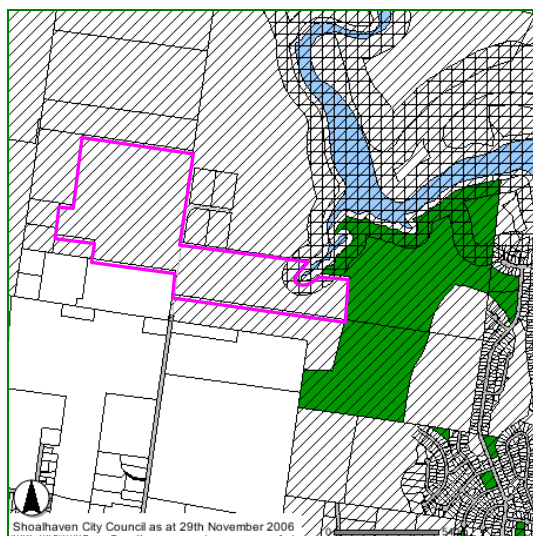


Figure 8 - Shoalhaven City Council GIS

The provisions of SEPP71 therefore will be considered in detail in the Environmental Assessment however, the aims of the policy are met in this proposal as demonstrated:

SEPP No. 71 Aims	Comment on this proposal
<i>1. To protect and manage the natural, cultural, recreational and economic attributes of the NSW Coast, and</i>	This subdivision proposal will have no adverse impacts upon the natural, cultural, recreational or economic values of the coast.
<i>2. To protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i>	The proposal has no adverse impact upon public access to the foreshore, while the site has a boundary in the vicinity of Narrawallee Creek, there is a Crown foreshore Reservation 30.48 metres wide between the subject land and the creek line.
<i>3. To ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i>	There are no public roads or rights of footway in the vicinity of the land that would permit access to this part of Narrawallee Creek. It is considered inappropriate to encourage pedestrian access through this subdivision when 63 hectares of foreshore lands abutting the same crown reservation, has recently been dedicated as a requirement of the Shoalhaven Local Environmental Plan, 1985.
<i>4. To protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and</i>	There are no known archaeological sites or artefact scatters within the site.
<i>5. To ensure that the visual amenity of the coast is protected, and</i>	The visual amenity of the coast is not likely to be impacted – there is limited view towards the site from the water
<i>6. To protect and preserve beach environments and beach amenity, and</i>	Beach environments and amenity will not be impacted in any way by the proposed subdivision as it is not in close proximity to the foreshore.
<i>7. To protect and preserve native coastal vegetation, and</i>	The public reserve to the east of the subject land will not be impacted by the proposal; neither will the small area of forest within the subject land. There is no other native forest vegetation within the site to retain.
<i>8. To protect and preserve the marine environment of NSW, and</i>	It is unlikely that there will be any impact on the marine environment – the new lots are located more than 900 metres to the closet part of the Inlet and while domestic wastewater is to be disposed on site, it is to be treated to minimise adverse impacts.
<i>9. To protect and preserve rock platforms, and</i>	The proposal will have no impact on rock platforms – there are none in the immediate vicinity of the subject land.
<i>10. To manage the coastal zone in accordance with the principles of ecologically sustainable development, and</i>	<p>The principles of ecologically sustainable development are not compromised by this proposal.</p> <p>With regard to the precautionary principle, there are no threatened species of endangered ecological communities on site, and those found in the near by public reserve are not likely to be directly impacted by the subdivision.</p> <p>Biological diversity and ecological integrity is maintained as there will be no loss of critical habitat or adverse impacts upon endangered ecological communities, and impacts upon threatened flora and fauna is minimal.</p>

11. To ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and	Council with State Government support specifically identified this land for further subdivision and residential purposes in the Milton – Ulladulla LEP process.
12. To encourage a strategic approach to coastal management.	This proposal does not adversely impact upon either the Council or the Department of Planning's strategic approaches to coastal management.

5.4 SEPP (Major Projects) 2005

The provisions of this SEPP apply to the land as the land is a specified site, being within the coastal zone where it is partly located within a sensitive coastal location. This triggers the requirement for the major project through Schedule 2 - 1 Coastal (1) (h) (i) which states:

"(h) subdivision of land where the future development created by the subdivision will not be connected to an approved sewage treatment work or system:

(i) into more than 2 lots, if wholly or partly in a sensitive coastal location,"

The proposed new lots are located more than 900 metres from this sensitive coastal area however, and are not likely to have any impact upon it.

