

Below I have included Council's response to our questions from last months public forum, with new questions relating to the responses in blue:

1. How has the ESC assessed that the abovementioned modification and development is "substantially the same development" under the Environmental Planning and Assessment Act 1979 (NSW) as the 1984 development application given the:

- 20 percent increase in the number of dwellings,
- the additional 5.5-metre-wide fire trail
- the extension to Chauvel Crescent and associated rerouting of traffic and
- the 220 percent increase in dwellings on Chauvel Crescent?

Council response:

It is important to understand that the application is still under assessment and that the determination of the development 'being substantially the same' is still being considered. The applicant has maintained that although there is some change of the layout and an increase in lot yield, the development footprint has not changed and that the associated environmental impacts have decreased due to the proposed amendments.

New question in response

It appears there has been no studies undertaken about the impact of this development on the environment and biodiversity for this DA for over 38 years. Considering there have been significant changes to the original DA, significant changes to governing legislation, and significant research undertaken that indicates how fragile this local ecosystem is, wouldn't this be the perfect opportunity for Council to ensure the local environment was protected?

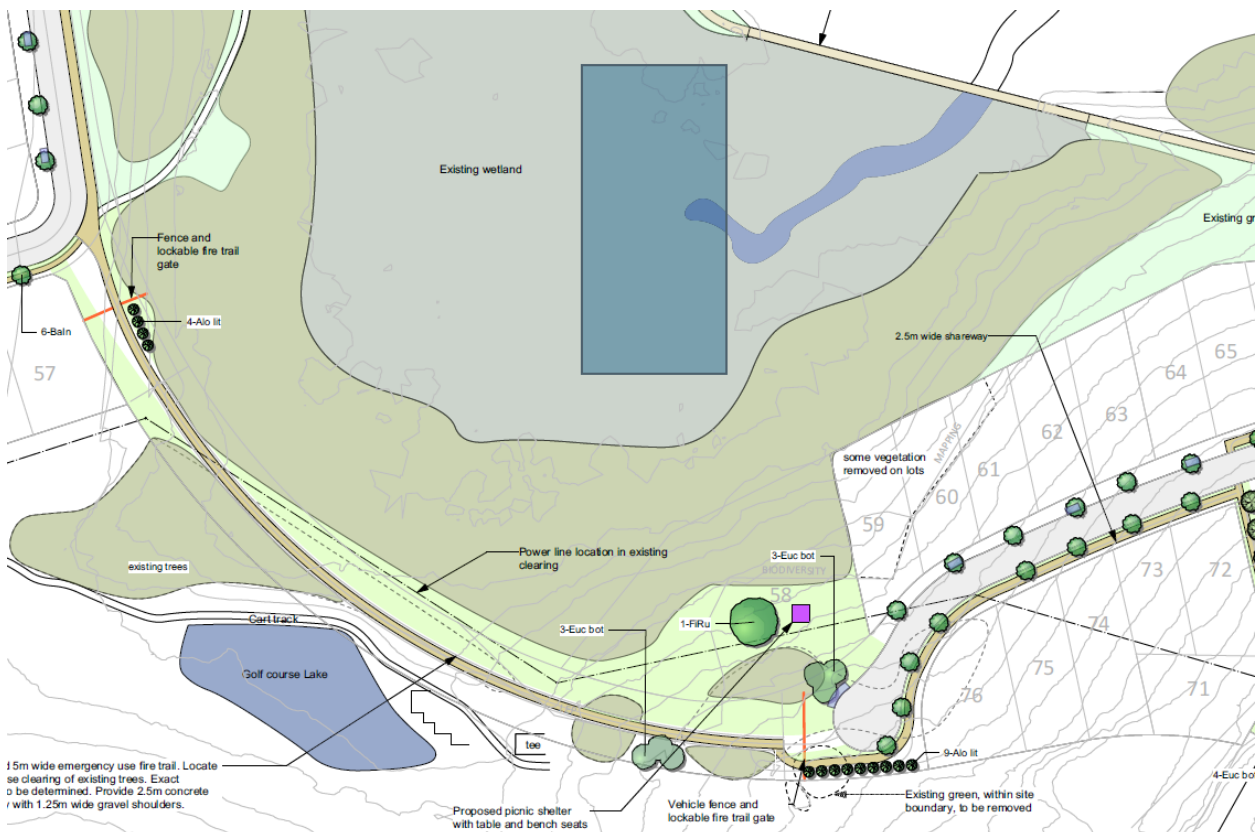
How are Council or the developers assessing the environmental impact considering there have been no modern assessments undertaken? On what basis are you assessing that the modifications mean there will be no increase in environmental impact? What experts in environmental science have Council sought advice from when making these judgements, and is Council open to sharing this evidence with the community?

