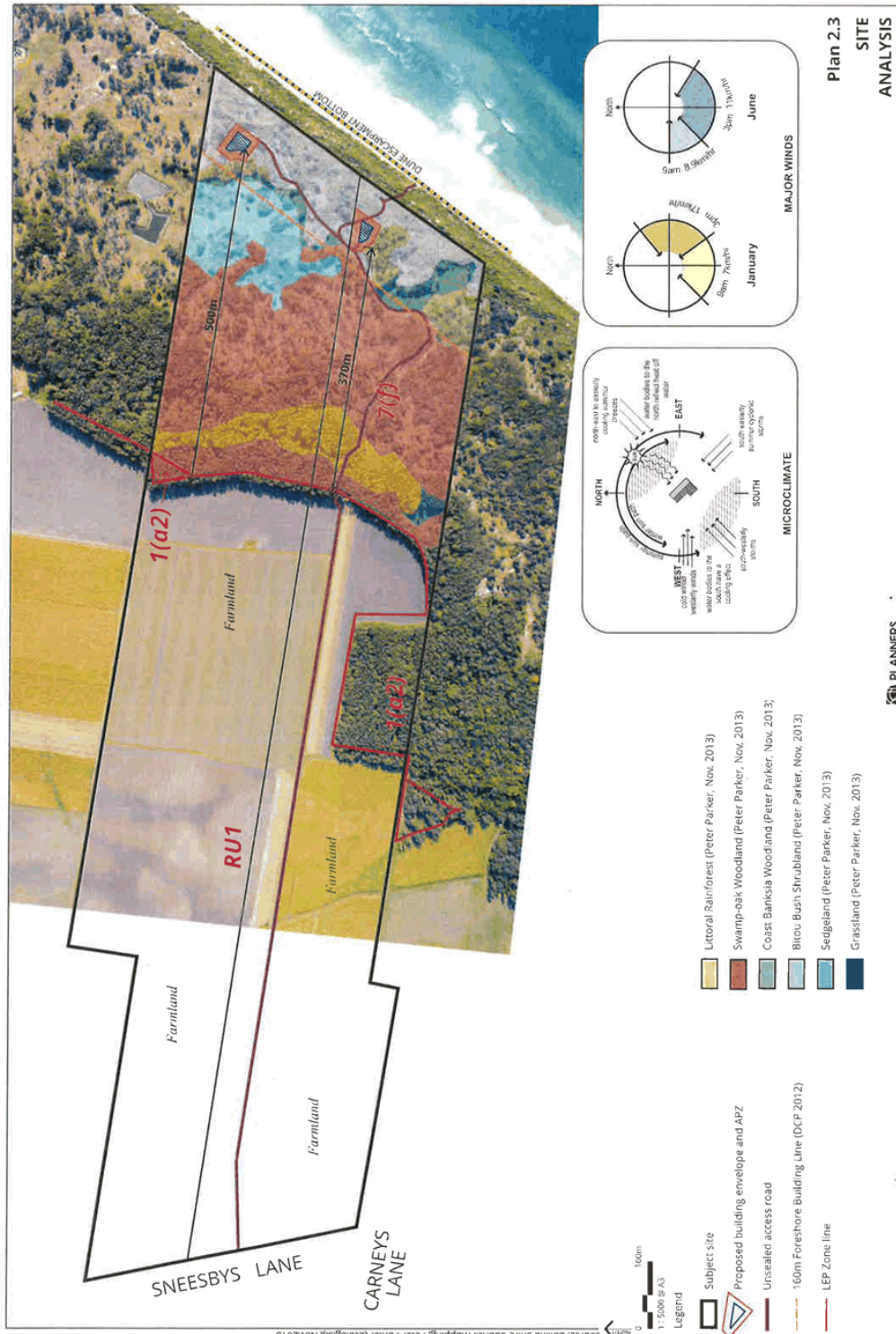


LOTS 1, 2 & 3 Sneesbys Lane, East Wardell



Plan 2.3
SITE
ANALYSIS



8.1 **DA 2013/473 - Two Dwelling House Pad Sites - 219 Sneesbys Lane**

8. **Development and Environmental Health Group Reports**

8.1 **DA 2013/473 - Two Dwelling House Pad Sites - 219 Sneesbys Lane**

Applicant	Planners North
Property	Lots 1, 2 and Lot 3 DP 809785, No. 219 Sneesbys Lane, East Wardell
Proposal	To Establish Two Dwelling House Pad Sites with Associated Access and Asset Protection Zones as a Staged Development Application
Effect of Planning Instrument	Two LEPs apply to the subject land. The eastern portion of the subject land is part zoned 7 (f) Environmental Protection (Coastal Lands) and 1(a2) Rural (Coastal Lands Agriculture) under the provisions of the Ballina LEP 1987. The western portion of the subject land is zoned RU1 Primary Production under the provisions of the Ballina LEP 2012.
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