5.5 Illawarra Regional Environmental Plan, 1986

The land is subject to the provisions of the Illawarra Regional Environmental Plan, 1986 and in that regard the land is mapped as prime crop and pasture land under that plan – see Figure 9.

The objectives relating to rural lands are:

Objectives	
(a) to retain the productive capacity of prime crop and pasture lands,	The subject land is classified as prime agricultural land being identified as Class 3 on the Department of Agriculture maps. The loss of approximately 4 hectares of this class 3 land is not likely to have a significant effect on the productive capacity of the land.
(b) to protect valuable natural environments, as identified on sheets 1–10, 14, 15 and 17 of the map,	The subject land is not within a nominated wildlife corridor; nor is it mapped as containing rainforest vegetation; there are no mapped extractive resources within or adjacent to the site.
(c) to provide for wildlife movement between major protected wildlife habitats,	The area is not mapped as being within a wildlife corridor on the Illawarra Regional Environmental Plan, 1986 maps.
(d) to effectively manage the development of rural lands having regard to flood potential, bushfire risks, salinisation, soil degradation, erosion and	This objective will be complied with in this proposal, bushfire mitigation measures are not necessary due to the distance between the new lots and the hazard vegetation. The lots are also located outside of acid sulfate soils and land which

weed infestation,	has the potential to flood.
(e) to allow for the development of small rural holdings in appropriate locations,	This application proposes two small rural holdings in a locality with high rural amenity, where Council has specifically included an allowance clause in the LEP to permit the subdivision of the land.
(f) to prevent uneconomic demand for State Government services,	This proposal is not likely to lead to any increase in demand for government services.
(g) to allow for future urban expansion,	This proposal has no impact on the ability to expand any existing urban area.
(h) to retain the scenic attributes of rural areas, and	The rural attributes of the locality are likely to be maintained. Future dwelling houses are not likely to detract from the visual amenity of the locality and are not located upon prominent ridgelines.
(i) to provide for developments which by virtue of their character require siting away from urban areas.	This proposal does not involve hazardous or offensive development that requires siting away from urban areas. It is compatible with the surrounding rural locality.

