

Memo

Department

To: Paula Moretti – Principal Planner, Strategic & Place Planning

Cc:

From: Brendan Smith - Team Leader, Biodiversity & Planning

Date: 26 October 2022

Subject: Planning Proposal Referral (PEX2022/001)
10-12 Boondah Rd, Warriewood
Biodiversity Comments

Record Number: 2022/476398

The purpose of this memo is to provide comments on the Planning Proposal for land at 10-12 Boondah Rd Warriewood. It is noted that a preliminary Biodiversity Certification (Biocertification) application for a portion of the site was made to the Department of Planning & Environment in April 2022, and a revised Biodiversity Development Certification Report (BCAR) has recently been submitted to Council which has sought to address comments provided by the NSW Department of Planning and Environment (DPE).

The Department recommends early and ongoing consultation with both the local Council and DPE when developing an application for biodiversity certification. Recent correspondence from the applicant's ecologist (Travers 12 October 2022) has indicated that formal consultation with Council on the Biodiversity Certification has commenced.

Therefore, while the revised Biodiversity Certification Assessment Report is relevant to this review, the following comments focus on the Planning Proposal as presented.

In preparing these comments I have referred to the Revised Site Plan (Buchan 5 October 2022), Travers Ecology Boondah Rd Warriewood memo to Council 12 October 2022, Calibre - Stormwater and Flooding Memo - 14 October 2022, Preliminary Biodiversity Certification Application Form (Plunkett April 2022), revised Biodiversity Certification Assessment Report (BCAR) (Travers Bushfire and Ecology 16 September 2022), revised Conservation Measures Implementation Plan (Travers Bushfire and Ecology 16 September 2022), Planning Proposal Report (SJB Planning June 2022), Bush Fire Strategic Study (Travers Bushfire and Ecology 8 June 2022), and the pre-lodgement information from July 2021.

Biodiversity Planning Controls

The following biodiversity planning controls, legislation and guidelines are applicable to the subject site, and Council has made comments in relation to the Planning Proposal based on the relevant requirements:

- Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999)
- NSW Biodiversity Conservation Act 2016 (BC Act 2016) and associated regulations including the Biodiversity Conservation Regulation 2017
- State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 2 Coastal management - Division 1 Coastal wetlands and littoral rainforests area
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 4 Koala habitat protection 2021
- Planning for Bushfire Protection 2019
- Pittwater Local Environment Plan clause 7.6 Biodiversity
- Pittwater 21 Development Control Plan - B4.1 Category 1 Flora and Fauna and B4.3 Category 2 Flora and Fauna
- P21DCP - B4.8 Freshwater Wetland Endangered Ecological Communities.
- P21DCP - C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development

Biodiversity Referral Comments

Biodiversity Planning legislation

The NSW Biodiversity Conservation Act 2016 (BC Act) provides a framework and tools to avoid, minimise and offset impacts on biodiversity through the planning and development assessment process. As per the accepted impact mitigation hierarchy, any proposal must first avoid, then minimise impacts to biodiversity, prior to assessing the offset requirements for the residual biodiversity impacts.

The subject lots contain significant biodiversity value, including Threatened Ecological Communities (TEC), mapped Coastal Wetland and Coastal Wetland Proximity Area, records of threatened species, threatened species habitats and fauna connectivity. This is detailed within publicly available vegetation mapping and Bionet records, previous studies, and documented in the current and previously submitted reports.

Areas of the western boundary and the south-western corner of the site are mapped within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values (BV) Map. The BV map extends to the west and covers much of the adjoining Warriewood Wetlands. The BV Map identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing.

The BV map forms part of the Biodiversity Offsets Scheme threshold, which is one of the triggers for determining whether the Biodiversity Offset Scheme (BOS) applies to a clearing or development proposal. Any vegetation clearing within the BV mapped area as part of future development will trigger entry into the BOS. This includes any Asset Protection Zones (APZ) that intersect the BV mapped area.

