



Attachment 3 to Item 4.1.1

Applicant's Response and Council Officer
Comments

Date of meeting: 21 November 2023

Location: Council Chambers

Time: 6:30 p.m.

Attachment 3: Applicant's Response and Council Officer Comments

Applicant's Response	Issue	Council Officer Response
<p>1.</p>	<p><i>“Whilst we fully support the proposed LEP amendment, this submission requests that Council, the Department of Planning and Environment (DPE) and Parliamentary Counsel, review the proposed wording of the amendment, to ensure that a development application for the community title subdivision of the site can achieve compliance with the amended provisions of the LEP. In particular, we would like to highlight issues with the current drafting of clauses 6.16(3)(a) and 6.16(4).</i></p> <p><i>The suggested wording for the LEP amendment is as follows:</i></p> <p>6.16 Development of land at 6/21 Vincents Road, Kurrajong</p> <ol style="list-style-type: none"> <i>1. This clause applies to Lot 6 in DP 270827, 6/21 Vincents Road, Kurrajong</i> <i>2. Despite any other provision of this Plan, consent may be granted under this clause to a community title subdivision of Lot 6 in DP 270827 subject to subclause (3).</i> <i>3. Development consent must not be granted for the purposes of a community title subdivision on land to which this clause applies, unless the community title subdivision:</i> <ol style="list-style-type: none"> <i>a. is for the subdivision of development for the purposes of seniors housing development and extension of private cemetery following the completion of the senior housing development; and</i> <i>b. the number of residential lots created by the subdivision does not exceed 19, and</i> 	<p>Clause 6.16(3)(a) of the exhibited Planning Proposal and the Planning Proposal forwarded to the Department of Planning and Environment for a Gateway Determination is as follows:</p> <ol style="list-style-type: none"> <i>3. “Development consent must not be granted for the purposes of a community title subdivision on land to which this clause applies, unless the community title subdivision:</i> <ol style="list-style-type: none"> <i>a. is for the subdivision of development for the purposes of seniors housing development and extension of private cemetery following the completion of the senior housing development; and”</i> <p>According to the current wording of the above subclause development consent can only be issued following the completion of the seniors housing development and could be taken to mean that the entire seniors housing development must be completed prior to the subdivision of the site.</p> <p>However, the Developer’s intention is to subdivide the site in stages, to align with the staged construction of the dwellings, as proposed in the development application for a staged community title subdivision of the Land and Environment Court approved Seniors Housing Development (DA0338/23) which is currently with Council for determination.</p> <p>The Statement of Environmental Effects and Subdivision Plans submitted in support of DA0338/23 details the intended staged subdivision of the development.</p> <p>Given there are no issues or concerns in relation to the proposed staged community title subdivision, it is proposed to make a minor post-exhibition amendment to this subclause to enable a staged community title subdivision consistent with the current DA0338/23 as follows:</p>

- c. *each lot created has a lot size of 360m2 or greater, and*
- d. *enables amalgamation of the remainder of the land with Lot1 DP 270827 to create an association property for the entire Seniors' Living development within the meaning of the Community Land Development Act 2021.*

- 4. *The community title subdivision or expansion of the existing private cemetery protects and enhances the biodiversity values of the site, and in particular any Critically Engaged Ecological Communities.*

We request that the wording of clause 6.16(3)(a) be reviewed prior to finalisation to address concerns relating to the timing of the issuing of the development consent, and to enable the staged construction and subdivision of the development. We understand that the purpose of clause 6.16(3)(a) is to ensure that the community title subdivision facilitated by clause 6.16 relates to the approved seniors housing development, rather than allowing the subdivision of any form of residential accommodation on the site.

Our concern is however that the current wording of clause 6.13(3)(a) may prevent development consent for the subdivision from being issued until the entire development has been completed. This would result in unreasonable delays between the completion of the dwellings, the issuing of the development consent and subsequent registration of the subdivision. A clause that simply requires the subdivision to relate to an approved seniors housing development would achieve the same outcome with less uncertainty and complexity.