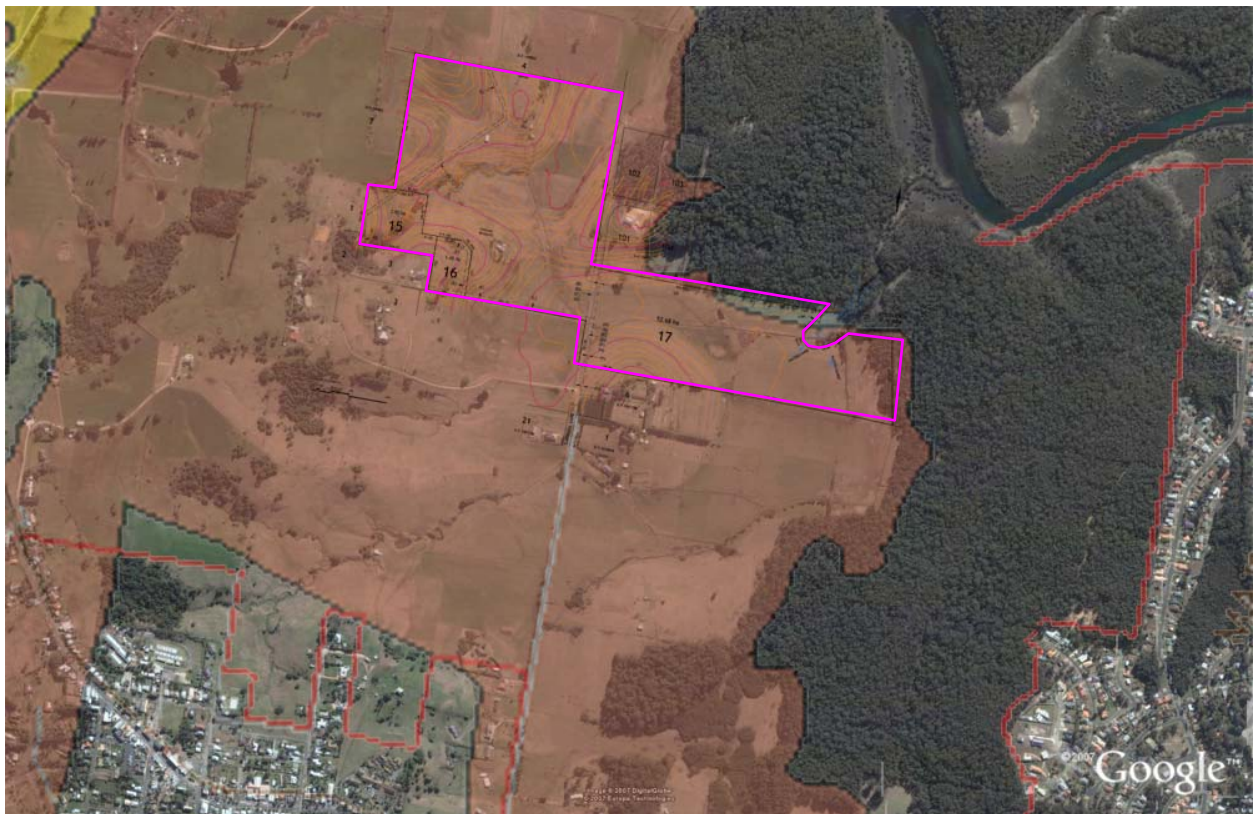


Figure 9 - Prime Crop & Pasture Land - Class 3 Agricultural Map (Shoalhaven City Council State of Environment Report)

Clause 13 of the REP states that where an environmental planning instrument permits the subdivision of land into allotments of less than 40 hectares for the purpose of erecting a dwelling house, then *"the consent authority shall not grant development consent for any such subdivision unless it is satisfied that the creation of the new allotment will not significantly reduce the agricultural viability of the land from which it is subdivided."*

The new lots are located on higher ground in an irregular shaped area which is not suitable for fodder cropping due to the slope. Placing the lots in this location does not fragment the prime crop and pasture land.

5.6 Shoalhaven Local Environmental Plan, 1985

The subject land has multiple zones, being Rural 1(a) (Agricultural Production), Rural 1(g) (Flood Liable) and Environmental Protection 7(d2) (Special Scenic), as illustrated on Figure 10 below. In that regard, subdivision as a landuse is generally permissible with consent in each zone by virtue of Part III Division 1 Clause 11. However, in this particular case, the subdivision of the land is permissible under Clause 38A – Fair Trading Option.