This application is for the establishment of two dwelling house pad sites, one on each of Lots 2 & 3 DP 809785, associated access and asset protection zones (APZs), as a staged development. A separate development application is to be lodged for a future dwelling house on each allotment. This application is presented to Council for determination as it seeks a variation to a development control contained in the Ballina Shire Development Control Plan 2012 (DCP) relating to the minimum 160m setback of a dwelling envelope from the dune front.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil (or state otherwise if this is not the case)

Public Exhibition

All adjoining land owners and occupants were notified of the proposed development and no submissions were received.

Applicable Planning Instruments

The western portion of the subject land is zoned RU 1 Primary Production under the provisions of Ballina Local Environmental Plan 2012 (BLEP 2012). The eastern portion of the subject land is part zoned 1(a2) Rural (Coastal

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Lands Agriculture) and part 7(f) Environmental Protection (Coastal Lands) Zone, under the provisions of Ballina Local Environmental Plan 1987(BLEP 1987).

The proposed dwelling house pad sites and the APZs are to be established on land zoned 7(f) Environmental Protection (Coastal Lands). The access road is to be located on land zoned 7(f) Environmental Protection (Coastal Lands) and RU1 Primary Production.

Report

The application has been assessed against the relevant heads of consideration under S. 79C of the EP&A Act 1979, with the following matters of particular relevance to Council in the determination of this application.

Details of Proposal

A staged development consent, in accordance with S.83B of the EP&A Act 1979, is sought for the establishment of one dwelling house pad site and associated APZ on each of Lots 2 & 3 DP 809785, 219 Sneesbys Lane, East Wardell and an access road over Lots 1, 2 & 3 DP 809785.

Section 83B of the EP&A Act 1979 provides that a Staged Development Application is a Development Application that "*sets out Concept Proposals for the development of a site and for which detailed proposals for separate parts of the site are to be the subject of subsequent Development Applications*". In this instance, the concept plan is the current application (stage 1) for the establishment of the dwelling house pad sites, whilst the subsequent Development Application (stage 2) will seek consent for the construction of a dwelling on each of the dwelling house pad sites.

The dwelling house pad site on Lot 2 has an area of 2,000m² and includes a building envelope of 570m² and APZ. The dwelling house pad site is located 35 metres from its nearest point to the northern property boundary and 46 metres from and parallel to the eastern boundary. The building envelope is located 52 metres from and parallel to the eastern property boundary and approximately 100 metres from the dune front.

The dwelling house pad site on Lot 3 has an area of 1,800m² and includes a building envelope of 420m² and APZ. The dwelling house pad site is to be established to the northern property boundary and 43 metres from and parallel to the eastern boundary. The building envelope is located 13 metres from and parallel to the northern property boundary and 52 metres from and parallel to the eastern boundary and approximately 95 metres from the dune front.

One access track is to be provided from Sneesbys Lane to the dwelling house pad sites, through Lots 1, 2 & 3 DP 809785 in accordance with the requirements of the New South Wales Rural Fire Service (RFS). The fact that one access track is to be provided will require the creation of a Right of Carriageway over Lots 1 & 2 in favour of Lots 2 & 3.

APZs around the two sites are to be established in accordance with the requirements of the RFS.

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It is intended that the sites be fully self supporting with water captured from the roof being collected and stored for personal use and bushfire management.

Whilst the provision of an On Site Sewage Management system is not part of this application, details have been provided sufficient to indicate that such a system is capable of being provided.

The applicant proposes the sites adopt sustainable on-site arrangements for electricity supply and wireless communications. However, if it is realised that this cannot be achieved these facilities will be provided via underground mains.