However, the applicant has submitted a Biocertification application to the Environment Department and have submitted the BCAR as supporting information to the Planning Proposal. If Biodiversity Certification is conferred by the Minister over the application area, then future assessment of impacts on biodiversity resulting from the development

is not required for the purposes of Part 4 of the Environmental Planning and Assessment Act 1979.

Warriewood Wetlands and State Environmental Planning Policy (Resilience and Hazards) 2021

At 26 hectares, Warriewood Wetland is the largest remaining sand plain wetland in the northern Sydney area. It has regional conservation significance, and provides a variety of habitats for native animals and also plays a vital role in flood mitigation, nutrient recycling and filtering sediments. The wetlands contain several Endangered Ecological Communities.

The BV mapped area is coincident with Coastal Wetlands mapped under State Environmental Planning Policy (Resilience and Hazards) 2021, and any development requiring consent is Designated Development, thereby requiring an Environmental Impact Statement to be prepared.

In accordance with clause 2.7 (SEPP R & H), Council must not grant consent for development unless satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland.

The remainder of the site is mapped as land in proximity to coastal wetlands (cl. 2.8). Development impacts on the proximity area require consideration of the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.



Figure 1: Coastal Wetland mapped under the SEPP R & H

The latest Travers Ecology Boondah Rd Warriewood memo to Council 12 October 2022 states that the Masterplan has been re-designed to further avoid impacts on the areas mapped as Coastal Wetland on the Coastal Wetlands and Littoral Rainforest Area Map, and the proposed C2 zoned land will now encompass all of the mapped wetland.

On review of the recent information, the plans have not been revised and the design still does not exclude development from within the mapped coastal wetland. Currently the planning proposal appears to include buildings, roads, excavation and filling, asset protection zones, bioretention basins, jellyfish filters, stormwater discharge points and landscaping are proposed within the mapped wetland area (see figures attached to this referral). As stated above, under State Environmental Planning Policy (Resilience and Hazards) 2021, the proposal as presented will result in a development that is Designated Development, thereby requiring an Environmental Impact Statement to be prepared.

Threatened Biodiversity

Based on the information provided within the BCAR, the site contains two Endangered Ecological Communities (EEC), Bangalay Sand Forest and Swamp Oak Floodplain Forest. The Bangalay Sand Forest of the Sydney Basin and South East Corner bioregions (BSF) covers 0.23 hectares of the site and occurs entirely within the portion of the site proposed to be zoned R3 Medium Density. This represents the loss of approximately 50% of the mapped extent of this EEC on the Northern Beaches. Whilst this vegetation is degraded, intact mature canopy remains. No avoidance or minimisation of impacts to this community is proposed, and 0.23 hectares would be directly impacted by clearing. The Biocertification recommends the retirement of biodiversity credits, or more likely payment into the Biodiversity Conservation Fund, to offset the impact.

The Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (SOFF) covers 0.44 hectares of the site, and 0.18 hectares would be directly impacted. The remainder is located within the portion of the site proposed to be rezoned to C2 Environmental Conservation.

The assessment recorded six threatened fauna species and their habitats that will be significantly impacted and will require the retirement of biodiversity credits to offset the direct impacts of the proposal. This includes the state listed threatened fauna species – Grey-headed Flying-fox (*Pteropus poliocephalus*), Large Bent-winged Bat (*Miniopterus orianae oceanensis*), Eastern Cave Bat (*Vespadelus troughtoni*), Southern Myotis (*Myotis macropus*), Little Bent-winged Bat (*Miniopterus australis*) and Powerful Owl (*Ninox strenua*).

Two hollow-dependent threatened fauna species were recorded present during survey including the Southern Myotis and the Powerful Owl. Nine hollow-bearing trees will be removed by the proposal, and these may support roosting/breeding habitat for the threatened Southern Myotis. Travers concludes however that no large hollows suitable for threatened owls were recorded present within the habitat tree survey area or adjacent.

No evidence of Koala activity, nor records of threatened flora species were detected on site during the field surveys.