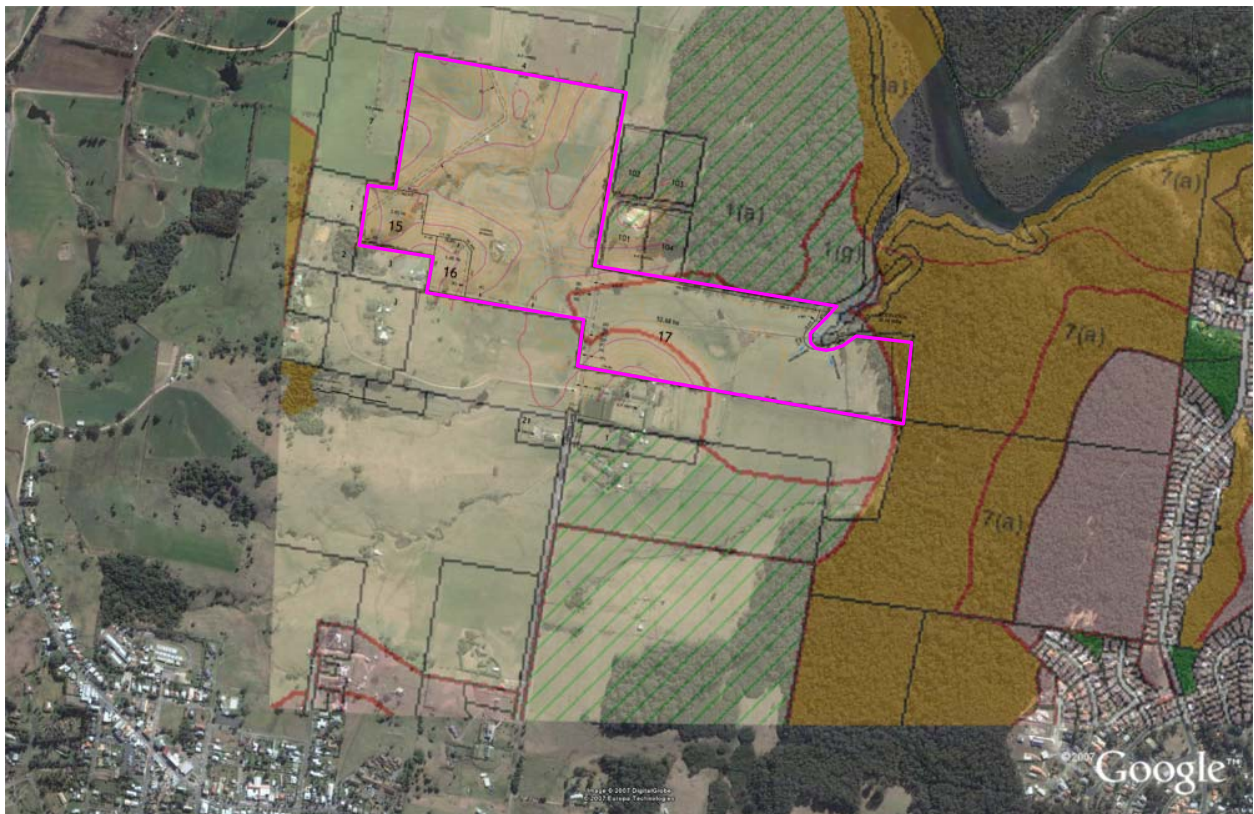


Figure 10 – Zoning overlay from SCC internet GIS

Schedule 8 states:

Milton - Garrads Lane, Part Portion 4, Parish of Ulladulla and Lot 4, DP 1015161:

- (a) *subdivision of the land into three lots, comprising one lot of approximately 41 hectares, one lot of approximately 6 hectares and one lot of approximately 57 hectares generally in accordance with plan marked with the reference number 11540, dated 20 September 2002, prepared by PW Rygate & West, and*
- (b) *development consent for any subdivision referred to in paragraph (a) or (c) must not be granted unless the subdivision makes provision for the dedication of the lot of approximately 41 hectares to the Council, at no cost to the Council, as public open space, and*
- (c) *subdivision of the lot of approximately 57 hectares into three lots comprising one lot of approximately 53 hectares and two lots of approximately 2 hectares each, and*
- (d) *the erection of one dwelling-house on each lot referred to in paragraph (c), but only if each dwelling-house and its associated effluent disposal area is located entirely within the lot on which it is erected.*

Subclauses (a) and (b) have been completed with the registration of Lot 2 DP 1087105 which is the 41 hectare public reserve zoned 7(a) and 7(d2). This project proposed lots of 1.45 ha and 2.85ha where the allowance clause uses the term “approximately”, it is considered that the proposed lots are compliant with the intent of the LEP provision.

The objectives of the zones are addressed as follows:

SLEP85 Zone Objective	Comments for this proposal
Rural 1(a) Agricultural Production	
(a) to conserve and maintain the productive potential of prime crop and pasture land,	The loss of 4ha of sloping land from the property is not likely to have a significant impact upon the agricultural potential and the location of the lots does not fragment the class 3 land.
(b) to ensure that existing or potential agricultural land use is not jeopardised by non-agricultural land uses, and	The proposed new lots are located in a position where there is not likely to be any conflict with existing agricultural practices and they are also located close to other rural residential development.
(c) to conserve cultural landscapes.	The Milton cultural landscape is not likely to be adverse affected by the creation of an additional two lots and subsequent dwellings.
Rural 1(g) Flood Liabile	
(a) to limit the erection of structures on land subject to periodic inundation,	There is no development proposed within the Rural 1g land and this subdivision per se will not result in the construction of any structures within that zone.
(b) to ensure that dwelling-houses are erected on land subject to periodic inundation only in conjunction with agricultural use,	A dwelling house is already constructed upon the residue lot and the proposed vacant lots are not located within the 1g zone to ensure that they are not liable to periodic inundation by flood waters.
(c) to ensure that the effect of inundation is not increased through development,	This development is not likely to increase the effects of inundation – there will not be any filling or new structures within the flood zone as a result of this subdivision.
(d) to restrict development and how it is carried out so that its potential to have an adverse impact on site and off site on acid sulfate soils is reduced or eliminated, and	The new lots are not located within the 1g zone or on land likely to be impacted by acid sulfate soils, therefore this proposal complies with this objective.
(e) to conserve and maintain the productive potential of prime crop and pasture land.	This objective is complied with, the 1g prime crop and pasture land is not affected by the proposal.
Environmental Protection 7(d2) Special Scenic	
The objective is to preserve and enhance scenic quality.	The new lots are not located within the 7d2 zoned land, which is located on the eastern boundary of the property. This subdivision proposal is not likely to compromise this objective.

Clauses 21 – 29 of the SLEP85 - The following comments are provided in relation to the applicable clauses of Division 5 – Environmental Management of the Shoalhaven Local Environmental Plan, 1985, relevant to the subject land.