We are also concerned that the current wording of clause 6.16(3)(a) states that development consent can only be issued following the completion of the seniors housing development and could be taken to mean that the entire seniors housing development must be completed prior to the

- 3. *"Development consent must not be granted for the purposes of a community title subdivision on land to which this clause applies, unless the community title subdivision:*

- b. *is for the subdivision of development for the purposes of seniors housing development and extension of private cemetery following the completion of the senior housing development in stages; and"*

	<p><i>subdivision of the site. The intention is to subdivide the site in stages, to align with the staged construction of the dwellings, as proposed under DA0338/23. The Statement of Environmental Effects and Subdivision Plans submitted in support of DA0338/23 are included as Attachments A and B of this letter respectively so that the intended subdivision of the development can be understood. Amending the wording of this clause to refer to the completion of the seniors housing dwellings, rather than the development, would be more appropriate.</i></p>	
2.	<p><i>It is our view that clause 6.16(4) should be amended, or removed, for the following reasons:</i></p> <ul style="list-style-type: none"> • <i>Clause 6.16(4) is unnecessary as the biodiversity values of the site are adequately protected by the current regulatory framework for the assessment and approval of development and clearing activities that impact on biodiversity including:</i> <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Environmental Planning and Assessment Regulation 2021</i> • <i>Biodiversity Conservation Act 2016</i> • <i>Biodiversity Conservation Regulation 2017</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>Hawkesbury Local Environmental Plan 2012</i> <p><i>Any future development application will be assessed against in accordance with the relevant legislative framework.</i></p> <ul style="list-style-type: none"> • <i>The purpose of the Planning Proposal is to permit the community title subdivision, and expansion of the existing private cemetery, that was approved under DA0055/21.</i> <p><i>The relevant legislative provisions for the protection of biodiversity were considered in the assessment of DA0055/21 and in the preparation of the Biodiversity Development Assessment Report (BDAR) and Fire and Vegetation</i></p>	<p>It is noted that the letter from Ecological Consultants Australia Pty Ltd that accompanied a development application (DA0338/23) for the staged community title subdivision of the Land & Environment Court approved Seniors Housing Development and extension of the private cemetery on the subject site was attached to the applicant's response provides the following justification for the applicant's suggestion to amend and remove the proposed subclause 6.16(4):</p> <p>"We have reviewed the Gateway determination report – PP-2022-4174 and understand that the subclause (4) has been suggested by the DPE to ensure the Sydney Turpentine-Ironbark Forest in the Sydney Basin Bioregion Critically Endangered Ecological Community (CEEC) and biodiversity values of the site are protected and enhanced.</p> <p>The proposed subdivision of the site does not involve any physical works that would impact the biodiversity values of the site, including the Sydney Turpentine-Ironbark Forest Critically Endangered Ecological Community (CEEC). The implementation of the management tasks and recommendations of the BDAR and Fire Vegetation Management Plans approved under DA0055/21 and the retirement of ecosystem credits will adequately protect and enhance the biodiversity values of the site.</p> <p>On this basis, in our opinion the proposed wording of clause 6.16(4) should be amended prior to the finalisation of the Planning Proposal to remove the requirement for the community title subdivision or expansion of the existing private cemetery to protect and enhance the biodiversity values of the site as:</p> <ul style="list-style-type: none"> • Proposed clause 6.16(3)(a) requires the subdivision to relate to a

