

**SCOTTS HEAD COMMUNITY GROUP –**

**WORKSHOP ON HOW TO WRITE A SUBMISSION ON A**

**DEVELOPMENT APPLICATION**

**10 MAY 2022**



The Scotts Head Community Group acknowledges the Traditional Custodians of this land, the Gumbaynggirr people. We pay our respects to them, and to all the First Nations people of Australia including their respective individual cultures, and their Elders past, present and future.

### **Purpose of workshop**

The workshop generally aims to help people in the Scotts Head community understand the role of writing submissions on development applications and 'tips and tricks' to write a good submission.

The specific aim is to arm the community with the skills to write the best argued and targeted submission about the proposed Ingenia Lifestyle manufactured housing estate proposal, once the development application is lodged and on public exhibition.

### **Who is running the workshop?**

The Scotts Head Community Group has organised the workshop, which will be led by Emeritus Professor Peter Phibbs from the University of Sydney (and formerly from the University of Western Sydney). He has taught urban planning for over 30 years in both Sydney and Melbourne. He is in the region doing some work for the Mid North Coast Joint Organization of Council project on Affordable Housing.

He also works with the Planning Institute of Australia to deliver the course "Planning for Non Planners" (which began in 2006). We are grateful for Professor Phibbs for making his time and expertise available.

### **What's the point of writing submissions?**

Submissions are a powerful way for people to have a say on development proposals that they feel strongly about. They are an opportunity for you to put forward all your concerns and to be heard. Planning authorities must carefully consider every submission they receive before making a decision.

Well argued, factual and logically presented submissions can have a direct impact on the decision-making process. The uniqueness of submissions (i.e. not using the same template for every submission) is also important and considered by the assessor. Development applications can, and have been, refused consent based on information provided in submissions. In short – submissions matter.

### **Can anyone write a submission?**

Yes. Under NSW law anyone can make a submission on a development application – regardless of where they live, their age or whether they are directly impacted by the proposal.

### **What happens to my submission after I send it in?**

The relevant planning authority – which is usually (but not always) the local council – must consider all submissions it receives during the exhibition period for a development application. Some authorities will prepare a submissions report to show how they have considered all the issues raised in submissions received.

**How is my privacy protected?**

Submissions to development applications are generally publicly available for review. If you want to provide a confidential submission or to have your personal details not disclosed, there is usually an option to request this when you provide your submission.

## **1A. WHAT IS THE INGENIA DEVELOPMENT PROPOSAL?**

Although a development application is yet to be lodged with Nambucca Council, here is what we know about the development so far.

### **Location**

Around 500 metres from the Scotts Head Village sign, on the southern side of Scotts Head Road. Address 11 Ocean Ridge Drive, Way Way NSW.



### **What is proposed?**

250 manufactured dwellings on a 16 hectare site. At 2 persons a dwelling, that is a total of 500 people (plus cars, boats, pets etc.) and up to a 56% increase on the population of Scotts Head (currently 899 people).