LEP Clause	Comments on this proposal
Clause 21 – Land of Ecological Sensitivity	This land is not mapped under the SLEP85 as being of ecological sensitivity.

Clause 21A – Vegetation Linkage	The land is not mapped as being within a designated vegetation linkage area.
Clause 22 – Activities in Zone No. 1(c), 7(a), 7(c), 7(d2), 7(e), 7(f1), 7(f2) and 7(f3)	This clause relates to tree clearing in these zones though there is no clearing necessary in the 7(d2) zone to facilitate this subdivision.
Clause 23 – Protection of Streams <i>(3) The objectives of this clause are:</i> <i>(a) to protect water quality,</i> <i>(b) to protect aquatic habitats and riparian communities,</i> <i>(c) to protect and enhance the function of perennial water courses and their associated vegetation as habitat corridors,</i> <i>(d) to protect the scenic and recreational values of perennial water courses and their associated vegetation communities, and</i> <i>(e) to protect perennial water courses from erosion and sedimentation.</i> <i>(4) Despite clause 9, the consent of the Council is required for any development within 50 metres from the centre line of a perennial water course or, where the perennial water course is greater than 20 metres in width, from the bank of the perennial water course.</i>	<p>This clause applies to perennial watercourses in rural zoned lands, indicated by continuous blue lines on a topographic map. The topographic map indicates there are drainage lines within the subject land with continuous blue lines being the head waters of two ephemeral watercourses, as illustrated on the application plan – Figure 4.</p> <p>In regard to the objectives of the clause, the proposed dwelling house on Lot 15 would be located between two of these watercourses and the effluent disposal field will be more than 40 metres to any intermittent watercourses located within the land as provided in the wastewater report.</p> <p>With regard to subclause 4, there is no new development proposed within 50 metres of those drainage depressions other than potential boundary fencing.</p>
Clause 24 – Water Catchment Areas	The subject land is not located within a water catchment area.
Clause 25 – Steep lands The objectives of this clause are: a. to protect soils from erosion; b. to protect the water quality of surface waters; and c. to protect visual amenity	This clause applies to land with slopes in excess of 20%, zoned Rural 1(a), 1(b), 1(c), 1(d) or 1(e), however, no part of the subject land has gradients of that degree.
Clause 26 – Soil, Water and Effluent Management	A consultants report has been prepared addressing the capability of the new lots to absorb treated effluent without any adverse environmental impact. This report will be submitted with the Environmental Assessment.
Clause 27 – Acid Sulfate Soils	The subject land is mapped as being within an area likely to contain acid sulfate soils, however the proposed Lots 15 & 16 are located outside that mapped area and there should be no impacts as a result of this subdivision, particularly as a right of carriageway is already constructed to facilitate access to the lots.
Clause 28 – Danger of Bushfire	The property has partly been mapped by Shoalhaven City Council as being bushfire prone land, therefore an assessment has been made of the development in accordance with the provisions of Clause 46 of the Rural Fires Regulations 2002. Bushfire Protection measures are not considered necessary in this case due to the distance between the new lots and the hazard vegetation and the existing property management activities over the subject land.
Clause 29 – Development on Flood Liable Land	The proposed new lots are not located on land that is mapped by Council as being flood liable i.e. the Rural 1(g) zone, they are

	located above the 20m contour.
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5.7 Shoalhaven DCP 78 – On Site Sewage Management

A report has been prepared by PMA Consulting Engineering and Environmental addressing the project's compliance with Council's Development Control Plan 78 – On Site Sewage Management and this will accompany the Environmental Assessment when submitted. That report demonstrates that future on site domestic wastewater disposal is not likely to have any adverse environmental consequences on the coastal zone or adjoining Narrawallee Inlet.

Buffers are provided as illustrated below to ensure the water courses are protected from potential impacts.