<p><i>Management Plan that accompanied the application. As such, the biodiversity values of the site will be adequately protected and enhanced through the implementation of the recommendations of the of the BDAR and Fire Vegetation Management Plans approved under DA0055/21. No further measures are therefore necessary to protect or enhance the biodiversity values of the site.</i></p> <p><i>In the unlikely event that a future development application is lodged for a seniors housing development, other than the development approved under DA0055/21, the assessment of a seniors housing development on the site will need to consider the relevant legislation which has been put in place to protect the biodiversity values of the site. Clause 6.16(4) is therefore unnecessary to achieve the required protection of the biodiversity values of the site.</i></p> <p><i>Clause 6.16(4) provides that development consent must not be granted for the community title subdivision of the site unless the subdivision protects and enhances the biodiversity values of the site. If the required protection and enhancement of the biodiversity values of the site has been secured through a separate development application (as is the case for DA0055/21), a development application which only seeks approval for the community title subdivision of the site, and does not include any physical works, should not be required to detail further enhancement works that would not otherwise be required under the current legislation.</i></p> <p><i>Development Application DA0338/23 has been lodged for the community title subdivision of the development approved under DA0055/21. The application does not include any physical works on the site.</i></p> <p><i>The letter prepared by Kingfisher Urban Ecology and Wetlands Ecological Consultants Australia Pty Ltd, that was prepared to accompany the development application for the community title subdivision of the approved development</i></p>	<p>completed seniors housing development. Any seniors housing development will be assessed against the current legislation (including the Biodiversity Conservation Act 2016, Commonwealth Environmental Protection and Biodiversity Conservation Act 1999, State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the Hawkesbury Local Environmental Plan 2012). An assessment of an application against the relevant legislation will ensure the biodiversity values of the site will be protected and enhanced.</p> <ul style="list-style-type: none"> • This subdivision DA relates to a seniors housing development (and extension of the private cemetery) approved under DA0055/21. The relevant legislation was considered in the assessment of DA0055/21 and in the preparation of the BDAR and Fire and Vegetation Management Plan. As such, the biodiversity values of the site will be adequately protected and enhanced through the implementation of the recommendations of the of the BDAR and Fire Vegetation Management Plans approved under DA0055/21. • It is not reasonable or necessary to propose additional enhancement measures for a development application that does not propose any physical works and where a previous DA has already achieved the required protection and enhancement". <p>The implementation of the management tasks and recommendations of the Biodiversity Development Assessment Report and Fire Vegetation Management Plans approved under DA0055/21 by the Land & Environment Court and the retirement of ecosystem credits along with Council's assessment of the staged community title subdivision, applications against the relevant State legislation will ensure adequate protection and enhancement of the biodiversity values of the subject site. Therefore, the applicant's request to remove the subclause 6.14(4) is considered to be warranted.</p> <p>However, the current inclusion of the proposed subclause 6.14(4) is a Gateway requirement, and therefore this is a matter for the Department of Planning and Environment as the Plan-making Authority to consider at the finalisation of the Planning Proposal.</p>
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	<p>provides the following commentary in relation to clause 6.16(4):</p> <p>It is not reasonable or necessary to propose additional enhancement measures for a development application that does not propose any physical works and where a previous DA has already achieved the required protection and enhancement.</p> <p>Given a development application for the community title subdivision of the site must relate to a completed (or approved) seniors housing development, and the subdivision is likely to not involve any physical works, subclause (4) is unreasonable and unnecessary. Accordingly, we request that the inclusion of clause 6.16(4) be reconsidered.</p> <p>We believe that the current wording of clause 6.16 can be easily amended to address the concerns raised in this submission. We would appreciate the opportunity to meet with Council or the DPE prior to finalisation to assist with this process.</p>	<p>The Gateway Determination does not authorise Council to be the Plan-making Authority for this Planning Proposal. As such, Council is not the final determining authority of this Planning Proposal but is required to consider all submissions received from the community, relevant government agencies and the applicant during the consultation period, address the issues or objections raised in the submissions and report the outcome of consultation to Council for its consideration.</p> <p>The Department of Planning and Environment as the Plan-making Authority for this Planning Proposal will take all the matters including the submissions received from the community, relevant public agencies and the response received from the applicant and Council's determination into consideration when finalising and determining the Planning Proposal.</p>
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