The western section of the site is currently used as cane fields. The middle section of the site contains a mosaic of high conservation value vegetation communities, whilst the eastern section of the site is dominated by the noxious weed Bitou Bush, isolated occurrences of the common prickly pear and scattered coastal banksia.

The dwelling house pad sites are to be located within the eastern portion of the site, amongst stands of dense Bitou Bush where no native vegetation occurs.

The access track is required to be provided through the middle section of high conservation value vegetation communities. The track currently exists and will require upgrading to comply with the requirements of the RFS. It has been assessed that the upgrading of the track will not impact on any threatened plants. It should be noted that the proposed location of the dwelling house pad sites will not impact on any high conservation value vegetation communities, whereas if the dwelling house pad sites were to be located in accordance with the requirements of the DCP they would be located within or in close proximity to high conservation value vegetation communities.

The applicant has advised that a Bitou Bush removal and soil erosion management plan will be prepared, proposing that all the Bitou Bush will be gradually removed from the site, starting with the building site and spreading outwards eventually clearing an area of approximately 3.2 ha. The area will be cleared of Bitou Bush and replanted with endemic native vegetation. It is anticipated the bulk of the Bitou Bush removal and vegetation replanting will be undertaken gradually (4-7 years).

Plans of the proposed development are attached.

Local Environmental Plans

Under the BLEP 2012 part of the subject land is zoned RU1 Primary Production with the remainder of the subject land identified as a Deferred Matter. The dwelling house pad sites are to be located in that part of the subject land identified as a deferred matter.

Under the BLEP 1987 that portion of the subject land identified as a deferred matter is part zoned 1(a2) Rural (Coastal Lands Agriculture) and part 7(f) Environmental Protection (Coastal Lands) Zone. The dwelling house pad sites and APZs are located in the 7(f) zone whilst the access road is located on land zoned RU1 and 7(f).

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The objectives of the 7(f) Environmental Protection (Coastal Lands) Zone under the BLEP 1987 are:

A The primary objectives are:

- (a) to protect environmentally sensitive coastal lands, and*
- (b) to prevent development which would adversely affect or be adversely affected, in both the short and long term, by the coastal processes.*

B The secondary objectives are to enable the development of public works and recreation amenities where such development does not have significant detrimental effect on the habitat, landscape or scenic quality of the locality.

C The exceptions to these objectives are:

- (a) to permit the development of public works, outside the parameters outlined in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on the coastal lands being minimised as is reasonably practical, and*
- (b) development of surf life saving, environmental education facilities and like facilities.*

Dwelling houses and associated works including establishing APZs and vehicular access are permitted with development consent on land zoned 7(f).

The proposed development is considered to be consistent with the objectives of the zone in that the location of the proposed dwelling house pad sites are well clear of significant native vegetation communities, as opposed to a site setback further from the dune front in accordance with the requirements of the DCP. Therefore the proposal will have less of an impact on the high conservation value vegetation communities of the subject site. Measures are also proposed to mitigate impacts of the development on fox baiting on the adjoining Crown Land and to progressively revegetate Bitou Bush infested coastal lands held in private ownership.

The building sites are sufficiently removed from the coast to not be affected by short and long term coastal processes.

Clause 32 of the BLEP 1987 – Development within Zone No. 7(f) states:

The council must not consent to the carrying out of development within Zone No 7 (f) for any purpose unless it has taken into consideration:

- (a) whether any environmental issues are involved in, or raised by, the proposed development, and*
- (b) if so, whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment, and*
- (c) whether the development complies with the objectives of Zone No 7 (f) as set out in the Table to clause 9.*

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The main environmental issue raised by this proposed development is the siting of the proposed dwelling house pad sites relative to the dune front. This is discussed in detail below in relation to the specific provisions of the Ballina Shire Development Control Plan that relate to South Ballina.

The proposed access road to service the dwelling house pad sites and future dwelling houses is permitted with consent in the RU1 Primary Production Zone of the BLEP 2012.

Ballina Shire Development Control Plan 2012 (DCP)

The proposed development has been assessed against the relevant provisions of the DCP and is generally consistent with these provisions. The following provisions of Chapter 7 – Rural Living and Activity of the DCP, specific to South Ballina, are of particular relevance in Council's determination of the application.