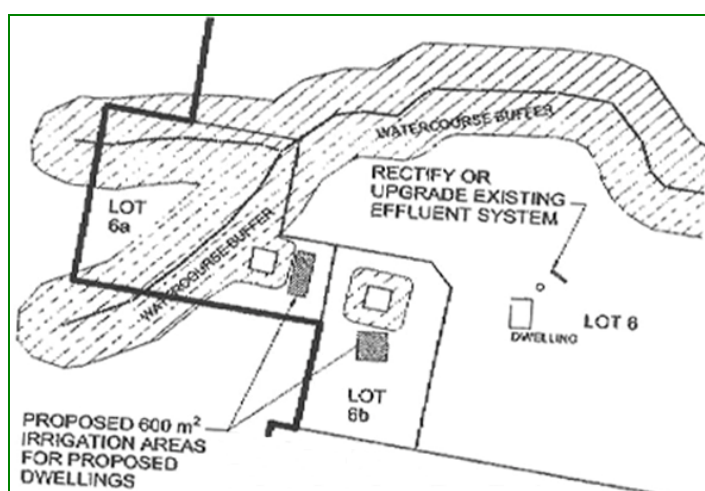


Figure 11 – extract from Wastewater Management Report

5.8 Shoalhaven DCP 100 – Subdivision Code

The provisions of Council's DCP 100 apply to the subdivision of all land within the City, and the following comments are made in relation to the objectives and performance criteria of the code.

Objectives	Performance Criteria	Comment on this proposal
RU 1 - General		
<p>O1 To provide an alternative living environment to that of urban and village settlements</p> <p>O2 To ensure that development complements and enhances the existing landscape and settlement pattern of the area so as to maintain the rural character and lifestyle.</p> <p>O3 To ensure that development of the land will not lead to a decline in ground and surface water quality and</p>	<p>P1 The arrangement of future buildings will have an important influence upon the quality of the rural environment.</p>	<p>The subdivision of the subject land provides an alternate living environment to that of the urban settlements in the locality being Milton, Mollymook and Narrawallee. It provides rural ambience, in an area that is close to urban development.</p> <p>A dwelling is able to be located on the proposed vacant lots so that they have adequate solar access, as there is no restrictive vegetation on the subject land.</p>

<p><i>does not lead to significant risk to life and property from natural hazards such as bushfire, flooding and slippage.</i></p> <p>O4 <i>To minimise the cost to the community by ensuring that development does not create unreasonable or uneconomic demands for the provision of services.</i></p>		<p>Part of the subject land is mapped as bushfire prone however the new lots are located some distance from the remnant coastal forest.</p> <p>Effluent disposal can be accommodated within the boundary of each lot through either surface or subsurface irrigation methods without adversely impacting upon the water quality of the locality.</p> <p>There is little impact on the new lots through natural hazards known to affect the subject land.</p> <p>This proposal is not likely to lead to the provision of any additional public infrastructure in the locality – telephone and electricity already exist.</p>
<p>RU2 – Site Analysis</p>		
<p>O1 <i>To provide rural living areas which have minimum impact on the rural environment and the operations of agriculture.</i></p> <p>O2 <i>Provide for the ecologically sustainable subdivision of land.</i></p>	<p><i>The objectives may be achieved where:</i></p> <p>P1 <i>A site analysis is undertaken which includes:</i></p> <ul style="list-style-type: none"> ▪ <i>Topographical features such as slope, existing nature vegetation</i> ▪ <i>Location of existing farm buildings and commercial operations</i> ▪ <i>Access</i> ▪ <i>Provision of services</i> ▪ <i>High fire risk areas</i> ▪ <i>Views and vistas</i> ▪ <i>Flooding</i> <p>P2 <i>To conserve ecological diversity and promote ecologically sustainable development:</i></p> <ul style="list-style-type: none"> ▪ <i>To prevent the extinction and promote the recovery of threatened species populations and ecological communities.</i> ▪ <i>To protect the critical habitat of those threatened species, populations and ecological communities that are endangered.</i> ▪ <i>To eliminate or manage</i> 	<p>As previously outlined the proposal is likely to have little impact upon the surrounding natural or built environment. The new lots are not located upon a prominent ridgeline where future development will broach the horizon line.</p> <p>Site details are provided on the accompanying application plan and are outlined in Section 4 of this Preliminary Assessment.</p> <p>Areas affected by flooding, acid sulfate soils and bushfire prone land are not being developed.</p> <p>The proposal is considered to be ecologically sustainable – there will be no increase in infrastructure demands, and legislative energy efficiency thresholds can be met through good design and orientation. Water usage will be low due to on site collection requirements and utilisation of water saving fittings.</p> <p>The proposal is not located on land with a high likelihood of adverse impact upon threatened species, populations or endangered ecological communities or their habitats – the proposed dwelling locales are cleared and an access track exists to the proposed lots via a right of carriageway.</p>

