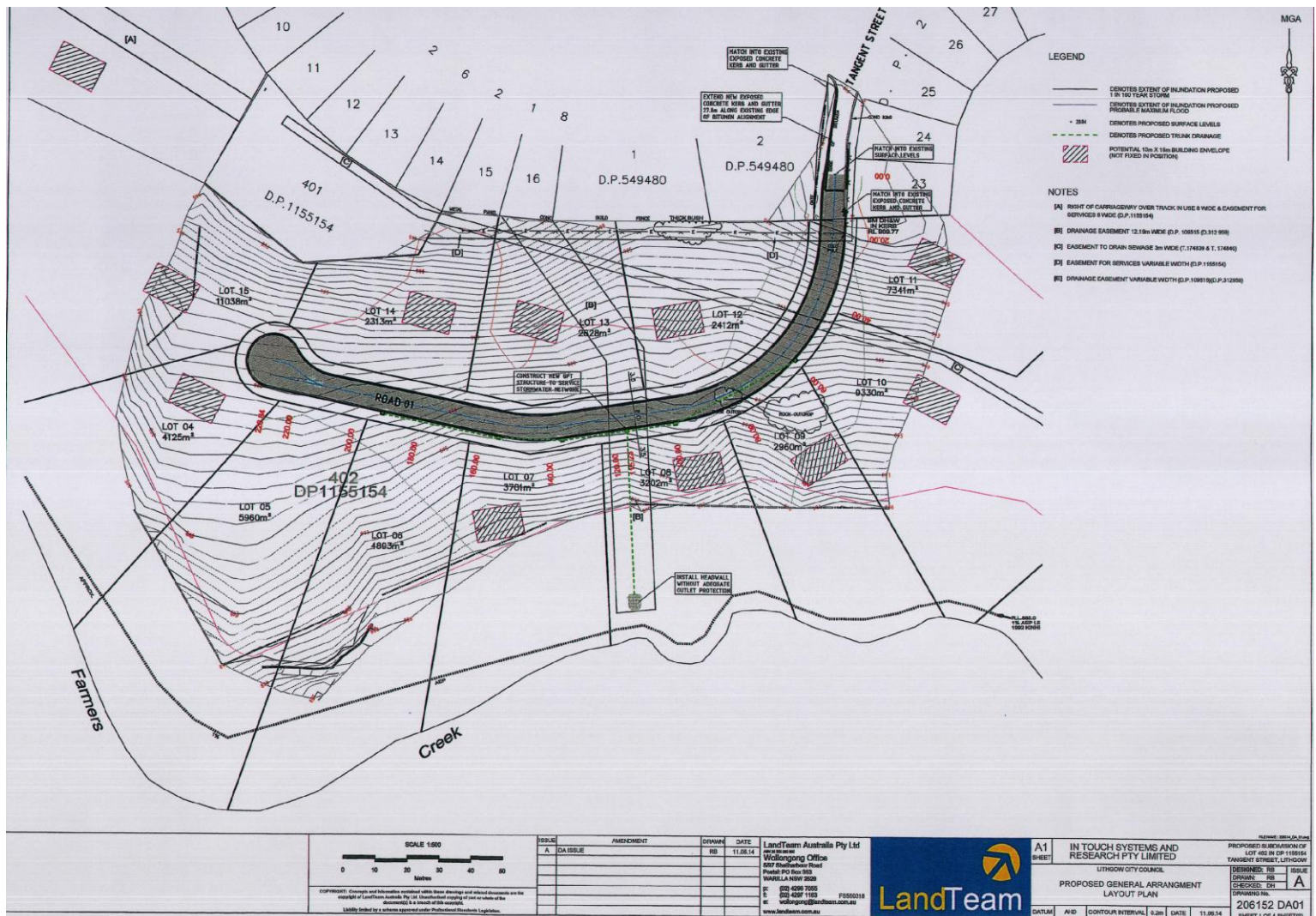


DEVELOPMENT ASSESSMENT REPORT - DA248/14 - PROPOSED SUBDIVISION 1 LOT INTO 12, TWEED ROAD LITHGOW NSW 2790

1. PROPOSAL

Council is in receipt of a Development Application DA248/14 from John Colquhoun-Thomson for Intouch Systems & Research Pty Ltd for a 1 lot into 12 lot subdivision on land known as Lot 402 DP 1155154, Tweed Road Lithgow NSW 2790 as shown below:



The proposal is for 12 residential allotments with access from a new road extension to Tangent Street, Lithgow with the following lot sizes:

- Lot 4 - 4125 m²
- Lot 5 - 5960 m²
- Lot 6 - 4893 m²
- Lot 7 - 3701 m²
- Lot 8 - 3202 m²
- Lot 9 - 2960 m²

- Lot 10 - 9330 m²
- Lot 11 - 7341 m²
- Lot 12 - 2412 m²
- Lot 13 - 2628 m²
- Lot 14 - 2313 m²
- Lot 15 - 11038 m²

2. SUMMARY

To assess and recommend determination of DA248/14, with the recommendation being for refusal. Council has requested the applicant to submit the following additional information:

1. Provide an indicative sewerage design showing:
Longitudinal sections along the centreline of all sewer mains at scales of 1:500 horizontal and 1:100 vertical. The following details should be included on longitudinal sections for each main:
 - (i) Invert, natural surface, and proposed ground surface levels;
 - (ii) Depth from invert to proposed ground surface level;
 - (iii) Chainage along pipe;
 - (iv) Pipe gradient, class, diameter, and material;
 - (v) Sewer main and manhole numbers;
 - (vi) Grades should be shown as percentage figures to two decimal places (e.g. 1.25%).
2. Stormwater drainage Line B design information. This includes the longitudinal grade of the pipeline and the design velocity of the stormwater drainage. Council guidelines state that pipes must have a minimum grade of 1% to permit self-cleansing and that flow rates must be a minimum of 0.6m/s and a maximum of 6m/s to prevent cavitation and scouring.
3. Similarly, it is also stated that concrete bulkheads must be constructed for all drainage lines exceeding a grade of 16% at intervals not exceeding 15m in accordance with Council's standard drawing EN 1025. If there are any lines exceeding this maximum grade, this design feature must be noted.

The application was lodged on 28 October 2014 and over the past 6 months Council has written to the applicant on a number of occasions (letters dated 17/11/14 and 20/2/15) seeking to address these issues and these matters are yet to be addressed.

As the requested information has not been provided, the applicant has not been able to demonstrate the development would not have an adverse impact on the environment. It is recommended that the development is refused.

