

Central Coast

Local Planning Panel

Central Coast
Supplementary Local Planning Panel
Business Paper
22 March 2022



Meeting Notice

**The Supplementary Local Planning Panel
of Central Coast
will be held remotely - online,
Tuesday 22 March 2022 at 2.00 pm,
for the transaction of the business listed below:**

1 Procedural Items

1.1 Disclosures of Interest.....3

2 Planning Reports- Outside of Public Meeting

2.1 LPP Supplementary Report DA/60725/2021 - 8 Ghersi Avenue Wamberal - 1
into 2 Lot Subdivision - Agenda Item 4.1 Local Planning Meeting 25 November
20214

Kara Krasaon
Chairperson

Item No: 1.1
Title: Disclosures of Interest
Department: Governance

Central Coast
Local Planning Panel

22 March 2022 Supplementary Local Planning Panel

Reference: F2020/02502 - D14205789

The NSW Local Planning Panel Code of Conduct states that all panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting.

Recommendation

That Panel Members now confirm that they have signed a declaration of interest in relation to each matter on the agenda for this meeting and will take any management measures identified.

Item No: 2.1
Title: LPP Supplementary Report DA/60725/2021 - 8
Gheri Avenue Wamberal - 1 into 2 Lot Subdivision
- Agenda Item 4.1 Local Planning Meeting 25
November 2021
Department: Environment and Planning

22 March 2022 Supplementary Local Planning Panel

Reference: DA/60725/2021 - D15082151
Author: Susana Machuca, Senior Development Planner
Manager: Ailsa Prendergast, Section Manager, Development Assessment South
Approver: Andrew Roach, Unit Manager, Development Assessment

Recommendation

- 1** *That the additional information be considered in the Panel's determination of the application.*
- 2** *That the Local Planning Panel assume the concurrence of the Secretary of the Department of Planning to permit the non-compliance with the development standard under Clause 4.6 of the Gosford Local Environmental Plan 2014, in accordance with the provisions of Clause 64 of the Environmental Planning and Assessment Regulation 2000.*
- 3** *That the Local Planning Panel grant consent to DA60725/2021 – 8 Gheri Avenue Wamberal for two lot subdivision, subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act.*
- 4** *That Council advise those who made written submissions of the Panel's decision.*

Summary

An application was received for a two-lot subdivision, at 8 Gheri Avenue WAMBERAL.

The application is required to be reported to the Local Planning Panel for determination due to the proposed variation to the minimum lot size development standard of Gosford Local Environmental Plan 2014. The variation is greater than 10% (14%, or 77.5 sq metre variation proposed). Two submissions have been received.

The Local Planning Panel considered the matter at its meeting of 25 November 2021. The matter was deferred at the meeting pending the submission of supplementary information regarding:

- a. Item 4.1(1) – Details of the terms of the drainage easement through Lot 47;
- b. Item 4.1(2) – The extent of works proposed to and within that easement;

2.1 LPP Supplementary Report DA/60725/2021 - 8 Gheri Avenue Wamberal - 1 into 2 Lot Subdivision - Agenda Item 4.1 Local Planning Meeting 25 November 2021 (contd)

- c. Item 4.1(3) – Assessment of the environmental impact of those proposed works through Lot 47;
- d. Item 4.1(4) – Owners consent from Lot 47, or alternatively legal advice to indicate owners’ consent is not required for the development application on this land; and
- e. Item 4.1(5) – Consideration of whether the address of the application needs to change, and whether re-notification is required, in accordance with Council’s notification policy.

It is noted that no amendment to the development design and/or plans have been carried out.

Applicant	Tim Shelly Planning
Owner	B F Lawrence
Application No	DA/60725/2021
Description of Land	LOT:33 DP:20817, 8 Gheri Avenue WAMBERAL
Proposed Development	1 into 2 Lot Subdivision
Site Area	1081sqm
Zoning	R2 Low-density Residential
Existing Use	Single-storey Dwelling House
Estimated Value	Nil
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979 – Section 4.15</i> • <i>Local Government Act 1993 – Section 89</i> • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • <i>Gosford Local Environmental Plan 2014</i> • <i>Gosford Development Control Plan 2013</i>
Current Use	Single-storey Dwelling House
Integrated Development	No – not integrated development in accordance with Clause 4.46 of the <i>Environmental Planning & Assessment Act 1979</i>
Submissions	Two (2)
List all documents submitted with this report for the Panel’s consideration	<ol style="list-style-type: none"> 1. Transfer Granting Easement Document & Schedule Details – D15064054 2. Owners Consent Lot 47 No. 38 Lucinda Avenue Wamberal – D15064056 3. LPP Report and Attachments (25 November 2021) 4. LPP Minutes (25 November 2021) 5. Draft Conditions of Consent
Report prepared by	Susana Machuca – Senior Development Planner
Report date	14 March 2022