### **But isn't this rural zoned land? How is this possible?**

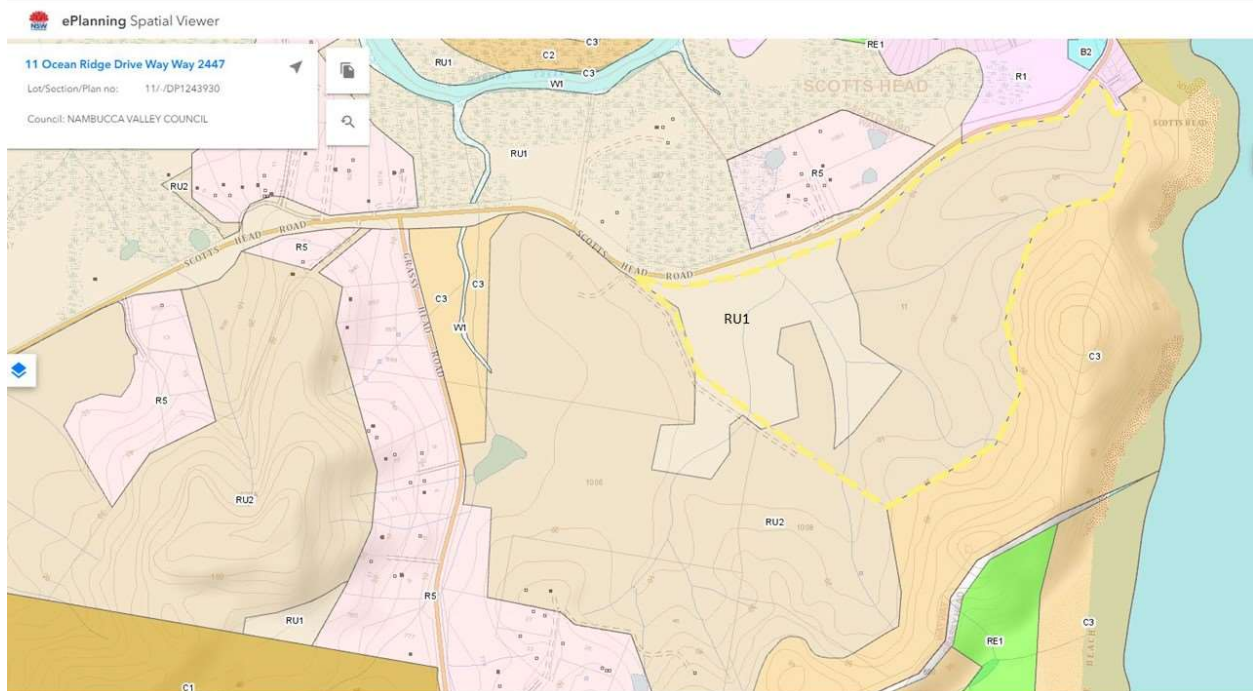
The Ingénia proposal is on a parcel of land that is zoned part RU1 Primary Production and part RU2 Rural Landscape under the Nambucca Local Environmental Plan. In the RU2 zone, "caravan parks" are permitted with consent.

We understand – but won't know for sure until we see the DA – that Ingénia will rely on the provisions of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) to argue the development is permissible in the RU2 zone. This is because under the Housing SEPP a manufactured home estate may be carried out with consent on any land where a caravan park is permissible.