How can the developers and Council satisfy concerned community members that they have done their best to protect this important foreshore and the Endangered Ecological Communities that the land borders? Why is there a reluctance to even ask the developer to consider undertaking modern environmental assessments?

Let's examine the States Coastal Management plan for the area:



And now the development.



It is abundantly clear the development encroaches on the proximity area for coastal wetlands, and it is clear that the new modification now “juts into” remnant littoral forest. If the maps showed coastal vulnerability areas, no doubt there would be even more of the development zone included in that.

Having spoken to the developers, they sound open to modern environmental assessments, in fact were half expecting to undertake them. Can Council asking them to proceed with modern biodiversity and environmental impact assessments hurt?

2. Also, under the Environmental Planning and Assessment Act 1979 (NSW), how has the ESC concluded that the abovementioned modification and development will have “limited environmental impact” on the fragile eco-system of Coila Lake given the additional:

- 20 percent increase in dwellings,
- the limited drainage,
- the additional 5.5-metre-wide fire trail, and
- the proposed tree destruction?

Council response:

As mentioned above, the application is still under assessment and Council is finalising its view on the extent of environmental impact. The applicant has maintained that the addition of bioretention swales and onsite detention (OSD) is in addition to the existing approval and therefore will have a lesser impact than if the subdivision was constructed as originally approved.

Regarding the proposed 5.5m wide shared pathway (sec. fire trail), it should be noted that the original subdivision was approved with a public road connecting the two precincts. The applicant is proposing to reduce the through road to a shared pathway as part of the application. This shared pathway moves through swamp oak floodplain Endangered Ecological Community and therefore the reduction in road construction is a lesser impact.

The applicant also contends that the Biodiversity Conservation Act provides saving provisions for older development consents and therefore as the subdivision footprint has already been approved, there is no necessity to assess the ecological/ biodiversity impact.

New question in response

Are you saying that because the DA was approved in 1983, it is no longer the responsibility of Council to ensure that the environment is treated with modern duty of care? That the requirement for careful scientific scrutiny does not apply?

Could council please explain why a current biodiversity and environmental impact study is not within their purview?

Surely there are ways Council can influence the developers in a collaborative fashion to satisfy the community that this development will not detrimentally impact the local endangered ecosystems?

3. The community requests that Council provide evidence demonstrating how you assess there will be “minimal environmental impact” of these modifications on the sensitive endangered

ecosystems of Coila Lake. We also request that a comprehensive, modern Environmental Impact Assessment be undertaken prior to any further progress on this development.

Council response:

As above, the application is still under assessment and Council is considering these matters.

Council's current understanding is that such an assessment is not required as the previous 1984 approval essentially means that the approval to clear has already been issued. There is no additional clearing required as part of this application.

New question in response

The drawing above of the development zone encroaching into the remnant littoral forest is significantly different to the original DA plan which did not do this. I would share a picture of the 1983 plan with you, but Council are yet to share the documents we have formally requested through the GIPA.

How can significantly more trees not have to be removed from the foreshore considering how much closer the houses are to the forested areas in the new modification? Especially considering the new changes to bushfire regulations in response to the 2019 fires?

4. We request that the Aboriginal Heritage Impact Permit be obtained by the developers prior to any further progress on this modification and development. We have also been asked by local elders to ensure Council proactively engage with them on the design of this process. They want to be assured that it will not damage the unique cultural history of the area.

Council response

Council will require via a condition of consent, that an AHIP be obtained prior to works commencing but it is not possible for the developer to obtain one prior to this amendment being determined.

Advice from the NSW Government agency (Heritage NSW and its previous equivalent Office of Environment and Heritage) is that they require the development consent to be in place before an AHIP is issued.