**2.1 LPP Supplementary Report DA/60725/2021 - 8 Gheri Avenue
Wamberal - 1 into 2 Lot Subdivision - Agenda Item 4.1 Local Planning
Meeting 25 November 2021 (contd)**

Background

The Panel considered a Planning Report on the matter at its meeting on 25 November 2022 and resolved as follows:

Panel Decision **That the Local Planning Panel defer determination of the application DA/60725/2021 – 8 Gheri Avenue Wamberal – 1 into 2 Lot Subdivision**

1 Requests the applicant to submit a supplementary assessment report addressing the above-mentioned matters within two months of the panel meeting date:

During consideration by the Panel, it was not satisfied that it had sufficient information to properly determine the application, in the absence of the information noted above in the Decision.

Reasons There is insufficient information for the Panel to make a decision.

Additional Information

In response to the outcome of the Panel meeting of 25 November 2021, the following additional information has been submitted:

27 January 2022:

- Received Applicant's response to the LPP additional supplementary information request, no amendment to the development design and/or plans were received.

RESPONSE TO PANEL DECISION

The applicant has addressed the decision of the Panel as follows:

1. Details of the terms of the drainage easement through Lot 47;

On the 27 January the applicant provided a response via email correspondence updated legal advice from Tony Pickup of Pickup Legal Specialised Consultancy in regard to the terms of drainage easement through No. 38 Lucinda Avenue Wamberal. In summary the works required to be undertaken in the easement were permitted under the terms of the easement, however owners' consent was still required for the said works. As such, Owner's consent of the adjoining property on Lot: 47 DP: 25382 No 38 Lucinda Avenue Wamberal has been obtained for the undertaking of the proposed works in the easement. Copy of the Owners is consent attached - D15064056.

**2.1 LPP Supplementary Report DA/60725/2021 - 8 Gheri Avenue
Wamberal - 1 into 2 Lot Subdivision - Agenda Item 4.1 Local Planning
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Additional Applicant response: *The dealing that created the easement (copy attached - D15064054) doesn't have an 88B instrument that provides the specific terms of the easement. Rather, it cross references on page 1 an easement to drain water within the meaning of Part III of Schedule 8 of the Conveyancing Act, which is as follows:*

Part 3 Easement to drain water

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water) in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of draining water or any pipe or pipes in replacement or in substitution therefore and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by the grantee, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by the grantee will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

Clarification from Pickup Legal Consultancy indicates that it is apparent that the easement allows the owner of the lot benefitted by the easement or do any of the following:

- 1. use existing pipes already in the easement (as highlighted in blue); or*
- 2. replace the existing pipes already in the easement (as highlighted in green); or*
- 3. if there are no pipes at all, laying new pipes of sufficient diameter to drain the water from the site (as highlighted in purple).*

Furthermore, it is noted that from discussions with Civil Engineering Consultants Mr Stuart Blyton of SRB Consulting Civil Engineers that it is confirmed that there are currently no pipes in the easement. This was carried out via a CCTV investigation of the easement during the course of the original DA assessment following a request from Council's engineer for more information in relation to stormwater disposal and the easement. As such, compliance of item 3 above is being met and thereby clearly acting in accordance with the terms of the easement.

2. The extent of works proposed to and within that easement

Overall, the proposed subdivision is to provide onsite stormwater detention and nutrient control measures. The stormwater from the site will be conveyed via an inter-allotment drainage system constructed within an easement to drain water 1m wide located within Lot 47 DP25382 No 38 Lucinda Avenue Wameral and connecting to the existing piped system within Lucinda Avenue as indicated on the concept Engineering Plans (D14656777) and Storm Water Cycle Management Report and Plans (D14656776). The interallotment drainage will be constructed underground via a 150mm diameter pipe from the rear of the site through to Lucinda Avenue using horizontal directional boring method. Refer to figures 1 and 2.

It is noted that for clarity of the abovementioned matter and as part of the assessment process, a review of the Draft Conditions of Consent (Attachment 1 – D14922160) indicates that Condition 2.3 (d) pertaining to internal site works is to reflect the specific type of bore drilling methodology and be amended as follows:

“Construction of interallotment stormwater drainage where stormwater from individual allotments cannot be discharged directly into the proposed street drainage system or existing street drainage system. The interallotment drainage shall be constructed using horizontal directional drilling methodology. The final engineering plans shall be endorsed by the owner of Lot 47 DP25382 No. 38 Lucinda Avenue prior to the commencement of any works within the easement to drain water 1m wide created over Lot 47 DP25382”.