3. LOCATION OF THE PROPOSAL

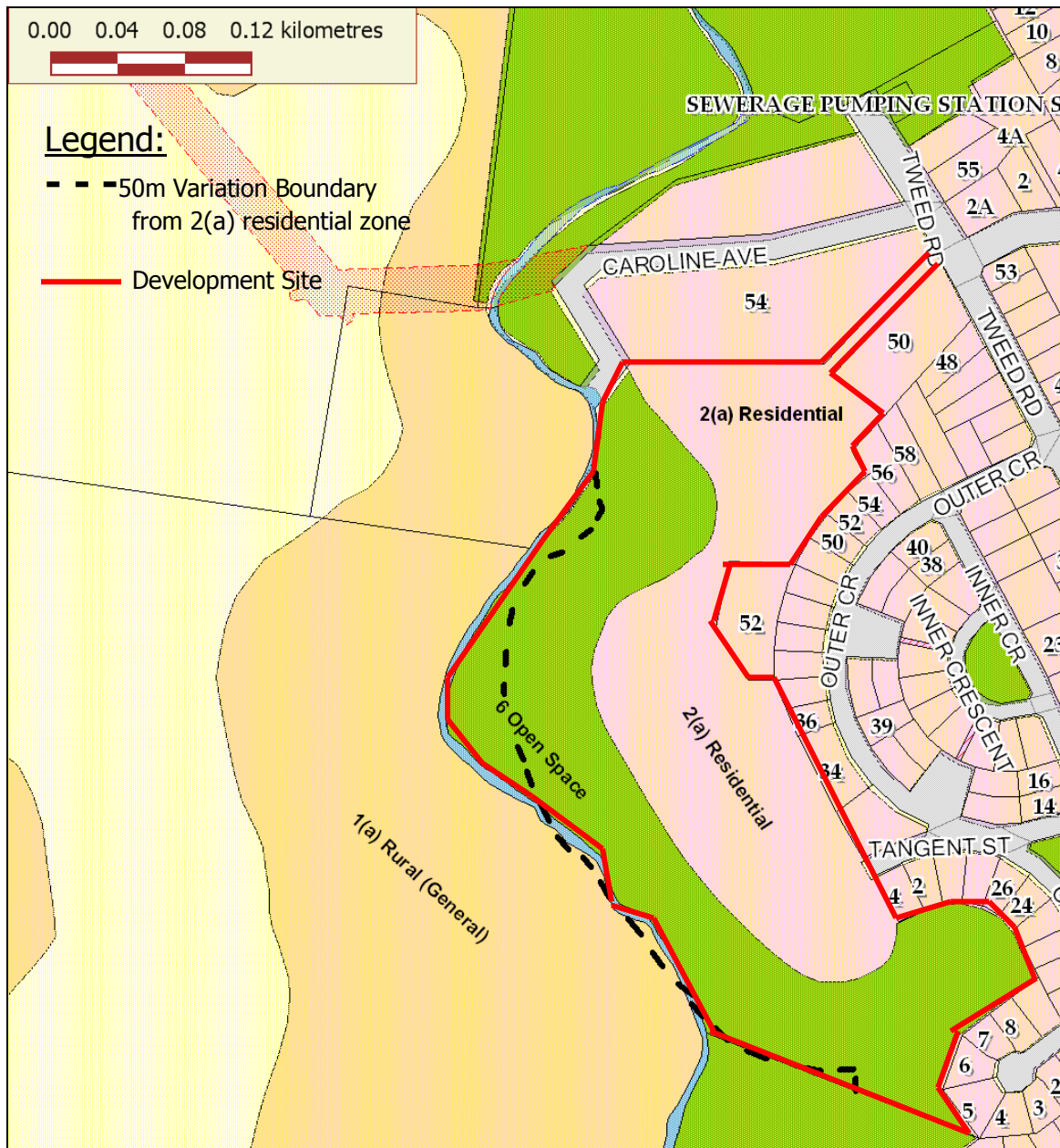
Legal Description : Lot 402 DP 1155154
Property Address : TWEED ROAD LITHGOW NSW 2790

4. ZONING: The land is zoned 2(a) Residential and 6 Open Space under Lithgow City Local Environmental Plan 1994.

5. PERMISSIBILITY: The application was lodged prior to the adoption of Lithgow Local Environmental Plan 2014 and therefore the application is to be assessed under Lithgow City Local Environmental Plan 1994 and having regard to Draft Lithgow Local Environmental Plan 2013 in accordance with the *Environmental Planning & Assessment Act 1979*. See Part 5.3.2 below.

The development being a subdivision is permissible under Lithgow City Council's Local Environmental Plan 1994 zone 2(a), subject to development consent. The land is also zoned 6 Open Space, however Clause 31- Minor Variation to Zoning Boundaries is being relied upon to allow for the subdivision permissibility within this zone.

Below is the LEP1994 zoning map for Lot 402 DP1155154:



5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

Council's Policy 14.1 Refusal of Development Applications applies to this determination, with the following clause of the policy that applies:

- 3.1 Situations where Development Application cannot be Recommended**
 Should refusal of a development application be proposed or otherwise necessary the following circumstances and determination pathway shall apply:

4. *Where the applicant has been requested in writing on at least 2 occasions to provide additional information to allow the application to be assessed and has failed to provide such information.*

Application may be determined by – Group Manager- Environment & Development,
Development Manager

However, this application has been called in pursuant to Policy 7.7 "Calling in of Applications by Councillors" Item 3 that states:

Should written notice, signed by a minimum of one (1) Councillor, be received by the General Manager prior to determination of a development application or development application/construction certificate, the application shall not be determined under delegated authority but shall be:

- *Reported to the next Ordinary Meeting for the information of Council that the development application or development application/construction certificate has been "called in"; and*
- *Reported to an Ordinary Meeting of Council for determination.*

This application was reported under the first dot point on 15 December 2014 with the following resolved:

MIN NO 14-489 THAT:

- 1. The calling in of Development Application No 248/14 be noted.*
- 2. An onsite meeting be held.*

It is considered that given Policy 7.7 and the above resolution, the application is required to be determined at an Ordinary Meeting of Council and not determined as stated in Policy 14.1 by the Group Manager Environment & Development or the Development Manager.