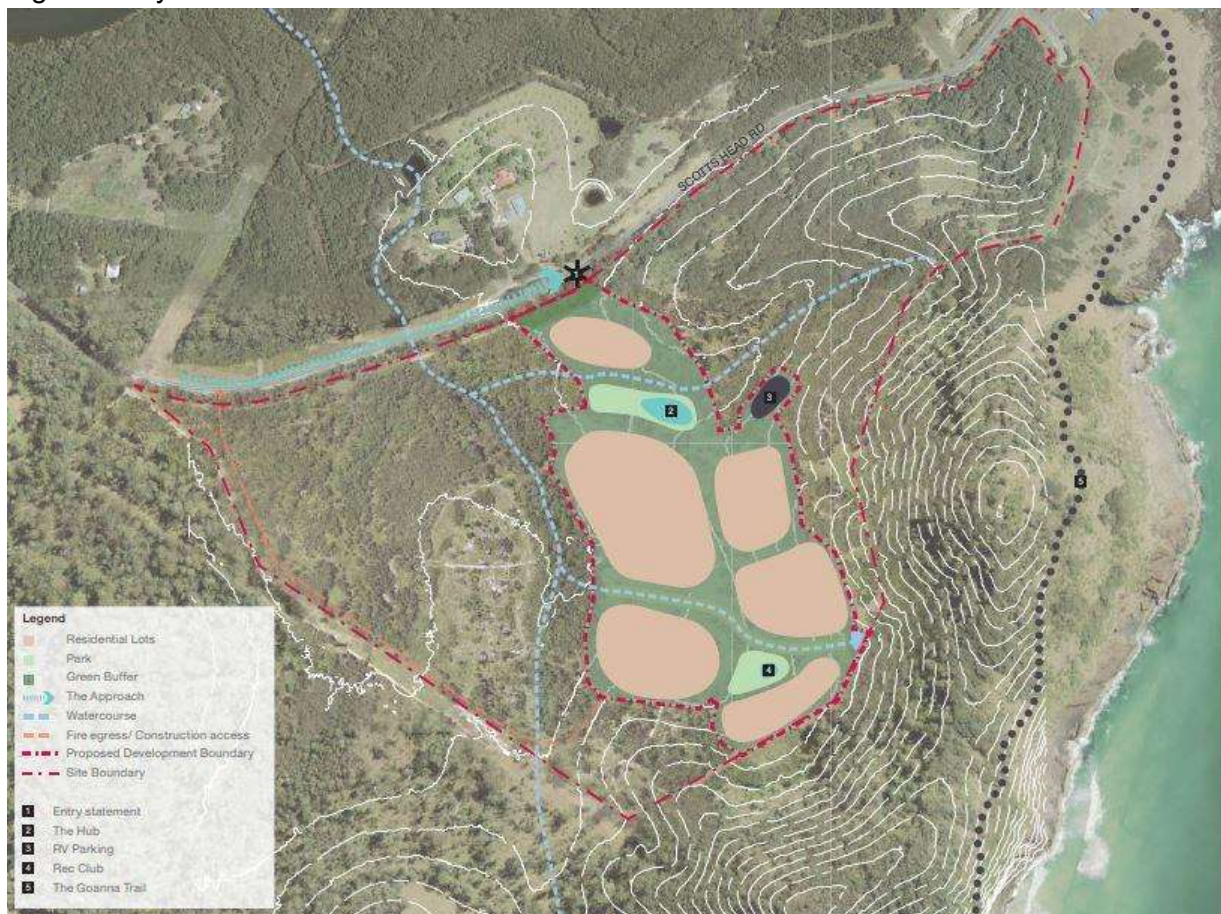
At Scotts Head, and elsewhere in the Nambucca Valley – that means that it *may* be legally possible to obtain consent for a manufactured home estate on RU2 zoned land (because caravan parks are permitted in this zone).



## Land zoning map for 11 Ocean Ridge Drive:



## Ingenia's layout:



## **1B. GENERAL TIPS AND TRICKS FOR SUBMISSION WRITING**

- **Make sure you:**
  - state clearly at the beginning that you are making a submission to object to the development proposal
  - list the DA number (and the property address if possible)
  - include your name, contact details and date your submission (if you want your personal details to be kept confidential you can also request this)
  - ask to be kept updated on the assessment and decision-making process
  - lodge the submission before the exhibition period closes.
- **Outline your key concerns** and focus your discussion on these. It is not necessary to address the whole proposal - choose the parts or issues that are most relevant or concerning to you.
- **Avoid using abusive, emotive, inflammatory or potentially defamatory language.** Focus on the development proposal and its impacts – not who the development proponent is. Venting may make you feel better (even if only temporarily) but it won't convince a decision-maker to reject the development proposal.
- **Structure your submission so it is easy to read** – headings for each issue and using dot points to present your concerns are a good idea and can be quicker to write. If you are writing a longer submission – generally over two pages – then headings and page numbering is very useful. A good way to do it is to follow the headings that are provided by section 4.16 of the Planning Act that outlines what decision makers have to consider when making a decision on a DA.
- **Make sure your submission is unique and in your own words** – template letters and petitions can be useful but they are generally less effective than lots of unique submissions from individuals or groups. Avoid using the same text from other submissions – it will usually take only a few extra minutes to write something in your own words and voice, and it is far more powerful.
- **Include detail to back up your concerns.** For example, instead of saying “*this proposal is outrageous and should be refused*”, say something like:
  - *“I have significant concerns about the extensive environmental impacts associated with this proposal. It will involve the clearing of large areas of native vegetation, including threatened species habitat, impact Aboriginal sites and lead to increased uncontrolled stormwater runoff, thereby impacting downstream creeks, wetlands and aquatic habitat”.*

- **Link your issues and concerns back to the relevant planning rules.** For example, instead of saying “*this proposal is bad for the area*”, say something like:
  - “*The development application is inconsistent with the objectives of the rural zoning of this land under the Nambucca LEP, which aim to maintain the rural landscape character and enhance natural resources*”
  - “*The development application does not satisfy requirements to provide adequate transport services and critical community services, such as access to primary medical care and public bus or other transport, as required by the Housing State Environmental Planning Policy*”.