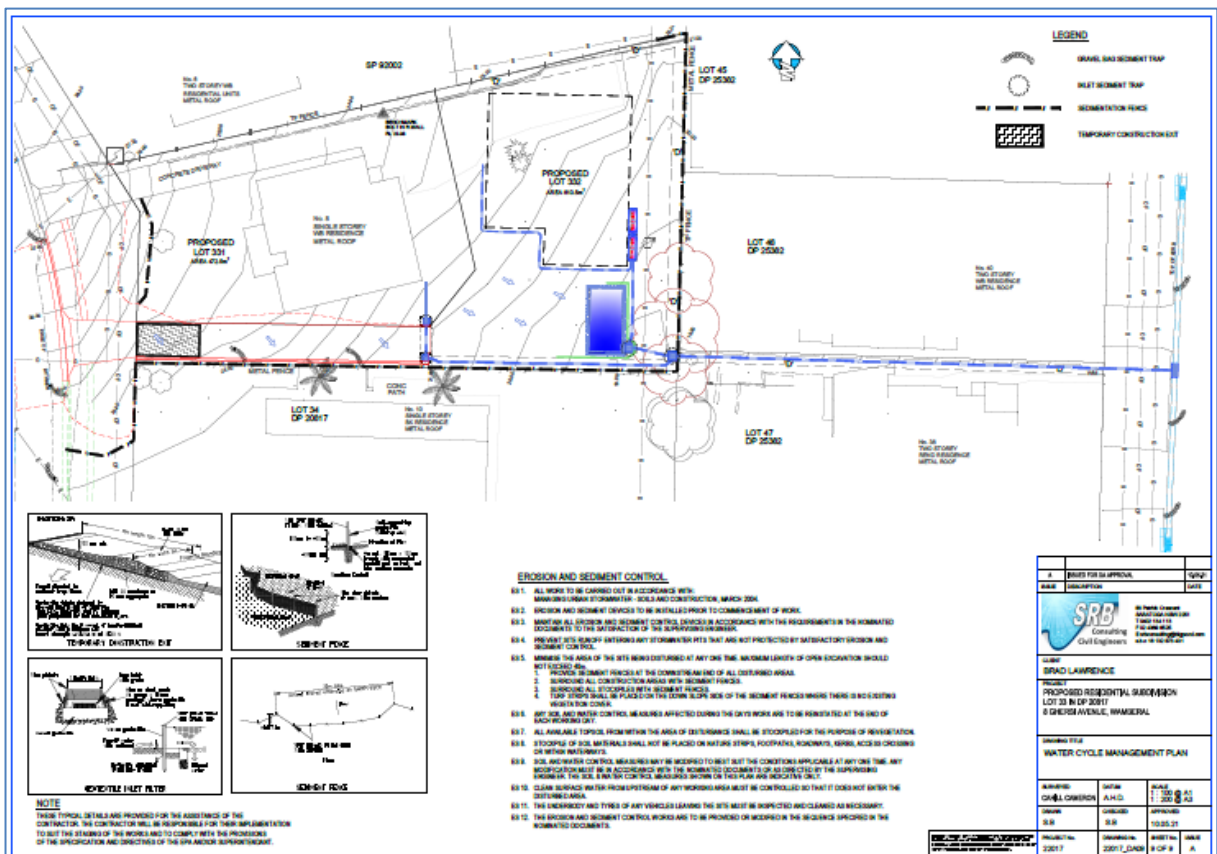


Figure 1: Concept Engineering Water Cycle Management Plan

3. Assessment of the environmental impact of those proposed works through Lot 47

As previously outlined and as indicated on the concept Engineering Plans (D14656777), the Storm Water Cycle Management Report (D14656776) and Schedule1 Draft Conditions of consent, the interallotment drainage shall be constructed using horizontal directional drilling methodology. It is noted that Horizontal Directional Drilling method is a guided trenchless method of installing underground pipelines along a predetermined path, thereby avoiding surface excavation. Refer figure 2.

It is noted that some of the main applications used for this methodology of installing underground pipes include crossing waterways, shore approaches, roadways, environmentally sensitive areas, congested areas etc.