It is noted that an onsite meeting has not been held as the final documentation to allow assessment of the application was not provided.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

Under the Water Management Act 2000-Section 305, an Application for certificate of compliance must be submitted to Council. This Act states:

- (1) A person may apply to a water supply authority for a certificate of compliance for development carried out, or proposed to be carried out, within the water supply authority's area.*
- (2) An application must be accompanied by such information as the regulations may prescribe.*

Therefore Councils Section 64 contributions for water and sewer connections will be required to be paid prior to the release of the Subdivision Certificate if approved.

5.3 LEGAL IMPLICATIONS

Conveyancing Act 1919

Under this Act, if the application was approved, easements and restrictions to the use of each allotment would be implemented prior to subdivision release as part of the 88B instrument. These would be required by Council and Water NSW and to comply with the provisions of this Act.

Environmental Protection and Biodiversity Conservation Act 1991

No federally listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this act on the proposed development.

Fisheries Management Act 1994

There are no legal implications of this Act on the proposed development.

Heritage Act 1977

There are no legal implications of this Act on the proposed development.

Local Government Act 1993

If this application is approved, the applicant must obtain a written Section 68 application for connection to Council's water and sewerage supply. This must be lodged and approved prior to commencement of any work on site and shall be at full cost to the applicant.

The Section 68 application requires the submission of all detailed engineering drawings/design, specifications and any applicably supporting information for the proposed works. All conditions of the Section 68 Approval must be complied with prior to the release of the Subdivision Certificate.

Mining Act 1992

There are no legal implications of this Act on the proposed development.

National Parks and Wildlife Act 1974

There are no legal implications of this Act on the proposed development.

Native Vegetation Act 2003

No native vegetation is required to be cleared as a result of this application. Accordingly, there are no legal implications of this Act on the proposed development.

Petroleum (Onshore) Act 1991

There are no legal implications of this Act on the proposed development.

Protection of the Environment Operations Act 1997

There are no legal implications of this Act on the proposed development.

Roads Act 1993

The development includes the creation of a public road which would be dedicated to Council if approved. It is considered that the proposal would comply with the Act subject to conditions of consent if determination is for approval.

Threatened Species Conservation Act 1995

No state listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this Act on the proposed development.

Water Management Act 2000

A Certificate of Compliance is required under this Act prior to the release of any subdivision certificate, if approved. See previous comments under "Financial Implications".

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 79C of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

Lithgow City Local Environmental Plan 1994

The application was lodged prior to the gazettal of the Lithgow Local Environmental Plan 2014 and therefore the application is to be assessed under Lithgow City local Environmental Plan 1994 as below:

LEP 1994 – Compliance Check		
	Clause	Compliance
9	2(a) zoning table	Not known
9	6 Open Space	No
21	Notification of certain development and development in Residential and Village Zones	Yes
31	Minor Variation to zoning boundaries	Not known
41	Development within the vicinity of heritage items	Yes

Comment: The proposal is generally in accordance with the Objectives of the Zone 2(a) Residential, however it is unclear due to lack of information if the development will create unreasonable demands for the provision or extension of public services i.e. sewer and stormwater. In relation to Zone 6 Open Space the development proposes residential use and this does not meet the Objectives of the zone. However Clause 31 is being relied on by the applicant to modify the zoning boundary to allow for the subdivision.

Clause 31 provides for the subdivision to be undertaken within 50m of the adjoining boundary zone being 2(a) Residential. The Council must be satisfied that 'the carrying out of the development is desirable due to planning, design, ownership, servicing, or similar requirements relating to the optimum development of land to which this Plan applies or for minimising land degradation'. However, given insufficient information has been provided to assess if the land is adequate for this subdivision, an assessment under this Clause cannot be undertaken.

The application has been notified to adjoining landowners in accordance with Clause 21 of the LEP. It is also expected that this development would not have an effect on the heritage listing of Braemar House located off Tweed Road. It is considered that although the application generally complies with some provisions of the LEP a full assessment cannot be adequately completed.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

SEPP(Sydney Drinking Water Catchment) 2011 – Compliance Check		
	Clause	Compliance
10	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes
11	Development that needs concurrence of the Chief Executive	Yes

Comment: The application is required to be assessed under this SEPP with a referral sent to Water NSW as a 'concurrence authority'. As a result the application is supported by Water NSW given it will have a neutral or beneficial effect on water quality subject to conditions of consent.

