

Central Coast

Local Planning Panel

Central Coast
Supplementary Local Planning Panel
Business Paper
23 May 2024



Meeting Notice

**The Supplementary Local Planning Panel
of Central Coast
will be held remotely - online,
Thursday 23 May 2024 at 1.00 pm,
for the transaction of the business listed below:**

1 Procedural Items

1.1 Disclosures of Interest.....3

2 Planning Reports

2.1 DA/60589/2020 - 129 Alan Street, Niagara Park - Proposed Dwelling House &
Garage - LPP Supplementary Report4

Kara Krason
Chairperson

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

Central Coast
Local Planning Panel

23 May 2024 Local Planning Panel

Reference:

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: DA/60589/2020 - 129 Alan Street, Niagara Park -
Proposed Dwelling House & Garage - LPP
Supplementary Report

Central Coast
Local Planning Panel

Department: Environment and Planning

23 May 2024 Supplementary Local Planning Panel

Reference: F2020/02502 - D16175805
Author: Robert Eyre, Principal Development Planner. Residential Assessments
Section Manager: Ailsa Prendergast, Section Manager. Residential Assessments
Manager: Andrew Roach, Unit Manager, Development Assessment

Summary

An application has been received for construction of a new dwelling house at Lot 14 DP 2480, 129 Alan Street, Niagara Park.

The application was considered by the Local Planning Panel at its meeting of 16 December 2021. (Attachment 4). The matter was deferred at that meeting pending the submission of additional information, primarily in relation to legal matters pertaining to access (the land is accessed via a Right of Way (ROW)).

The matter was again considered and deferred at the Panel meetings of 18 October 2022 (Attachment 5) and 28 February 2023 (Attachment 6), for the receipt of additional information. The additional information, including further legal advice, has been obtained and the matter is referred to the Panel for consideration.

This report provides commentary in relation to the matters raised by the Panel. Extensive legal advice has been received to the matters raised by the LPP.

The application is required to be referred to the Local Planning Panel for determination as the proposed development is classified as 'designated development' under *Interim Development Order No.122 - Gosford*.

No public submissions were received to the exhibition of the proposal.

The application is recommended for approval, subject to conditions.

2.1 DA/60589/2020 - 129 Alan Street, Niagara Park - Proposed Dwelling House & Garage - LPP Supplementary Report (cont'd)

Applicant	J Kechagias
Owner	J Whyte and C Whyte
Application No	DA60589/2020
Description of Land	Lot 14 DP2480 No. 129 Alan Street Niagara Park
Proposed Development	New dwelling house
Site Area	20,160m ²
Zoning	7(a) Conservation under IDO 122
Existing Use	Vacant
Employment Generation	No
Estimated Value	\$345,000.00

Recommendation

- 1 That the Local Planning Panel grant consent to DA60589/2020 for the development of a dwelling house on lot 14 DP2480 No. 129 Alan Street, Niagara Park 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 1979.***
- 2 That Council advise relevant external authorities of the Panel's decision.***

Background

The application for a Dwelling House and associated Garage at 129 Alan Street, Niagara Park was initially considered by the Local Planning Panel at its meeting of 16 December 2021. Supplementary reports were considered by the Panel on 18 October 2022 and 28 February 2023. The previous reports, draft conditions, plans and related documents previously considered by the Local Planning Panel are separately provided.

At the meeting of 28 February 2023, the matter was deferred by the Panel with the following resolution:

That the Local Planning Panel further defer consideration of this matter for electronic determination, to seek the following:

- 1 Updated legal advice that addresses the further information provided by Council in the supplementary report advising that the proposed works on the adjoining property that do not form part of the application are not exempt development nor complying development, which alters the assumptions included in the currently provided legal advice. On the basis that such works are not exempt development, will the works beyond the site boundary require separate development approval either prior to any approval issued for the new dwelling becoming an operational consent (deferred commencement condition) or prior to*

commencement of works? How will the works be facilitated without development approval?