The avoidance measures proposed within the BCAR, particularly in relation to SOFF, result from changes to the previously unapproved and unsupported planning proposals submitted for the site. While avoidance of SOFF within the proposed C2 zone is acknowledged, it is the opinion of Council that this area is not developable due to existing planning constraints associated with the mapped wetland under the SEPP R & H (as discussed above). Therefore avoidance measures should be demonstrated outside the mapped wetland areas.

Indirect impacts listed include a reduction of arboreal connectivity and cross-site movements, increased presence of domestic animals, edge effects such as weed incursions, increased spill-over from noise, activity, lighting effects into the adjacent natural areas, increased soil nutrients from changes to runoff, concentrated stormwater runoff from solid surfaces and subsequent increased flows.

Additional direct and indirect impacts will likely result from excavation and filling within the site to the boundary of Warriewood Wetlands. The applicant has also advised that new groundwater measurements could not be obtained as the existing rural users had obstructed the groundwater wells with soil and piles of chopped wood, and therefore the potential for impacts to groundwater dependent ecosystems cannot be fully discounted, and reliance on detailed assessment at the development application stage is insufficient.

The BCAR also states that indirect impacts to the wetland may include pedestrian usage and trampling of soils, dumping of rubbish and garden waste, accidental spillages post development may occur.

The BCAR also identifies potential 'prescribed' impacts in relation to human-made structures, non-native vegetation, habitat connectivity, waterbodies, water quality and hydrological processes and vehicle strikes.

Landscaping

The amended site plan indicates a 15 metre landscaped setback to the boundary with Warriewood Wetlands, and Travers state that this area can form part of the total 24 metre bush fire asset protection zone measured from the Warriewood Wetland boundary. They state that landscape plantings are permissible within the APZ and are in compliance with Planning for Bushfire Protection (PBP) requirements for Inner Protection Areas (IPAs).

However, in order to comply with PBP, the vegetation within the landscaped buffer would need to be created and managed in perpetuity to meet certain vegetation community structure and composition requirements (e.g. < 15% tree canopy, canopy separation of 2 – 5 metres, creation of large discontinuities or gaps in the vegetation, shrubs < 10% ground cover, and mown grass understorey). This requirement is inconsistent with P21 DCP C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development.

The control instead requires the minimum 15 metre buffer to be extensively landscaped and incorporate landscaped mounds with mass plantings of native trees and shrubs, planting should consist of a framework of locally indigenous canopy trees with native shrubs and groundcovers and that native groundcovers used as an alternative to lawn.

It should also be noted that the former Part 3a approval for the adjoining development immediately north of the site required that the asset protection zone is exclusive of the agreed vegetated wetland landscape buffer.

Summary and Conclusion

Based on the submitted rezoning and medium density development layout, the Planning Proposal is not supported for the following reasons:

- Lack of measures to avoid and minimise impacts to threatened biodiversity, including the complete removal of Bangalay Sand Forest. It is noted that the BCAR states that the proposal will lead to the avoidance of the majority of mapped biodiversity values within the subject lots, however this is not correct as

the full extent of BSF on site will be directly impacted, as well as impacts to six threatened fauna species and other native flora and fauna species.