State Environmental Planning Policy 44 – Koala Habitat Protection

SEPP 44 is applicable to site given that it exceeds 1ha in size and is located within the Lithgow Local Government Area to which the SEPP applies.

Part 2 of the SEPP requires Council to consider whether the land the subject of the application retains potential and subsequently core koala habitat.

Comment:

Given that no trees are to be removed as part of the development, and the section of the subject site relevant to the application is devoid of native vegetation it is considered unnecessary to proceed further with SEPP 44 assessment.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

The application was lodged prior to the gazettal of Lithgow Local Environmental Plan 2014 and therefore the application is to be assessed under Lithgow City Local Environmental Plan 1994. However consideration must be given to Draft Lithgow Local Environmental Plan 2013 as below:

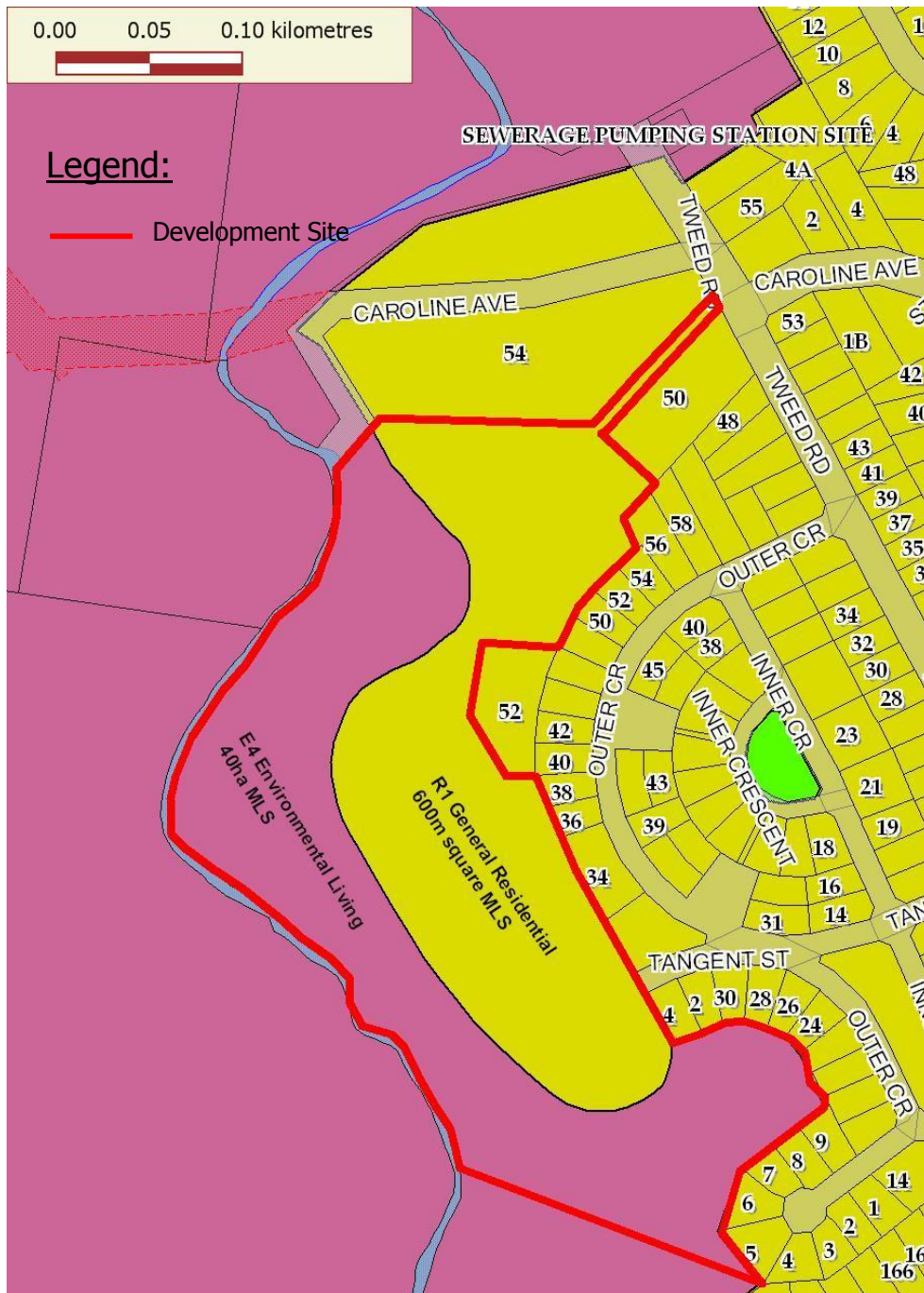
LEP 2014 – Compliance Check		
	Clause	Compliance
Part 2	Land Use Table- R1 General residential	Not known
Part 2	Land Use Table- E4 Environmental Living	Not known
4.1	Minimum subdivision lot size	No
5.10	Heritage Conservation	Yes
7.1	Earthworks	Yes
7.2	Flood planning	Yes
7.3	Stormwater Management	Not known
7.6	Riparian Land and watercourses	Yes
7.10	Essential Services	Not known