Examples of **relevant planning rules** that you can reference in your submission are detailed below.

For a more detailed guide – refer to the Environmental Defenders Office fact sheet at:  
<https://www.edo.org.au/wp-content/uploads/2022/03/211210-Submissions-Letters-Petitions.pdf>

## 2. THE PLANNING SYSTEM – STRATEGIC PLANNING AND DEVELOPMENT CONTROL

### Summary of NSW Planning instruments

# Making Land Use Plans in NSW



Planning instruments for the area can be summarised as:

- Nambucca Consolidated [Development Control Plan](#) (amended 2013)
- Nambucca [Local Environment Plan](#) (plus multiple amendments)
- Nambucca [Local Strategic Planning Statement 2020](#) (see Priority 3 Housing)
- North Coast [Regional Plan 2036](#) (see Goal 4 Housing)
- Nambucca Valley: [Community Strategic Plan 2027](#)



### **3. PLANNING RULES RELEVANT TO THE INGENIA PROPOSAL – REFERENCE THESE IN YOUR SUBMISSION IF YOU CAN**

#### **State Environmental Planning Policy (Housing 2021)**

- Also referred to as the “Housing SEPP”
- Accessible on the NSW Government legislation website at:  
<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0714#sec.125>
- Part 8 of the Housing SEPP (clauses 118 to 125) sets out the rules for manufactured home estates – see below.
- Referring to these in your submission – and **stating why you think the development is inconsistent with these** – is important and speaks directly to the decision-maker.

#### **118 Aims and strategies**

- (1) The aims of this Part are—
- (a) to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements, and
  - (b) to provide immediate development opportunities for manufactured home estates on the commencement of this Part, and
  - (c) to encourage the provision of affordable housing in well designed estates, and
  - (d) to ensure that manufactured home estates are situated only in suitable locations and not on land having important resources or having landscape, scenic or ecological qualities that should be preserved, and
  - (e) to ensure that manufactured home estates are adequately serviced and have access to essential community facilities and services, and
  - (f) to protect the environment surrounding manufactured home estates, and
  - (g) to provide measures which will facilitate security of tenure for residents of manufactured home estates.
- (2) The strategies by which those aims are to be achieved are—
- (a) by allowing, with development consent, manufactured home estates on certain land on which caravan parks are permitted if the land meets the suitable locational criteria stipulated in this Part (which it would not do if, for example, it contains important resources, is subject to natural or man-made risks or has sensitive environmental or ecological features), and
  - (b) by applying this Part to areas where there is likely to be a demand and suitable opportunities for the development of manufactured home estates, and
  - (c) by allowing manufactured home estates to be subdivided with development consent either by way of leases for terms of up to 20 years or under the *Community Land Development Act 1989*, and
  - (d) by enabling the Minister for Planning to exclude from this Part any land that is subject to a local environmental plan prepared in accordance with the principles of a direction issued in conjunction with this Part under section 117 of the Act.

#### **125 Matters to be considered by councils**

- (1) A council may grant a development consent pursuant to this Part allowing development for the purposes of a manufactured home estate **only if it is satisfied**—
- (a) that each of the sites on which a manufactured home is or will be installed within the manufactured home estate is or will be adequately provided with reticulated water, a reticulated sewerage system, drainage and electricity, and
  - (b) that the manufactured home estate is or will be provided with adequate transport services, and
  - (c) that sufficient community facilities and services, whether situated within or outside the estate, are or will be available and reasonably accessible to the residents of the manufactured home estate, and
  - (d) that the development will not have an adverse effect on any—
    - conservation area
    - heritage item
    - waterway or land having special landscape, scenic or ecological qualities,
 which is identified in an environmental planning instrument applicable to the land concerned.
- (2) A council may grant a development consent pursuant to this Part allowing development for the purposes of a manufactured home estate only after it has considered the following—
- (a) the cumulative impact of the proposed development and other manufactured home estates in the locality,
  - (b) any relevant guidelines issued by the Director,
  - (c) the provisions of the *Local Government (Manufactured Home Estates) Transitional Regulation 1993*.