Council is not the authority for administering the National Parks and Wildlife Act. Heritage NSW has set requirement for consultation as part of the AHIP process.

It should also be noted that the indigenous communities have been consulted with as part of the assessment of a previous application.

New question in response

You state that indigenous communities have been consulted with. When was that? 1983? Or when one of the former DA's was attempting to move forward in 2006 or 2012?

Can you provide details of the indigenous people consulted and the dates when they were consulted?

What does the Council consider an appropriate level of engagement with indigenous communities? Does consulting with indigenous communities for a different DA count as fair engagement for the current DA?

5. Clarification on Code of Meeting practice and representations by groups

Council response

This began as an informal procedure as a courtesy to speakers who read presentations on behalf of individuals who could not be present. It was considered that it was not fair to ask questions of the speaker as they could not be expected to fully know and represent the views of the person/s they were speaking for. This included people representing informal groups.

In your circumstance, you were encouraged to engage directly with councillors about your concerns and you were also invited to send through any questions you may have for a formal response.

New question in response

How can this be considered a courtesy? I clearly stated in both my submission in writing and when I spoke on record that I was speaking on public record on behalf of the group. I would appreciate the opportunity to answer questions this time around.

Was the stifling of questions to avoid answering our questions on public record?

New questions

Below are two new questions

In Council's response you state:

I understand that you have been frequently communicating with Council staff in relation to the modification of Development Application DA2248/1983. Please be assured that the application is still under assessment and that the exhibition period has now closed. The assessment of the DA will take into consideration matters contained within your submission.

New question in response

Is it lawful for Council to, as per the below email from Mark Brain, formally cease communicating with a concerned community member and just "log their emails"? My email is clearly and reasonably asking for clarification of the development process as it is very unclear to the community how the development process continues from here? Mark states:

As a matter of courtesy, I need to advise you that any further correspondence regarding this issue will be read and filed, but not responded to

I request that Council formally answers the questions they have not already answered from my email below dated Friday, 13 August 2021 9:13 PM.

NEW QUESTION re. delayed GIPA request

The community has noted both in formal submissions and in discussions with Council, that there is a strong reluctance to share information with the community about this development. This has now extended to a formal GIPA request that is meant to take 20 working days, but has now extended beyond 2 months waiting time.

We recognise some documents dating back that far will be hard to put your hands on, however, 2 months is a very long time and these documents are now well past due.

Also, it has been confirmed by the staff member conducting the document collection that any documents post 2010 pertaining to this development be given to us by the development team. These documents should be readily available documents to the public. But here we are two months later, and only a few documents have been produced.

Can I confirm why there have been these lengthy delays, and what the Council obligations are around sharing these documents with the public informally, or under formal GIPA request?

From: Mark Brain <Mark.Brain@esc.nsw.gov.au>
Sent: Wednesday, 1 September 2021 2:14 PM
To: Simon Cox <Simon@horizonone.com.au>
Subject: RE: Follow up to our conversation seeking to confirm discussion in writing

Hi Simon,

To confirm from our discussions, the applicant will, regardless of the DA determination be subject to the National Parks and Wildlife Act administered by the Office of Environmental and Heritage and will be subject to the Environmental Protection and Biodiversity Conservation Act administered by the Federal Government.

As per previous advice, the modification of DA 2248/1983 is under assessment. As a matter of courtesy, I need to advise you that any further correspondence regarding this issue will be read and filed, but not responded to. If you still wish to send emails to Council for registration purposes, please send all correspondence to council@esc.nsw.gov.au and not directly to staff, to ensure that they are electronically registered in Council's document management system.

Regards

Mark Brain

Development Pre-Assessment Coordinator

t 02 4474 1231 | f 02 4474 1234

From: Simon Cox <Simon@horizonone.com.au>
Sent: Monday, 23 August 2021 5:14 PM
To: Mark Brain <Mark.Brain@esc.nsw.gov.au>
Subject: RE: Follow up to our conversation seeking to confirm discussion in writing

Hi Mark

Would you like me to rephrase these questions or would you prefer to answer them in a different way?