Comment: The proposed subdivision will generally meet the objectives of zone R1 General Residential and E4 Environmental Living; however it is unclear if adequate facilities without unreasonable demands on services are adequate as sufficient information has not been supplied for assessment.

The subdivision does not meet the requirements of Clause 4.1 'Minimum subdivision lot size' for part of the subdivision as the lots require a minimum lot size of 40ha. The remainder of the lot is a minimum lot size of 600m² which is met for this development shown in mapping below. However this clause is not being complied with completely.

The development is within proximity of Braemar House, however given it is for a subdivision only and is not affecting streetscape within its vicinity, the development adequately complies with draft Clause 5.10.

Earthworks will be undertaken on the land as a result of this development with construction of roads and installation of services. Conditions of consent, if approved, would ensure that any fill brought to site was suitable and that adequate sediment and erosion controls were undertaken.



It is considered that given the development at this stage is for subdivision only that the flood behaviour as a result of this application would be unchanged. All allotments have adequate space to erect a dwelling outside of the flood liable land and is considered to comply with draft Clause 7.1. It is unclear if the development can comply with draft Clause 7.2 for Stormwater Management as insufficient information has been provided for assessment by Council's Engineers.

The development has been assessed by NSW Office of Water in relation to the proximity to the watercourse with conditions of consent provided if determination is for approval. Given the development is for subdivision it is not expected that the development will affect the riparian land or watercourses given the building envelope locations and appropriate conditions of consent, if approved.

In relation to draft Clause 7.8 Essential Services, the development will be able to adequately supply water, electricity and vehicular access; however assessment cannot determine if it adequately provides for sewer or stormwater drainage.

The development therefore does not comply with the provisions of the draft LEP2013 and cannot be supported in this instance.

5.3.3 Any Development Control Plan

South Bowenfels Development Control Plan (DCP)

South Bowenfels DCP – Compliance Check	
Clause	Compliance
1.4 Aims & Objectives of the Plan	Yes
5.1 Lot layout & Size	No
5.2 Street Design	Yes
5.3 Utility Services	Not known
5.4 Soil and Stormwater Management	Not known
5.5 Public Open Space	Yes
5.6 Heritage	Yes
5.7 Hazards/ Environmental Constraints	Yes
5.8 Benching/Cut & Fill Objectives	Yes
5.10 Protection of Watercourses and Riparian Corridors	Yes

Comment: The development does not meet the requirements for minimum road frontage or minimum depth, however the development does meet the requirements of an average lot size of greater than 700m² as each lot is over 2000m². Given the constraints of the site, the frontages and depths are being compensated for by larger allotment sizes and this variation is considered acceptable.

The development will comply with Council's street design and guidelines for roads, pedestrian and turning movements. In relation to utility services, the applicant has provided adequate information to ascertain that water, electricity and telecommunications can be provided for this development. However in relation to sewer and stormwater design the information has not been supplied to adequately assess these provisions. No public open space has been proposed for this subdivision; however no open space plan or study has been adopted by Council to indicate requirements. There is public active open space less than 500m walking distance away and a conservation area should be provided around the riparian corridor if approved. The development will comply with open space requirements.

There are no known aboriginal heritage items or relics as per a AHIMS Web Services search. The adjoining Braemer House is within the vicinity of the development, however it is considered the proposal will comply with the provisions of clause 5.6. The land is known to be flood prone and building envelopes outside that area have been provided. The land is not contaminated as confirmed by a report by Envirowest Consulting. The steepness of the site will be controlled through further development and conditions of consent if approved.