Overall, some of the related benefits and suitability for the use of this construction methodology in the proposed interallotment drainage works include but are not limited to:

- Minimal impact and/or disturbance to existing land surface and existing vegetation, on Lot 47 DP25382 No 38 Lucinda Avenue Wameral that is, no need for and trench excavation;
- Provides maximum directional capabilities, drills exactly through width and length of required pipeline specification within the dedicated easement area;
- Suitable for diverse soil type conditions and surfaces (e.g. river crossings, roads, landscapes etc.);
- Enables deeper pipe location installations if so required;
- Quicker to implement than traditional drilling techniques, less disturbance time for affected properties whilst works are carried out;
- Labour force and machinery equipment used are significantly reduced in timelines and sources; and
- Causes minimal hazardous impact on the environment.

As such, on this occasion the proposed Horizontal Directional Drilling methodology is considered appropriate and is not expected to result in adverse and /or have unreasonable impacts on the adjoining property.

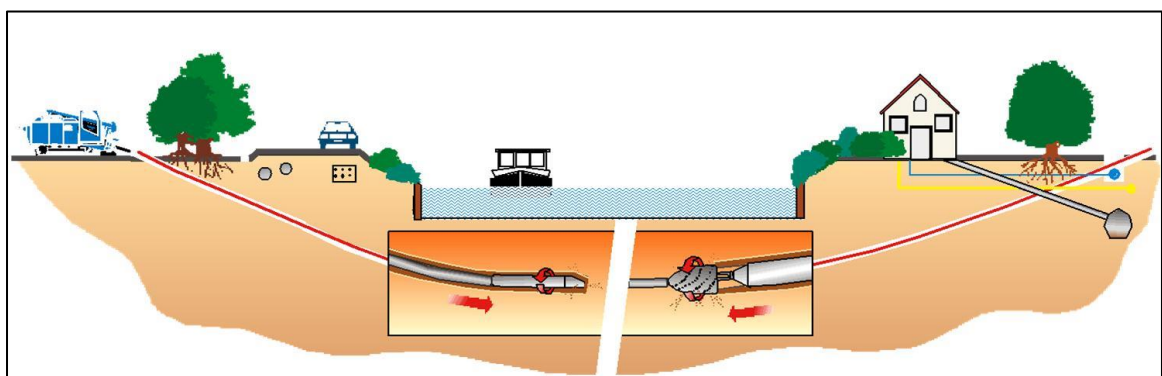


Figure 2: Concept image of Horizontal Directional Drilling (HDD) methodology

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4. Owners consent from Lot 47, or alternatively legal advice to indicate owners' consent is not required for the development application on this land.

As previously mentioned, a copy of owner's consent from Lot:47 DP:25382 No. 38 Lucinda Avenue has been obtained and attached as part of the documentation.

5. Consideration of whether the address of the application needs to change, and whether re-notification is required, in accordance with Council's notification policy.

Upon review of the original application documentation and information lodged including the obtained by the applicant as part of this LPP additional supplementary information request in relation to the possible need to change the address and/or precis of the application, the following items (summarised) have been considered:

- The application on LOT:33 DP:20817 No. 8 Gheri Avenue WAMBERAL (benefited land) was lodged with a stormwater design from the site that is to be via an interallotment drainage system constructed within an easement already created to drain water and within Lot 47 DP25382 No. 38 Lucinda Avenue WAMBERAL (burdened land) and connecting to the existing piped system within Lucinda Avenue.
- Although the dealing that created the easement doesn't have an 88B instrument that provides the specific terms of the easement, it cross references on page 1 an easement to drain water within the meaning of Part III of Schedule 8 of the Conveyancing Act and is apparent that the easement allows the owner of the lot benefitted by the easement or do any of the following:
 1. use existing pipes already in the easement; or
 2. replace the existing pipes already in the easement; or
 3. if there are no pipes at all, laying new pipes of sufficient diameter to drain the water from the site.
- From discussions with the civil engineers and CCTV Investigation carried out on the proposals site during the assessment of the DA, the applicant has confirmed that there are currently no pipes within the easement.
- Notwithstanding the above, legal advice obtained by the applicant indicated that although it is apparent that the works required to be undertaken in the easement are permitted under the terms of the easement, owner's consent of the burdened land was still nonetheless required for the said works.
- As such, the applicant obtained owner's consent from the burdened land to provide necessary pipework to drain stormwater through the easement in accordance with the terms of the easement.

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Given the abovementioned, Council is of the opinion that the application:

- has not changed and/or amended the description of the land and address to which the application (benefited land) and neighbouring property (burdened land) relates to respectively including street address and any known commonly used property name;
- has not changed in terms of description of the proposal, terms of the easement and continues to be the benefited land in respects to the easement;
- has not changed in terms of the engineering concept design nor have any plans been amended;
- that owner's consent from the burdened land to complete all the necessary works in accordance with the terms of the easement was obtained;
- that the environmental impacts identified will have little or no environmental impacts as compared to the original application; and
- the proposal was originally notified and was not subject to capturing significant public interest, community groups, organisations or agencies impacts and/or areas of concern. Two (2) submissions were received.