- 2 *Legal review of the draft conditions of consent in the context of the legal advice provided to the panel confirming that the works beyond the boundary are not currently part of the application. The draft conditions include several conditions relating to design and development details for the off-site works, in addition to conditions proposed by external authorities which cover works subject to the DA and works on the adjoining land that do not form part of the DA. What is the legal mechanism for conditioning and carrying out works on an adjoining property where landowners consent and development approval for such works is not to be provided?*
- 3 *A further supplementary report that includes an assessment in response to the provision of legal advice that addresses the matters outlined above, including an updated set of draft conditions.*

Report

Legal advice dated 18 May 2023 has been received (refer to Attachment 12). In summary the legal advice states:

1. Section 4.17(1)(f) of the *Environmental Planning and Assessment Act 1979* contains the power to impose a condition requiring the carrying out of works whether or not being works on land to which the application relates. The fact that the works off site are not exempt development does not impact the power available under Section 4.17(1)(f). Council (and the Local Planning Panel) has the power to impose condition 2.4 of the proposed conditions of consent.
2. Condition 2.4 provides development consent for the proposed works in the right of carriageway. The fact that the works in the right of carriageway are not exempt development does not change the previous advice. No separate consent for the works in the right of carriageway is required as the works have been considered and are required under this consent.
3. Works can be carried out in a right of carriageway where the terms of the easement permit upgrade and maintenance of the right of carriageway. The applicant has provided legal advice in relation to the terms of the right of carriageway which confirms upgrade and maintenance works are permitted (refer to Attachment 9). The legal advice submitted by the Applicant's solicitor has been reviewed by Council's Solicitor and is considered correct.

2.1 DA/60589/2020 - 129 Alan Street, Niagara Park - Proposed Dwelling House & Garage - LPP Supplementary Report (cont'd)

4. It is a separate matter for the applicant on the DA to make arrangements for permission to be obtained to carry out the works on the land not the subject of the DA. That is in the right of carriageway.
5. Condition 2.4 and the balance of conditions are reasonable and appropriate. It is recommended that in addition to condition 5.5 that compliance with the Vegetation Management Plan be required at all times (refer amended condition 6.4).

Late Public Submission/Further Legal Advice

- On 28 June 2023, a very late submission was received on behalf of the Central Coast Better Planning Group, which contended that the EIS did not comply with clause 71 of the *Environmental Planning and Assessment Regulation 2000*. In particular, that the EIS was not signed and did not contain certain statements including the name and address of the person who prepared the EIS.

It should be noted the application was lodged on 20 January 2021, and exhibited from 29 January 2021 to 9 March 2011 with no public submissions received.

Further legal advice was sought on the above issue. The legal advice received on 23 November 2023 states:

As discussed below, the remaining matter is for the assessment of the EIS as against item 6 in Part 3 of Schedule 2 of the EP&A Regulation 2000 to be undertaken.

We set out a Table which contains each of the matters set out in item 6, and our comments against each of the requirements, for Council's assessment and consideration:

Item 6 requirement	Comments
<i>(a) the name, address and professional qualifications of the person by whom the statement is prepared,</i>	<i>The name and professional qualifications of John Kechagias is provided on page 2 of the EIS. The author is described on page 2 as John Kechagias. There is not an address detail, but we would assume when the EIS was lodged, or through various email communications with Mr Kechagias, the address of Apex Intelligent Design is provided.</i>
<i>(b) the name and address of the responsible person,</i>	<i>A "responsible person" is not designated in the document but by the detailing of Mr Kechagias as the author of the report and the provision of his details it is reasonable to assume he is the responsible person for the purposes of the Regulations.</i>