The development will require cut and fill which will be determined at Construction Certificate stage. It is considered that all fill will be required to meet Council requirements and be maintained adequately onsite. If the development was approved requirements would be imposed to ensure that the riparian corridors were protected as per compliance with Clause 5.10.

There are some non-compliances with the DCP and some aspects not available to be addressed and therefore the application cannot be fully assessed.

5.3.4 Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

No.

5.3.5 Any matters prescribed by the regulations that apply to the land

NA

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Council has requested the applicant to submit the following additional information:

1. Provide an indicative sewerage design showing:
Longitudinal sections along the centreline of all sewer mains at scales of 1:500 horizontal and 1:100 vertical. The following details should be included on longitudinal sections for each main:
 - (iii) Invert, natural surface, and proposed ground surface levels;
 - (iv) Depth from invert to proposed ground surface level;
 - (iii) Chainage along pipe;
 - (iv) Pipe gradient, class, diameter, and material;
 - (v) Sewer main and manhole numbers;
 - (vi) Grades should be shown as percentage figures to two decimal places (e.g. 1.25%).
2. Stormwater drainage Line B design information. This includes the longitudinal grade of the pipeline and the design velocity of the stormwater drainage. Council guidelines state that pipes must have a minimum grade of 1% to permit self-cleansing and that flow rates must be a minimum of 0.6m/s and a maximum of 6m/s to prevent cavitation and scouring.
3. Similarly, it is also stated that concrete bulkheads must be constructed for all drainage lines exceeding a grade of 16% at intervals not exceeding 15m in accordance with Council's standard drawing EN 1025. (If there are any lines exceeding this maximum grade, this design feature must be noted.

Over the past 6 months Council has written to the applicant on a number of occasions seeking to address these issues and these matters are yet to be addressed.

As the requested information has not been provided, the applicant has not been able to demonstrate the development would not have impacts including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. Therefore a final assessment could not be undertaken and the development can only be determined by way of refusal.

5.3.7 The Suitability of the site for the development

The development proposes the subdivision of land, however insufficient information was supplied for the assessment and Council is unable to determine if the development is suitable for the site.

5.3.8 Any submissions made in accordance with this Act or the Regulations

The proposal was sent to Water NSW, Council's Engineers, Council's Water & Sewer Officer and NSW Office of Water for commenting with NSW Office of Water and Water NSW providing no objection subject to conditions of consent. A full assessment could not be undertaken by Council's Engineers or Council's Water & Sewer Officer given additional details were not provided. The proposal was also sent to adjoining landowners, placed on public display in Councils Administration Building and advertised for a period of 30 days with seven (7) submissions received as summarised below:

Public Submissions

The following concerns have been raised in submissions:

- The types of developments permissible on the allotments are unknown which could potentially have impacts on views, natural light and privacy of existing residents. It could be proposed or restricted i.e. only single story houses and no large vegetation, to minimise impacts on these surrounding neighbours;
- The proposal will be steep for road access and for building, but Lots 9, 8 & 7 appear to extend into the riparian zone and to the flood plain of the river. Photos are submitted (attached) showing the river in a flood and it is believed that these lots would be compromised during this time. Erosion markings from the last flood are still evident today;
- The previous application accepted a soil survey report that stated the old 'Factory Dump Site' did not present any environmental problem, however this does not seem a rigorous enough assessment as the quarry area still presents a potential problem in that it was covered chitter and leaves potential for leaching of contaminated into the water course;
- Pleased to see drainage through lot 13 however there is a current Council drain at the border of Lot 1 & 2 Outer Crescent that drains into the paddock and the drainage has not been addressed;
- Issues are raised with the potential pollution to Farmers Creek from roadwork's, stormwater and the old quarry site;
- That the area will lose their quiet streets due to increased motor vehicles travelling through the area;
- That the narrowness of Tangent Street means it is nearly completely unpassable when two vehicles are parked either side of the street and with a crest of hill, curves that have blind spots and increased traffic, the current issues and safety concerns will increased;