Kind regards

Recruitment in the time of COVID-19 – Following ACT Health guidelines, the H1 team are working from home. We can help you facilitate online recruitment processes, assessments, interviews and meetings, as well as prepare/induct new personnel to work from home. We are here to help, so do not hesitate to ask us about our remote/online options. We hope you are staying safe.



SIMON COX

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From: Simon Cox

Sent: Thursday, 19 August 2021 10:21 AM

To: Mark Brain <Mark.Brain@esc.nsw.gov.au>

Subject: RE: Follow up to our conversation seeking to confirm discussion in writing

Hi Mark

Just a quick follow up on this one.

Kind regards

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From: Simon Cox <Simon@horizonone.com.au>

Sent: Friday, 13 August 2021 9:13 PM

To: Mark Brain <Mark.Brain@esc.nsw.gov.au>

Subject: Follow up to our conversation seeking to confirm discussion in writing

Hi Mark

Thank you for your time yesterday, it is appreciated.

As discussed, I am emailing you to gain written confirmation of some of the things we discussed so I can make sure we are on the same page as Council. Feel free to put a Yes/No or qualify an answer in writing (e.g. Kind of, but with this exception)

- A. At this stage, there has been no Environmental Assessment of any kind undertaken to assess the impact of this DA on nearby endangered ecosystems, biodiversity and marine parks?
 - a. But there is one from 2012 on a different DA for the same site that is no longer relevant
- B. You are expecting to ask the developers to at some stage comply with NSW and Federal Environmental Acts, and this will likely involve completing a thorough Environmental assessment. This is especially the case for the Eastern end of the development plus the new through road, which is closest to the forest and endangered ecosystem.
- C. You have confirmed that the developers, as requested by NSW Heritage, will have to complete a full AHIP process before the development modification can be approved by Council? **see my rudimentary stepped timeline below, I may have timing wrong
- D. You are not aware that the land may be in the process of being sold (we understand due diligence is currently taking place to sell in part or full to a Canberra consortium along with builders Monarch Building), however this does not affect the process or require a new DA?
- E. Council have made the judgement that the changes in the current modifications are not considered material in comparison to the 1984 DA approval.

- a. Can I please confirm that this consideration was made in light of recent changes to *Environmental Planning and Assessment Amendment Act 2017* that tightened this rather loose judgment call significantly?
- b. Can I please request that Council provide a written summary of their rationale, or come back to us with a confirmation of when this happens in the process, as required by the Act amendment?

Something we didn't discuss, and something nobody in the community seems to possess, is an understanding of how the process flows in terms of "what happens when". Can you please direct us to a resource or information that can guide us as to what happens when?

For example, from our conversations and those with others, we guestimate the following are the steps ahead of the development as we head towards modification approval. Are you able to correct/modify or agree to this and answer the below questions please?

This is a laymen's effort, so if I am vastly wrong please feel free to red pen it.

1. Developers, Batemans Bay Marine park and the NSW RFS respond to Councils request for further information (letter to Rygate West July 2021)
 - a. Can you please confirm the status of this request?
 - b. Are we able to view the responses from public bodies such as the Marine park in response to your request please?
2. Council responds to the community in regards July 2021 submissions, confirming what, if any further actions are required by the developers
 - a. Will the community get a response in writing?
 - b. Will Council make us aware of what additional information they request from the developer and other bodies as a result of the communities' submissions as it happens?
3. Council move to progress the development and approve the modifications
4. Council ask the developer to satisfy a full AHIP process to progress the development
 - a. What involvement and transparency will the community have into the scientific/archaeological sampling of the development zone?
 - b. What will be the engagement required with the local indigenous community?
 - c. What happens If local elder reject the use of the land for development due to high cultural heritage value?
5. Council request the developers to undertake the following assessments:

- a. A full environmental assessment including biodiversity and environmental impact assessment
 - b. A social impact assessment
6. Necessary adjustments made by the developers in a way that engages the community in a collaborative way

I recognise there is a bit of work here and I will be more than satisfied with short sharp answers in CAPS or red ink adjacent to my information.

In the meantime I have reached out to the owners of the land (current) seeking an opportunity to open communication lines with the community so we can potentially move from angry community at loggerheads with developers, to a more collegiate and collaborative approach.

Thank you again for your time.

Kind regards

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