<p>(c) the address of the land— (i) in respect of which the development application is to be made, or (ii) on which the activity or infrastructure to which the statement relates is to be carried out,</p>	<p>The property description, being the land in respect the development application is made is detailed on page 6 of the EIS and is No 129 Alan Street Niagara Park (Lot 14 in DP 2480). There is also a detailed description of the property provided on page 6 of the EIS.</p>
<p>(d) a description of the development, activity, or infrastructure to which the statement relates,</p>	<p>The proposed development is detailed on page 6 to page 7 of the EIS. In summary the application seeks approval for the construction of a single storey dwelling house comprising 4 bedrooms and a study with a detached garage and new driveway on Lot 14, DP 2480 at 129 Alan Street Niagara Park.</p>
<p>(e) an assessment by the person by whom the statement is prepared of the environmental impact of the development, activity, or infrastructure to which the statement relates, dealing with the matters referred to in this Schedule,</p> <p>The matters referred to in the Schedule are contained in item 7 – which provides:</p> <p>(1) An environmental impact statement must also include each of the following— (a) a summary of the environmental impact statement, (b) a statement of the objectives of the development, activity or infrastructure, (c) an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure, (d) an analysis of the development, activity or infrastructure, including— (i) a full description of the development, activity or infrastructure, and (ii) a general description of the environment likely to be affected by the development, activity or infrastructure, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and (iii) the likely impact on the environment of the development, activity or infrastructure, and (iv) a full description of the measures proposed to mitigate any adverse effects of the development, activity or infrastructure on the environment, and (v) a list of any approvals that must be obtained under any other Act or law before the development, activity or infrastructure may lawfully be carried out,</p>	<p>The copy of the document we have been provided with does not attach the Appendix A which is titled "EIS Requirements", however, there are several details included within the primary document.</p> <ul style="list-style-type: none"> • We have not located a "Summary" of the environmental impact statement; however section 6 does provide a summary of the environmental impact measures. • The objectives of the development are not specifically addressed under any heading set out as "objectives of the development". We consider that this requirement may be met by the "Description of the proposal" which is detailed at pages 6, 7 and 8 in the EIS. • The feasible alternatives to the carrying out of the development, having regard to the objectives, including consequences of no development are analysed over sections 5.1, 5.2, 5.3 and 5.4 of the EIS. • The analysis of the development is undertaken in section 1.2. The description of the environment likely to be affected by the proposal is set out under sections 1.8, 1.9, and Part 2 of the EIS. An analysis of the environmental impacts of the development is undertaken in section 3 of the EIS. The description of the measures proposed to mitigate the impact of the development are addressed in section 6 of the EIS. No other approvals are needed to undertake the proposal on the site. • The section 6 in the EIS deals with the measures set out above, in a single section. The compilation is not detailed however, item 7(1)(e) does not request an analysis, rather just a "compilation"

<p>(e) a compilation (in a single section of the environmental impact statement) of the measures referred to in item (d)(iv),</p> <p>(f) the reasons justifying the carrying out of the development, activity or infrastructure in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in subclause (4).</p>	<p>of the environmental impact measures proposed.</p> <ul style="list-style-type: none"> • The reasons justifying the development are dealt with across the various sections set out above. There is an analysis of the biophysical, economic, and social considerations that is dealt with in sections 2 and 3 of the EIS. We have been unable to locate an analysis of the principles of ecologically sustainable development, referable to the proposal, in the EIS. There is a reference to ESD on page 41 but no analysis referable to the proposal is undertaken.
<p>(f) a declaration by the person by whom the statement is prepared to the effect that—</p> <p>(i) the statement has been prepared in accordance with this Schedule, and</p> <p>(ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and</p> <p>(iii) that the information contained in the statement is neither false nor misleading.</p>	<ul style="list-style-type: none"> • There is a statement on page 41 of the EIS indicating that the document has been prepared in accordance with the Regulations. Notably, the EP & A Regulation 1980 is referred to, although that is not considered to be a specific concern. • There does not appear to be a statement that the information contained in the statement is neither false nor misleading. That may have been provided separately to Council but is required.
<p>(2) The person preparing the statement must have regard to the following—</p> <p>(a) for State significant development—State Significant Development Guidelines,</p> <p>(b) for State significant infrastructure—State Significant Infrastructure Guidelines.</p>	<ul style="list-style-type: none"> • The proposal is not in relation to state significant development or infrastructure, so this clause is not relevant to this application.

Summary and Recommendations

The EIS largely addresses the criteria required in items 6 and 7 of Part 3 of Schedule 2 of the EP&A Regulation 2000.

However, we recommend that the EIS be supplemented with a statement that addresses ecologically sustainable development, and in that regard the applicant can be directed to item 7 (4) of Part 3 of Schedule 2 of the Regulation which addresses the particular principles of ESD that should be assessed in the EIS, having regard to the application. We also consider that there should be a clear statement that the information contained in the statement is neither false nor misleading. Both of these matters can be attended to by providing supplementary information. In addition, given these matters are to be

2.1 DA/60589/2020 - 129 Alan Street, Niagara Park - Proposed Dwelling House & Garage - LPP Supplementary Report (cont'd)

addressed in supplementary information, it would also be prudent to obtain a "Summary" of the EIS.

Following the supplement to the EIS addressing the above matters we see no impediment on a legal basis for the grant of consent.'