- Regardless of the reduced development footprint, it appears that the development within the proposed R3 zone intersects the BV map / Coastal Wetland and as such, the current concept proposal for 10 & 12 Boondah Road would require an EIS.
- The current design is not sited and designed to avoid and minimise impacts to biodiversity. The proposal would result in a direct net loss of biodiversity. Potential impacts that would result from the proposal include locating dwellings, associated infrastructure, excavation and filling, and APZs within the mapped coastal wetland. Further impacts to biodiversity include the clearing of native vegetation and endangered ecological communities, impacts to threatened species habitats, reduction in local wildlife connectivity, indirect impacts associated within increased light and noise pollution, and impacts to ground water dependent ecosystems within the site and adjoining Warriewood wetlands.
- The requirement for the retention and enhancement of an ecological buffer to protect the mapped coastal wetland on site and to the adjoining Warriewood Wetlands needs amendment to achieve a suitable biodiversity outcome and reduce potential impacts to the adjoining wetland.
- The lack of a 15 metre wide extensively landscaped buffer strip adjoining Warriewood Wetlands, exclusive of the bushfire asset protection zone, and consisting of landscaped mounds with mass plantings of native trees and shrubs, locally indigenous canopy trees with native shrubs and groundcovers as required by the P21 DCP control 6.6 Landscape treatment of the Buffer Strip. It is recommended that any potential future designs include a landscaped buffer comparable to that located on the adjoining development north of the site.
- Flooding, flood storage and water flows are of concern, and the areas of significant vegetation (trees), fauna habitats and wetland buffers should be retained and not be subject to any excavation / filling.
- The removal of wildlife corridors through and surrounding the site including direct connection to core habitats within Warriewood Wetlands, as well as connections to the east that form part of a wildlife corridor that extends further north along the Narrabeen Creek catchment. It is recommended that a corridor is provided in the northern boundary of the site, thereby retaining, enhancing and protecting areas of the TEC BSF.
- Potential for indirect and prescribed impacts to TECs, threatened species and their habitats
- Likelihood of altered surface and groundwater flow regimes, and therefore potential direct and indirect impacts to Groundwater Dependent Ecosystems (GDE) on the subject site and in the locality.
- A reliance within the BCAR that an appropriate storm water management plan will be prepared to avoid impacts on the TEC, and is not expected to impact on groundwater resources or groundwater dependent ecosystems.

Therefore, the range of issues described above, as well as the loss of native tree canopy, will result in a future development that does not satisfy the applicable planning controls, and is not supported by Council's Biodiversity Planning section.

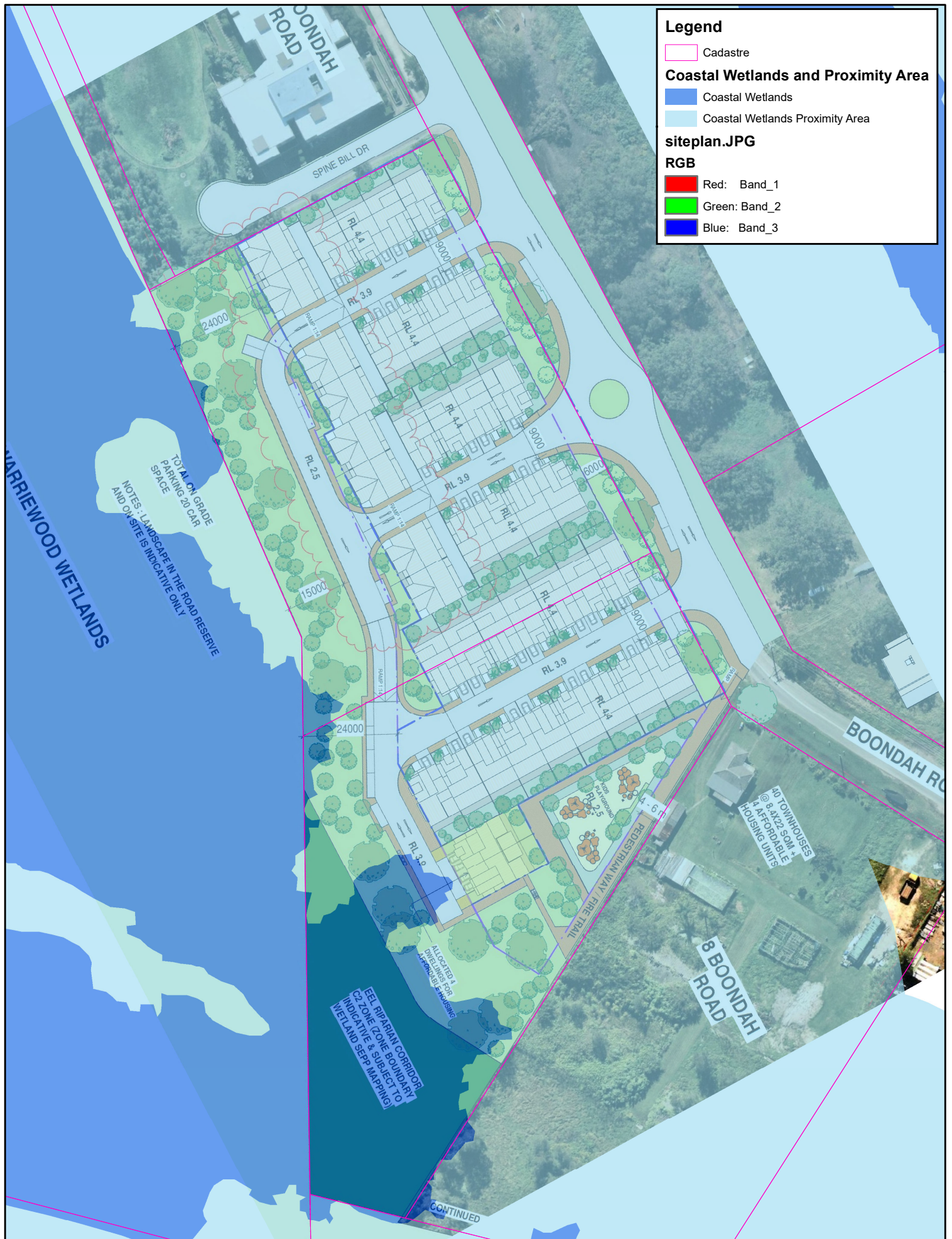
In addition, the offset obligations calculated as part of the Biodiversity Certification Assessment Report for the TECs and threatened species are not available on the Northern Beaches, and therefore will result in net loss of biodiversity within the Northern Beaches LGA.