Chapter 7, Part 4.1 South Ballina, Subclause 4.1.3 Development Controls:

- ii *For the purpose of establishing a dwelling envelope (as opposed to the construction of a dwelling), the edge of the dwelling envelope shall be setback a minimum of 160m from the dune front as shown on the South Ballina Foreshore Land Map."*

The edge of the proposed building envelope on Lot 2 is approximately 100 metres from the dune front. The edge of the building envelope on Lot 3 is approximately 95 metres from the dune front.

The underlying objective of this 160 metre setback control is to minimise the impact of development on threatened shorebird species, including the Pied Oystercatcher. The predation by foxes is identified as a key threat and therefore the management approach adopted locally is to bait for foxes. The Pesticides Control Order under S. 38 of the Pesticides Act 1999 provides that 1080 fox baits must not be laid within 150 metres of habitation (includes a dwelling house), with some exceptions. The DCP explains that the 160 metre setback has been applied from the dune front to provide for flexibility in the application of fox baiting program (i.e. to enable bait stations to be moved north/south over time). A 160 metre setback has been selected to reflect the potential for the dune system to move landward over time.

The Pesticides Control Order, however, allows 1080 baits to be laid at distances less than 150 metres from a habitation, subject to conditions. The relevant conditions relate firstly to the undertaking of a risk assessment by the Authorised Officer to assess the likelihood of non-target species, such as domestic/working dogs, taking the bait. The second relevant condition is any adjoining owner must agree in writing to the use of 1080 baits at distances of less than 150 metres from habitation (dwelling house).

To meet these conditions of the Pesticides Order and to offer an alternative approach to meet the underlying objective of the 160 metre setback control in the DCP, the applicant has proposed to place a restriction on the title of the subject lands to the effect that the landowner and any future owners will not object to the use of 1080 baits within 150 metres of habitation, to prohibit certain breeds of dog to be kept on the property, and to propose that any

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dog/s kept on the property are to be kept within a fenced dog enclosure as required by Council's DCP.

To assist Council with its deliberations on the proposed variation to the DCP's 160m setback requirement, the application was referred to the relevant government agencies having an interest in the fox baiting program namely, NSW Trade and Investment (Crown Lands), NSW Office of Environment and Heritage and the Livestock Health and Pest Authority.

A response was only received from NSW Trade and Investment and is attached.

The application seeks a variation to this development control, as it is considered in this particular case that to comply with this development control in the development of the site would have a potentially significant impact on identified endangered ecological communities that are elsewhere on the subject site whereas establishing the dwelling house pad sites in the proposed location dominated by Bitou Bush would be preferable. The proposed restrictions to be placed on title of the subject lots are a reasonable alternate approach in the circumstances to meet the underlying objective of the 160 metre setback requirement. Should approval be granted, a condition would be applied requiring the final wording of the proposed restrictions to be submitted to Council prior to work commencing on-site.

iii *Applications must outline arrangements with respect to pedestrian beach access. New access points must be located away from known Pied Oystercatcher nesting grounds.*

In relation to pedestrian beach access, NSW Trade and Investment (Crown Lands) advised (as per letter attached) "*there is a significant unauthorised access from Lot 3 through R10026 to the beach, referred to as an 'unsealed access road' on Plan 2.3 Site Analysis in the proposal's Statement of Environmental Effects by Planners North. Without authorisation, there is no legal basis for such access to cross Crown land. Crown Lands' position on this access road is the land occupied by this access over R10026 should be left to remediate to its natural state*".

In response to the letter from Crown Lands, the applicant has replied:

1. No approval is sought for any access across the crown reserve;
2. The track that has been established at the site has never been used by the owners to access the beach. It was established either by previous owners or by 4WD hoons who trespass on the subject land to gain access to the beach; and
3. It is envisaged that the establishment of dwellings at the land and the revegetation program proposed to be implemented with the development will halt this illegal use of the subject site and adjoining Crown land and be a major positive towards achieving the goals of protecting the Crown's strip.

iv *All fencing within Zone E2 – Environmental Conservation must be constructed as follows:*

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- *Four strands;*
- *All strands must be of plain wire;*
- *The top strand of wire must be coated with white plastic;*
- *The fence must have a 40cm gap at the bottom and 40cm gap between the top two strands of wire;*
- *Within the dunal wetlands the fence height is to be sufficient to ensure the top wire is above water level at all times; Reflectors are to be placed at five metre intervals.*

The applicant raises no objection to complying with this requirement.