## **Excluded land (ie. locations where manufactured home estates are prohibited by the Housing SEPP)**

### **Schedule 6 Categories of excluded land**

- 2 Land which the council, after taking into account the principles set out in the Floodplain Development Manual published by the New South Wales Government in December 1986, considers is unsuitable for residential development because of flooding.
- 6 Land which under any environmental planning instrument is within an area or zone identified in that instrument by the description—
  - open space, other than open space (private recreation)
  - environmental protection
  - scenic protection
  - rural (where the land is not adjacent to or adjoining land zoned for urban use).
- 7 Land that is within the following coastal local government areas, being land that is not zoned or reserved under an environmental planning instrument for urban use and is not identified as suitable for urban development under the Coastal Urban Planning Strategies or Residential Strategies approved for the time being by the Director— Nambucca.

## **Nambucca Local Environmental Plan 2010**

- Accessible on the NSW Government legislation website at:  
<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0401>

### **Zone RU1 Primary Production**

#### **1 Objectives of zone**

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

#### **2 Permitted without consent**

Environmental protection works; Extensive agriculture; Forestry; Home-based child care; Home occupations; Horticulture.

#### **3 Permitted with consent**

Aquaculture; Cellar door premises; Dual occupancies; Dwelling houses; Eco-tourist facilities; Extractive industries; Farm buildings; Heavy industries; Home industries; Intensive livestock agriculture; Intensive plant agriculture; Landscaping material supplies; Neighbourhood shops; Open cut mining; Plant nurseries; Residential accommodation; Roads; Roadside stalls; Rural supplies; Rural workers' dwellings; Secondary dwellings; Shop top housing; Tourist and visitor accommodation; Any other development not specified in item 2 or 4.

#### **4 Prohibited**

Amusement centres; Attached dwellings; Backpackers' accommodation; Boarding houses; Camping grounds; **Caravan parks**; Cemeteries; Centre-based child care facilities; Co-living housing; Commercial premises; Correctional centres; Crematoria; Entertainment facilities; Exhibition homes; Exhibition villages; Function centres; Group homes; Health services facilities; Heavy industrial storage establishments; Heliports; Hostels; Hotel or motel accommodation; Independent living units; Industrial retail outlets; Industrial training facilities; Industries; Mortuaries; **Multi dwelling housing**; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Semi-detached dwellings; Seniors housing; Service stations; Serviced apartments; Sex services premises; Storage premises; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

### **Zone RU2 Rural Landscape**

#### **1 Objectives of zone**

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To control development which could have an adverse impact on the Council's urban water supply.

## **2 Permitted without consent**

Environmental protection works; Extensive agriculture; Forestry; Home-based child care; Home occupations; Horticulture.

## **3 Permitted with consent**

Aquaculture; Cellar door premises; Dual occupancies; Dwelling houses; Eco-tourist facilities; Farm buildings; Group homes; Heavy industries; Home industries; Landscape material supplies; Neighbourhood shops; Plant nurseries; Residential accommodation; Roads; Roadside stalls; Rural supplies; Secondary dwellings; Tourist and visitor accommodation; Any other development not specified in item 2 or 4.