Biodiversity Certification

As stated, the above comments have focussed on the Planning Proposal, and a preliminary Biocertification application for a portion of the site was made to the DPE. Formal consultation with Council was not part of the Planning Proposal as originally submitted, however this has now been requested by the applicant and are due 23 November 2022. Council's comments on the Biodiversity Certification application and BCAR have not been provided to the applicant at this stage.

An assessment of the preliminary BCAR was undertaken by the NSW Biodiversity Conservation and Science Department (part of DPE) and their comments have been incorporated into the revised document. Council's biodiversity team consider that Biodiversity Certification may not be the appropriate approval pathway for the subject land and proposed development. As above, Council's biodiversity team consider that impacts to biodiversity have not been adequately avoided or minimised as required by biodiversity certification.

It should be noted that the NSW DPE will determine whether the proposed biodiversity certification would result in a 'serious and irreversible impact', and will also assess the adequacy of proposed biodiversity offsets and additional conservation measures.



Legend

- Cadastre

Coastal Wetlands and Proximity Area

- Coastal Wetlands
- Coastal Wetlands Proximity Area

siteplan.JPG

RGB

- Red: Band_1
- Green: Band_2
- Blue: Band_3

TOTAL ON-GRADE PARKING 20 CAR
 NOTES: LANDSCAPE IN THE ROAD RESERVE AND ON-SITE IS INDICATIVE ONLY

ALLOTTED A ZONE FOR AFFORDABLE HOUSING
 EEL RIPARIAN CORRIDOR CAZ ZONE BOUNDARY INDICATIVE & SUBJECT TO WETLAND SEPP MAPPING

10 TOWNHOUSES @ 8.4x22.50M + 17 AFFORDABLE HOUSING UNITS

8 BOONDAH ROAD

CONTINUED

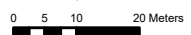


Scale (A4) - 1:1,200
 GDA 94 MGA Zone 56



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Legend

Cadastre

Coastal Wetlands and Proximity Area LABEL

Coastal Wetlands

Coastal Wetlands Proximity Area

siteplan.JPG

RGB

Red: Band_1

Green: Band_2

Blue: Band_3

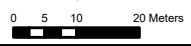


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