- v *Applications are to include details of any weed management or environmental protection works proposed as part of the development. All works are to be undertaken in accordance with the practices and methodologies documented in the Department of Land and Water Conservation document "Coastal Dune Management : A Manual of Coastal management and Rehabilitation Techniques" (2001) and the Bitou Bush TAP;*

The application proposes the implementation of a Bitou Bush Removal and Soil Erosion Management Plan for the removal of the Bitou Bush, over a 4-7 year program and replanting of endemic native vegetation. If Council is minded to grant approval, then a condition would be applied requiring a Bitou Bush Removal Plan, developed in accordance with best practice manuals as referenced in Council's DCP, be submitted to Council prior to works commencing on-site. The application does not address the limitations imposed on the aerial spraying of Bitou Bush on adjoining Crown land as a result of the proximity of the future dwellings to the eastern property boundaries. The condition requiring a Bitou Bush Removal Plan would also seek to encourage the applicant to extend the plan to cover the adjoining Crown land. This, however, would be subject to the Crown's acceptance of work being carried out on their land.

To ensure ongoing commitment and awareness of the Bitou Bush Removal Plan it is recommended that a condition be applied requiring the placement of a restriction on title informing all future owners of the commitments to carrying out the Bitou Bush Removal Plan.

- vi *All dwellings must comply with the provisions of the Coastal Design Guidelines for NSW relating to Isolated Coastal Dwellings;*

No dwelling houses are proposed within this stage of the application. A separate development application will be lodged for a dwelling house within each building envelope established as part of this application and at that time assessment against these guidelines will be necessary.

- vii *Applications are to include details with respect to an appropriate fenced dog enclosure. The enclosure must be designed in accordance with the following:*

- *In reasonable proximity to the dwelling there shall be constructed and maintained a fenced enclosure which is designed and constructed so as to provide a secure enclosure for keeping dogs;*

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- Any gate forming part of the fenced enclosure shall be a self-closing gate;
- No gate to the fenced enclosure shall be propped open or otherwise kept open other than for the purpose of passing through; and

viii Where an applicant does propose to keep domestic dogs, the applicant must demonstrate that an appropriate location exists on the site for the provision of an enclosure that meets the above requirements".

In relation to the need to provide a dog enclosure, the application proposes such enclosure and further a restriction on title that any dogs are to be kept in such enclosure and prohibit the keeping of certain breeds of dog.

Conclusion

The application complies with all relevant provisions of the BLEP 2012, BLEP 1987 and DCP with the exception of the requirement to establish a dwelling envelope not closer than 160m from the frontal dune system.

It is considered that the proposal to construct the dwelling house pad sites at the proposed location is, in the circumstances, better than a location complying with the 160m setback for the following reasons:

- The proposed application, with the inclusion of the restrictions on title, offers a reasonable alternate approach that will still enable the continuation of the fox baiting program on Crown lands and meet the underlying objective of the 160 metre setback control contained in the DCP;
- The proposed location requires the proposed dwelling house pad sites to be constructed in an area dominated by the noxious weed Bitou Bush, as opposed to a site complying with the 160m setback requirement which would see dwelling houses and APZs established in areas of high conservation value vegetation;
- The proposed dwelling house pad sites will have less impact on the scenic quality of the area, as the sites are located on the western edge of the sand dunes, whereas, if the sites were to be located in accordance with the requirements of the DCP, it would result in significant fill being imported and a mound protruding above the surrounding relatively flat, low lying portion of the site.

Options

- 1 That Council grant approval to the application as submitted, subject to applicable conditions of consent, including those referred to within the report; or
- 2 That Council maintain the requirements of its DCP and refuse the application as submitted, for the reason that the application does not comply with the requirements of DCP and therefore is likely to have an adverse environmental impact.

For the reasons outlined in this report, Option one is recommended.

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RECOMMENDATION

That Staged Development Application 2013/473 for the establishment of two dwelling house pad sites and associated asset protection zones and access on Lots 1, 2 and 3 DP 809785, 219 Sneesbys Lane East Wardell, be **APPROVED** subject to applicable environmental planning conditions of consent including those referred to in the report.

Attachment(s)

1. Locality and layout plans for the proposed development
2. Correspondence from NSW Trade and Investment