## **4 Prohibited**

Amusement centres; Attached dwellings; Backpackers' accommodation; Boarding houses; Centre-based child care facilities; Co-living housing; Commercial premises; Entertainment facilities; Exhibition homes; Exhibition villages; Heavy industrial storage establishments; Health services facilities; Heliports; Hostels; Hotel or motel accommodation; Independent living units; Industrial retail outlets; Industrial training facilities; Industries; **Multi dwelling housing**; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Rural workers' dwellings; Semi-detached dwellings; Seniors housing; Service stations; Serviced apartments; Sex services premises; Shop top housing; Storage premises; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

### **Nambucca Development Control Plan**

- The DCP provides specific detail on the requirements for development, such as how many car parking spaces are needed, landscaping, street setbacks and so on.
- The DCP is available on the Nambucca Council website at:  
[https://www.nambucca.nsw.gov.au/cp\\_themes/default/page.asp?p=DOC-OSF-44-28-00](https://www.nambucca.nsw.gov.au/cp_themes/default/page.asp?p=DOC-OSF-44-28-00)
- Examples from the DCP include the following:

**A4.9 WATERCOURSES** Natural watercourses, drainage channels and riparian zones are to be **retained and preserved in their natural state** wherever possible, to ensure that their ecological function is not compromised. Recommended buffer zones are stipulated in Part F of this DCP.

**D2.1 EROSION AND SEDIMENT CONTROL PLAN (ESCP)** D2.1.1 General Development applications requiring disturbance to soil shall be accompanied by an Erosion and Sediment

Control Plan (ESCP). Nambucca Shire Council retains the discretion to decide when an erosion and sediment control plan is required.

## **H2.4 SCOTTS HEAD**

Outlines the characteristics of the village (see excerpt below). if you think the development does not meet the character or objectives, state this and why you think this is so in your submission.

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### **H2.4 SCOTTS HEAD**

#### **H2.4.1 Vision**

*"Strengthen and build on the existing coastal village character of Scotts Head as a vibrant, prosperous community."*

#### **H2.4.2 Character**

The desired future character of any development for Scotts Head should:

- support and enhance its seaside village character and seek to maintain its high quality natural environment when designing new residential areas;
- encourage innovative, environmentally sustainable housing styles; and
- encourage the development of a mixed use residential/commercial precinct within the commercial zone to provide a vibrant village core.

#### **H2.4.3 Objectives**

The general objectives for development in Scotts Head are to:

- promote residential development, which is of a high design standard and is sensitive to, reflects and enhances the special physical character of Scotts Head;
- encourage the development of a mixed residential/commercial village centre;
- optimise the retention of views to and from water bodies, foreshore reserves, public areas, streets and residential allotments; and
- maximise the aesthetic character of the residential environment and be consistent with the natural beauty of the area.

#### **H2.4.4 Building styles**

Beach house style or 'eco friendly' architecturally designed houses, should be encouraged in Scotts Head.

Within the commercial zone, mixed use building forms are encouraged having ground floor commercial or retail uses with residential or tourist uses above.

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### **NSW Environmental Planning and Assessment Act 1979**

- This Act establishes the strategic planning framework (state environmental planning policies and local environmental plans) and sets out the standard matters to be considered in deciding whether to approve a development application.

#### **4.15 Evaluation**

- (1) **Matters for consideration—general** In determining a development application, a consent authority is to **take into consideration such of the following matters as are of relevance to the development** the subject of the development application—
- (a) the provisions of—
- (i) any environmental planning instrument (eg. *the Nambucca LEP, Housing SEPP, etc*), and
  - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
  - (iii) any development control plan, and
  - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),
  - (v) (Repealed)
- that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

#### **4.14 Consultation and development consent—certain bush fire prone land**

- (1) **Development consent cannot be granted** for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) **on bush fire prone land** (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3(2)) unless the consent authority—
- (a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection* prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (***the relevant specifications and requirements***), or

(b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

### **NSW Biodiversity Conservation Act 2016**

- This Act requires proponents to demonstrate that impacts to biodiversity have been avoided and minimised as the first priority. Offsets or compensation for residual impacts should only be considered after all steps are taken to avoid and minimise impacts.
- This Act 'prevails' over the *Environmental Planning and Assessment Act 1979*, meaning that even if a development is allowed under the local environmental plan (LEP) it must first satisfy the need to avoid impacts to biodiversity before it can be approved.

#### **6.4 Biodiversity conservation offsets under scheme**

- (1) For the purposes of the biodiversity offsets scheme, the biodiversity conservation measures to offset or compensate for impacts on biodiversity values after any steps taken to avoid or minimise those impacts are as follows...