	<p><i>certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities.</i></p> <ul style="list-style-type: none"> <i>To ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed.</i> <i>To encourage the conservation of threatened species, populations and ecological communities by adoptions of measures involving cooperative management.</i> 	
RU3 – Rural Road Network		
<p>O1 <i>To provide acceptable levels of access, safety and convenience for all users of the rural road network</i></p> <p>O2 <i>Each lot to have coincidental practical and legal vehicular access.</i></p>	<p>P1 <i>Legal access is provided by either:</i></p> <ul style="list-style-type: none"> <i>new roads – to be dedicated and constructed;</i> <i>presently unformed public roads to be constructed;</i> <i>presently unformed crown roads to be dedicated and constructed;</i> <i>roads presently constructed and maintained by Council;</i> <i>Right-of-way over adjoining private property or within the proposed subdivision and providing access to no more than four allotments, existing or proposed in the subdivision.</i> <p>P2 <i>Existing road reserves may require widening so as to provide for a design speed of 80 km/h.</i></p> <p>P3 <i>The re-erection of fences to new alignment fronting excised lots.</i></p> <p>P4 <i>Road widening at entrance point to lots.</i></p>	<p>Legal and practical access is available to each proposed lot from the existing right of carriageway from Garrads Lane.</p> <p>There will be no requirement for the construction of new roads to facilitate the subdivision of this land. Access to each dwelling site will be provided within the existing easements, with an extension of that for access to Lot 15.</p> <p>The subject land does not have direct frontage to a public road therefore there it is not necessary to realign any boundary fencing.</p> <p>No new access points are being created in this subdivision; there is currently a track to Lot 3 DP 1015161.</p>
RU4 - Drainage		
<p><i>To maintain road access in accordance with accepted levels of service.</i></p> <p>O2 <i>To minimise the risk of traffic accidents related to flooded roads in accordance with the accepted level of risk.</i></p>	<p>P1 <i>Lots are to be provided with flood free access</i></p> <p>P2 <i>Culverts and other drainage structures to be designed for 1 in 5 year Average Recurrence Interval.</i></p> <p>P3 <i>Bridges to be designed for 1 in 100 year Average Recurrence</i></p>	<p>The existing public roads to the site are flood free. This application does not propose any additional intersections or road construction.</p> <p>There is no existing public drainage infrastructure requiring upgrading as a result of this proposal.</p> <p>There are no requirements for bridge construction.</p>

	<i>Interval.</i>	
	P4 <i>Overflow over roads to be in accordance with velocity and depth criteria.</i>	This proposal should have no impact upon public road drainage.
RU5 – Rural Landscape		
O1 <i>To minimise the impact of the subdivision on the natural environment.</i> O2 <i>To enhance development by screening and providing colour, texture and spatial definition and linking natural to developed areas</i>	P1 <i>Lot locations are to provide house sites which consider</i> <ul style="list-style-type: none"> <i>views and visual impact</i> <i>landscape potential and building suitability</i> <i>wind and fire protection</i> 	<p>There are not likely to be any adverse visual amenity issues as a result of the construction of a dwelling house on the two proposed lots.</p> <p>Bushfire mitigation measures are not necessary as the land is not likely to be impacted by bushfire due to the current and anticipated future management practices.</p>
RU 6 - Bushfire		
O1 <i>To provide rural subdivisions with bushfire control measures which can be readily defended in a bushfire event.</i> O2 <i>To control the construction of rural dwellings in high bushfire prone areas.</i>	P1 <i>Subdivision must not be permitted in areas of high bush fire risk.</i> P2 <i>Subdivision is to be provided with legal primary and secondary access.</i> P3 <i>Subdivision is designed to provide for a fuel reduced buffer area and the creation of building sites that minimise the risk of fire and fire fighters.</i>	<p>It is considered that the provisions of Section 79BA of the Environmental Planning & Assessment Act, 1979 & Section 100B of the Rural Fires Act, 1997 over ride these provisions of this DCP. The development has been considered in under the requirements of Clause 46 of the Rural Fires Regulations, 2002 and Planning for Bushfire Protection, 2006.</p> <p>This proposal complies with the requirements of Planning for Bushfire Protection with regard to asset protection and hazard mitigation and therefore with the intent DCP 100 and its objectives.</p>

In summary, the proposal satisfies the requirements of DCP 100 for a rural subdivision.

Performance Criteria	P1	P2	P3	P4
RU 1 General	S			
RU 2 Site Analysis - Rural	S	S		
RU 3 Rural Road Network	S	S	S	S
RU 4 Drainage	S	N/A	N/A	N/A
RU 5 Rural Landscape	S			
RU 6 Bushfire	N/A	N/A	S	
RU 7 Rural Services	S			

5.9 Shoalhaven Water - Rural Water Supply Policy

The subject land currently benefits from Council's reticulated water supply. However, this water supply will not be extended to proposed Lots 15 and 16 in accordance with Shoalhaven Water's Rural Water Supply Policy. Future dwellings on those lots will be supplied by an on site collection facility – stormwater run off into tank storage. This will assist with the promotion of water efficient appliances and fittings and reduce likely loads on the wastewater treatment system.