Applicant's Submission

The applicant has now submitted a supplement to the EIS addressing the above matters which includes:

1. Address and contact details of person who prepared EIS and their qualifications.
2. The document is signed.
3. It references the *Environmental Planning and Assessment Regulation 2000*.
4. There is a declaration that the material is neither false nor misleading
5. An executive summary has been provided.
6. A response towards the requirements to the *Environmental Planning and Assessment Regulation 2000* for ecologically sustainable development has been added in Section 7 of this EIS.
7. The conclusion has been expanded (refer to Attachment 2).

Advertising/Renotification

Chapter 7.3 of the *Gosford Development Control Plan 2013* sets out in respect of applications where a development application has been amended prior to determination that:

'... if in the opinion of Council or staff with the appropriate delegated authority the amendments are minor, or will result in no additional impacts, the amendments will not require readvertisement or re-notification.'

Similar provisions exist in the current *Central Coast Development Control Plan 2022*.

In this case, the amended information submitted (amended EIS with minor changes) are considered minor, they do not significantly change the development proposed and do not create any additional impacts.

As such, it is the view of assessing officers that renotification of the proposal is not warranted.

Conclusion/Recommendation

The application was correctly notified under the provisions of GDCP 2013. No public submissions were received.

2.1 DA/60589/2020 - 129 Alan Street, Niagara Park - Proposed Dwelling House & Garage - LPP Supplementary Report (cont'd)

The proposal is supported by external authorities and Council's internal referral assessment staff, subject to conditions.

The EIS has been reviewed, including independent legal review, and minor amendments made to satisfy the requirements of the legislation and the issues raised in the submission received well outside the exhibition period. As such the application is recommended for approval, subject to conditions.

Attachments

1 	DA60589/2020 Draft Conditions of Consent	D14943925
2 	PUBLIC - Redacted Architectural Plans 129 Alan Street, Niagara Park DA 60589 2020	D14971905
3 	Revised Plans 129 Alan Street NIAGARA PARK DA/60589/2020	D15105043
4 	DA/2020/60589 - 129 Alan Street, Niagara Park - Proposed Dwelling House	D14943625
5 	Supplementary Report DA/60589/2020 - 129 Alan Street Niagara Park - Dwelling House and Detached Garage.	D15124258
6 	DA 60589/2020 - 129 Alan St Niagara Park - Supplementary Report and Legal Advice - Dwelling House & Garage	D15546182
7 	Ecological Report - Appendix C - PAN-52378 DA/60589/2020	D15076275
8 	Easement/Restriction Letter - Appendix A - PAN-52378 DA/60589/2020	D15076278
9 	Owner's additional legal opinion for the LPP - 129 Alan Street, Niagara Park - DA/60589/2020	D15160936
10 	Updated Letter to Central Coast Council - re Right of Way DA/60589/2020 129 Alan Street, Niagara Park (WWSB 222179)	D15346843
11 	222179 Advice on ROW Final Version - 129 Alan Street NIAGARA PARK - DA/60589/2020	D15452822
12 	Advice on Right of Way - 129 Alan Street NIAGARA PARK - DA/60589/2020	D15682185
13 	Environmental Impact Statement (Rev C) - PAN-52378 - 129 Alan Street, NIAGARA PARK - DA/60589/2020	D15972541
14 	Updated Flora and Fauna Report FINAL Sept 2021 - 129 Alan Street, NIAGARA PARK DA/60589/2020	D14841113
15 	Schedule of External Finishes 129 Alan Street, Niagara Park DA/60589/2020	D14421900

1. PARAMETERS OF THIS CONSENT

1.1. Approved Plans and Supporting Documents

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

Architectural Plans by: Apex Intelligent Design

Drawing	Description	Sheets	Issue	Date
A-01.1	Site Plan	1	-	30/05/2019
A-01.2	Site Detail	1	-	30/05/2019
A-04	GA Ground	1	-	30/05/2019
A-04	Roof Plan	1	-	30/05/2019
A-05	Window Schedule	1	-	30/05/2019
A-06	Elevations North/East	1	-	30/05/2019
A-07	Elevations West/South	1	-	30/05/2019
A-08	Schedule of External Finishes	1	-	30/05/2019