As such, Council considers that the address nor description of the proposal has not changed and the requirement of re-notification under Part 7.3 Notification of Development Proposals of the Gosford DCP 2013 is not warranted and/or required on this occasion.

Conclusion

The applicant has submitted the relevant additional documentation including the Transfer Granting Easement Document & Schedule Details and Owners Consent of Lot 47 No. 38 Lucinda (both attached) that verifies and assists to clarify the matters raised and as requested by the Panel.

This application has been assessed against the matters for consideration of Section 4.15 of the *Environmental Planning & Assessment Act 1979* and all relevant instruments, plans and policies. The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed development. Subject to the imposition of appropriate conditions, the proposed development is considered reasonable and therefore it is recommended that the Local Planning Panel grant consent to DA/60725/2021 for a 1 into 2 Lot Subdivision on Lot:33 DP:20817, 8 Gheri Avenue Wamberal.

Attachments

- | | | |
|---|---|-----------|
| 1  | Dealing 385422 - Creation of Drainage Easement | D15064054 |
| 2  | D15064056 REDACTED Owners Consent Lot 47 No 38 Lucinda Avenue
Wamberal | D15099258 |

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Office of the Registrar-General / SEC:GLOBAL / KEI:ADVICS

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TRANSFER GRANTING EASEMENT TG 31 2021 \$ 47 R³/₂

REAL PROPERTY ACT, 1900
(See Instructions for Completion on back of form)

<p>Servient Tenement (Land burdened)</p> <p>Torrens Title Reference</p> <p>Folio Identifier 47/25382 Certificate of Title Volume 5843 Folio 172 ϕ</p> <p>ϕ NOW BEING <u>whole</u> OF LAND COMPRISED IN FOLIO <u>93/20817</u></p>	<p>Dominant Tenement (Land benefited)</p> <p>Torrens Title Reference</p> <p>Volume 9514 Folio 209</p> <p>NOW BEING <u>whole</u> OF LAND COMPRISED IN FOLIO <u>31/504642</u></p>
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DESCRIPTION OF LAND Note (a)

TRANSFEROR (registered proprietor of servient tenement) Note (b)

As to Folio Identifier 47/25382, ERIC JAMES WEST and AILEEN MADGE WEST
As to Certificate of Title Volume 5843 Folio 172, ELISE SAVILLE and JAN LOUISE JAMES

(the abovenamed TRANSFEROR) hereby acknowledges receipt of the consideration of \$ 1.00 and TRANSFERS and GRANTS an easement to drain water one wide within the meaning of Part III of Schedule 8 of the Conveyancing Act 1919 and as shown on Plan annexed to transfer Z 385421

OFFICE USE ONLY

ϕ PLAN REFILED AS D.P. 123654

OVER

TRANSFEREE (registered proprietor of dominant tenement) Note (b)

JAN LOUISE JAMES and RONALD ALAN JAMES

PRIOR ENCUMBRANCES Note (d)

subject to the following PRIOR ENCUMBRANCES: 1. nil
2. _____ 3. _____

DATE 31-10-20

EXECUTION Note (e)

\$10.00

We hereby certify this dealing to be correct for the purposes of the Real Property Act, 1900. Signed in my presence by the transferor who is personally known to me.

Signature of Witness: [Signature]
Name of Witness (BLOCK LETTERS): [Name]
Address and occupation of Witness: [Address]

Signature of Transferor: [Signature]

Note (e)

Signed in my presence by the transferee who is personally known to me

Signature of Witness: [Signature]
Name of Witness (BLOCK LETTERS): [Name]
Address and occupation of Witness: [Address]

Signature of Transferee: [Signature]

TO BE COMPLETED BY LODGING PARTY

Notes (f) and (g)

LODGED BY: RAVE'S MARSH MURRAY & BACKHOUSE SOLICITORS 219 227 ELIZABETH STREET SYDNEY DX 255

Ref: Delivery Box Number 717A

CT	OTHER	LOCATION OF DOCUMENTS
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17/1/2022
Gosford City Council
Re : DA No. 60725/2021

To: Whom it may Concern

As Owners of Lot 47 DP 25382 -No. 38 Lucinda Avenue, Wamberal I herby give consent to Brad Lawrence of 8 Gheri Ave Wamberal to provide necessary pipework to drain stormwater through the easement in accordance with the terms of the easement .
Pipework will be installed via underground boring so there will no disturbance to the easements property.

Name :

Anthony Wales

Signature :



Name :

Janie Wales

Signature :