6.0 Key Issues for Assessment

The **Key Issues** associated with this proposal are:

- *Sensitive Coastal Location* – The site is partially located within a sensitive coastal location, being that area adjacent to the confluence of a water course into Narrawallee Inlet at the eastern boundary of the land. No new development is taking place within that locality – the proposed rural residential allotments are in excess of 900m from that location.
- *Prime Crop & Pasture Land* – the subject land is largely mapped as Class 3 Agricultural land and the proposed lots are not located in a position which will fragment the prime crop and pasture land. The lots are located in the south western corner of the land, in the vicinity of the existing dwelling house, where there will be little conflict with agricultural activities.
- *Acid Sulfate Soils* – The area of the subject land east of the extension of Garrads Lane is mapped as having a low risk potential of acid sulfate soils within 1 – 3 metres of ground surface. That area generally corresponds with the flood prone land and is not proposed to be disturbed in any way to facilitate this proposal.
- *SEPP 14 Coastal Wetlands* - The land east of the site boundary at the junction of the water course and the Inlet is mapped as being within a SEPP 14 Coastal Wetland. While the boundary of the SEPP 14 wetland does not appear to be within the subject land, all on site sewage management facilities should be located with buffers to watercourses within the subject land to minimise the likelihood of adverse impact on the wetland area.
- *Flood Prone Land* – That part of the subject land generally east of the extension of Garrads Lane is mainly zoned Rural 1(g) which is indicative of flood prone land. The new lots are located above the 1% AEP recurrence level and are not likely to be flood prone.
- *Endangered Ecological Community* – The public reserve land to the east of the subject land is known to contain an endangered ecological community – Swamp Sclerophyll Forest on Coastal Floodplains. The location of the proposed rural residential allotments is not within close proximity of that ECC and there is not likely to be any significant impact upon that species.
- *Bush Fire Prone Land* – the land in the vicinity of the eastern boundary of the subject land is mapped as bushfire prone land. However, the proposed new rural residential allotments are in excess of 900 metres from that Category 1 vegetation and there is no connective canopy or forest vegetation capable of carrying a bush fire to the proposed lots.

Therefore, while the subject land is mapped as bush fire prone land there is unlikely to be any requirement for asset protection zones or deemed to satisfy construction requirements under the provisions of Planning for Bush Fire Protection, 2006.

- *Fair Trading Policy* – The proposal benefits from an allowance clause in the Shoalhaven Local Environmental Plan, 1985, particularly Clause 38A and Schedule 8,

where the land may be subdivided into a total of three allotments. This LEP amendment permits the proposed rural residential allotments to be in the vicinity of 2 hectares each in size.

- *On site sewage management* – The subject land does not benefit from reticulated sewage infrastructure; therefore all disposal of domestic wastewater must be undertaken on site in accordance with the provisions of Council's Development Control Plan 78 – On Site Sewage Management. As mentioned above, there are water courses within the subject land which drain into SEPP 14 wetlands adjacent to Narrawallee Inlet and buffer distances will be applicable for on site disposal.
- *Subdivision Code* – The land is subject to the provisions of Council's Development Control Plan 100 – Subdivision Code, the proposal will comply with the provisions of this policy.

7.0 Conclusion

The proposal generally complies with the requirements of Schedule 8 the Shoalhaven Local Environmental Plan, 1985 with regard to lot size, where they are commensurate with surrounding development and the rural residential character of the locality.

The natural hazards known to affect the subject land are not likely to have a significant impact upon proposed Lots 15 or 16 or any subsequent dwelling house constructed upon those lots. They are located outside known areas of acid sulfate soils, and some distance from flood liable or bushfire prone land.

It is not likely that there will be any significant or detrimental impact upon the water quality of Narrawallee Inlet or the associated coastal wetlands as a result of the proposal. Further it is not anticipated that there will be any adverse impact on known nearby endangered ecological communities, threatened species or their habitats.

The proposal is unlikely to have an adverse impact upon the scenic quality of the coast or the visual amenity of the locality. Therefore this proposal is considered to be of minimal environmental impact, complying with the objectives of the Shoalhaven Local Environmental Plan, 1985 and State Environmental Planning Policy No 71.