Supporting Documentation

Document	Title	Date
J Kechagias	Environmental Impact Statement Rev C	29/11/2023
Douglas Partners	Site Classification & On-Site Effluent Disposal Assessment Project 82899.01	November 2020
Larry Cook Consulting P/L	Further Information Waste-Water Management Plan Ref:22009-A	04/02/2022
Apex Intelligent Design	Stormwater & Sediment Control Plan S-01	
Enviro Ecology	Integrated Bushfire & Vegetation Management Plan Rev C	04/09/2021
Fraser Ecological Consulting	Flora & Fauna Assessment	08/09/2021 & 02/03/2022
Beveridge Williams	Engineering Plans 7 Sheets. Issue P3	22/03/2022
Bushfire Code & Hazard Solutions Pty Ltd	Bushfire Assessment Report	09/11/2020
Apex Intelligent Design	BASIX Certificate No1030876S	16/11/2020
Mactree Surveys	Arboricultural Impact Assessment	17/11/2020

J Kechagias	Waste Management Plan	16/11/2020
Trehy Ingold Neate	Survey Plan SH01 Rev A	22/02/2017

- 1.2. Carry out all building works in accordance with the Building Code of Australia.
- 1.3. Comply with the conditions/requirements from the Authorities as listed below and attached as a schedule of this consent.

Government Agency / Department / Authority	Description	Ref No	Date
NSW Rural Fire Service	Conditions Clause 55(1) of EPA Regulation 2000	DA20210205000446-CL55-1	03/05/2021
Ausgrid	Conditions of approval		10/03/2021

- 1.4. Comply with all commitments listed in BASIX Certificate as required under clause 97A of the *Environment Planning and Assessment Regulation 2000*.
- 1.5. The development being carried out in accordance with the Environmental Impact Statement prepared by J Kechagias dated 24 November 2020 except where modified by the conditions of this consent.

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

- 2.1. All conditions under this section must be met prior to the issue of any Construction Certificate.
- 2.2. No activity is to be carried out on site until any Construction Certificate has been issued, other than:
 - a. Site investigation for the preparation of the construction, and / or
 - b. Implementation of environmental protection measures, such as erosion control etc. that are required by this consent.
- 2.3. Submit an application to Council under Section 138 of the *Roads Act, 1993*, for the approval of required works to be carried out within the road reserve.
Submit to Council Engineering plans for the required works within a public road that have been designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control. The Engineering plans must be included with the Roads Act application for approval by Council.
Design the required works as follows:

- a. The reconstruction of the existing access crossing within Alan Street to service the property. The crossing shall be a minimum 6.0metres wide sealed pavement incorporating splays to accommodate the swept turning paths of the RFS 10m Tanker and extend from the Alan Street carriageway to the property boundary.
- b. The provision of a stormwater drainage pipeline across the Alan Street access crossing connecting into the existing piped road crossing.
- c. The construction of a minimum 4m wide sealed carriageway within Ilberry Street road reserve (Chainage 159 to 210) in accordance with the following:
 - Inner radius should have minimum radius of 6m
 - The minimum distance between inner and outer curves is 6m

Note: A minimum 4.0 m vertical clearance is to be maintained at all times

- d. The provision of a stormwater drainage works including a road crossing, headwalls and scour protection for works within Ilberry Street road reserve.
 - e. Preparation of a Geotechnical Engineers report supporting the roadworks to accommodate the NSW Rural Fire Service 23-tonne fire-fighting tanker.
- 2.4. Submit engineering plans for the following works within the private property "Right of Carriageway" designed by a suitably qualified professional, in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control.
- a. The construction of the existing "Right of Carriageway" connecting to the Alan Street access crossing with a sealed 6.0m wide pavement.
 - b. The construction of the "Right of Carriageway" to a 4m wide sealed pavement including a passing bay located at Chainage 80, stormwater drainage works in accordance with Table 7.4 (a) as detailed in NSW Rural Fire Service *Planning for Bush Fire Protection 2019*.
 - c. Services conduits (including draw wire) for Power and Phone, within the accessway corridor in accordance with the relevant authority's specifications and requirements.
 - d. Storm water discharging arrangement within the site identified in the "Stormwater Plan & Sediment Control Plan", Drawing No. S-01 prepared by Apex Intelligent design.
 - e. Piping of all stormwater from impervious areas within the site to proposed storm water management system,
 - f. The provision of water, electricity and gas shall comply with Table 7.4a of *Planning for Bush Fire protection 2019*.
 - g. Erosion and sedimentation controls.

The engineering plans and any associated reports for the above requirements must form part of the Construction Certificate.