- Machinery used to create the subdivision would generate a lot of dust and venture into adjoining properties which would affect cleaning, washing and maintaining those properties. This could also impact on health of families in the area especially if ongoing works for years of months;
- Given the economic climate of the town and recent job losses and the ongoing issues with the industry declines and the number of vacant land and houses already existing in the area, this application is not suitable or needed;
- The noise generated by heavy machinery used would be severely affecting pets and neighbouring animals and the clearing would also reduce the number of animals in this area;
- The drop off for Tangent Street is not suitable and traffic would not allow owners to have any parking at the front existing dwellings on this section of road. Other applications for subdivisions have been refused for the same reasons before;
- The proposed access from Tangent Street is not acceptable as stated in Environmental & Services Report printed 19/12/05 (DA125/05) in relation to the previous DA submitted to Council the report states:

'The original intention to utilise the already existing Tangent Street was discounted due to the steepness of the land directly at the end of Tangent Street... In respect of Tangent Street, it was thought preferable to not use this access due to Engineering considerations and considerations for adjoining owners'.

It is considered that Council should agree with this previous report as nothing has changed this and it would have disastrous effects for families if approved. If the road is widened here it would bring the road closer to existing houses.

- That the proposal may effect existing wildlife of kangaroos, wombats, ring-tail possum, echidnas, Blue Tonged Lizard, various snakes and turtles, birds, Purple Copper butterfly and Eastern Bentwing Bat would all be greatly affected by this subdivision.

Comment:

The area is zoned residential and therefore the types of development would be required to be permissible within this zoning. The land is suitably zoned to allow for a subdivision for residential purposes regardless of the current economic climate. All development on each allotment will have a merit based assessment in relation to views, overshadowing and privacy issues of the surrounding area as is not to be addressed as part of the subdivision.

The flood study provides levels for the area and building envelopes have been proposed on lots closer to the river which will alleviate any flood inundation concerns. The road was assessed by Council officers and was considered acceptable with the proposed grades. The development would have a number of conditions of consent if approved from Water NSW, NSW Office of Water and Council to ensure that during works no pollution (including sediments) are entering the river to reduce any impacts in this regard.

There is no evidence of leaching from previous activities on the land and a contamination report has confirmed the land is suitable for residential development.

Drainage issues have not been fully addressed by the applicant and therefore Council cannot complete assessment or alleviate concerns raised on drainage in this instance.

Traffic concerns will be addressed by Council officers as part of the full assessment. No recommendations have been provided given the additional information required for this development. An increase of 12 lots within the area is not considered a major increase in traffic to the residential area. However if the development was approved, Council may require upgrades to the existing street for access from Tangent Street if approved.

For the road works if the application were approved the applicant would be required to undertake work in a manner that reduces dust pollution at all times. The timing of construction is irrelevant as all works would still be subject to conditions of consent if approved. Construction noise would be limited to daylight hours and is not expected to be of major impact to flora or fauna in the area given it is close to existing residential area. Majority of the land is devoid of vegetation with mainly overgrown grasses and it is not expected that the development of this land would significantly impact on flora and fauna of the area. Previous reports cannot be relied on for the assessment of this application in relation to road design and traffic volumes as they do not reflect the current application or design of subdivision.

5.3.9 The public interest

It would not be in the public interest to allow a development without adequate provisions of services. As mentioned, these issues remain unresolved by the applicant.

6. DISCUSSION AND CONCLUSIONS

Council has requested the applicant to submit the following additional information:

1. Provide an indicative sewerage design showing:
Longitudinal sections along the centreline of all sewer mains at scales of 1:500 horizontal and 1:100 vertical. The following details should be included on longitudinal sections for each main:
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3. Similarly, it is also stated that concrete bulkheads must be constructed for all drainage lines exceeding a grade of 16% at intervals not exceeding 15m in accordance with Council's standard drawing EN 1025. If there are any lines exceeding this maximum grade, this design feature must be noted.

Over the past 6 months Council has written to the applicant on a number of occasions seeking to address these issues and these matters are yet to be addressed.

As the requested information has not been provided, the applicant has not been able to demonstrate the development would not have an adverse impact on the environment, it is recommended that the development is refused.

7. ATTACHMENTS

Nil.

8. RECOMMENDATION

THAT development application DA248/14be REFUSED for the following reasons:

1. Insufficient details were submitted for Council to assess the development under the *Environmental Planning and Assessment Act 1979, Section 79C Evaluation*, which states:

(1) Matters for consideration—general

- (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,*

In this circumstance Council is unable to determine the environmental impacts and suitability of the site for the proposed development.