#### **4. WHAT HAPPENS IN A DEVELOPMENT CONTROL MATTER?**

You can follow the Development Control Process by having a look on the Council website.

[https://nambucca.nsw.gov.au/cp\\_themes/default/page.asp?p=DOC-JJF-72-66-37](https://nambucca.nsw.gov.au/cp_themes/default/page.asp?p=DOC-JJF-72-66-37)

The council planner uses this process to prepare an assessment report for the Northern Region Planning Panel. Your job is to influence the planner in writing that report by providing a range of detailed local matters that the planner might not be familiar with.

5. EXAMPLE OF DEVELOPMENT ASSESSED BY JOINT REGIONAL PLANNING PANEL

Filter by

Planning Panel

Northern Regional Plannin

Local government

Nambucca Shire Council

Status

Determined

Type of Matter

DA

Panel Reference Number

Search

Project Address

Address

Apply filters

Reset filters

Sydney and Regional Planning Panels

Please contact council for all enquiries until panel meeting is scheduled

Visit [Rezoning reviews](#) to search for Rezoning Reviews and Planning Proposals

Showing: 9 results

DA

PPS-2018NTH017

Determined

Northern Regional Planning Panel

Six Lot Subdivision

Lot 2 DP 1173066, 81 Red Ash Road, Valla

DA

PPS-2015NTH019

Determined

Northern Regional Planning Panel

Water Treatment Facility

Lot 2 DP 538542, 20 Gumma Road, Macksville

DA

PPS-2015NTH012

Determined

Northern Regional Planning Panel

132 Lot Residential Subdivision

Lot 1 DP 1119830, Bellwood Road, Nambucca Heads

16

## 6. WHAT A PLANNER WRITES IN AN ASSESSMENT REPORT AND WHY

A planner usually structures their report by section 4.16 in the Environment Planning and Assessment Act. The planner needs to consider:

- Any EPI or draft EPI (*so the Nambucca Heads LEP and the Housing SEPP*)
- Any DCP, PA and the Regulations
- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- the suitability of the site for the development,
- any submissions made in accordance with this Act or the regulations (*that's you!*)
- the public interest.

You should also consider that just because a proposed development will have a negative impact on say the natural environment it will be rejected. The planner might consider that the negative impacts aren't serious and/or can be moderated by a condition of consent (eg there has to be a buffer zone between development activity a particular part of the site with high environmental values).

Now often the planner might be new to the area and not have a lot of local knowledge about a particular site. Your job is to provide the key information that the planner can use about writing about each of the above bullet points - See how it says "any submissions made in accordance with the Act". You could even make the planners job easier by using the same headings.



## 7. HOUSING SEPP – WHAT IT MEANS AND HOW IT HAS BEEN USED TO REFUSE APPLICATIONS

In the legal hierarchy, SEPP's overrule what is an LEP. So the SEPP is very important – ie Part 8 of the Housing SEPP – Manufactured Home Estates.

Appeals to the Land and Environment Court (where a developer has appealed against a refusal from a Local Council) have been rejected on the basis of access to services and nature of the surrounding land<sup>1</sup>.

In the case Oxford St Holdings versus Mid Coast Council Commissioner Dickson noted that:

*I am satisfied that the uncertainty of the convenience store, in combination with the resident's reliance on public or community bus access to Forster, if private transport is not available, leads to a conclusion that services within the meaning of cl 9(1)(c) are not 'reasonably accessible' to residents of the manufactured home estate. Even if private transport is considered, I am not satisfied that a twenty minute round trip (on Mr Maberley-Smith's evidence) meets the requirement of reasonably accessible*

**Note that it is now clause 125 (1) c – in the Housing SEPP**

In the case TMT Devco Pty Limited v Cessnock City Council, Commissioner Brown dismissed the appeal because they concluded that the land did not meet the requirements of the SEPP because it was rural land not adjacent to adjoining land zoned for urban use.

So these are clearly two possible issues that you could consider in your submissions.

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<sup>1</sup> Details of these cases are available from Raymond Fowke.