



## **AMENDED STATEMENT OF FACTS AND CONTENTIONS**

(Landscaping and Clearing)

### **COURT DETAILS**

Court	Land and Environment Court of New South Wales
Class	1
Case number	15/10467

### **TITLE OF PROCEEDINGS**

Applicant	<b>RVA Australia Pty Ltd</b>
Respondent	<b>SUTHERLAND SHIRE COUNCIL</b>

### **FILING DETAILS**

Filed for	<b>SUTHERLAND SHIRE COUNCIL</b>
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# PART A – FACTS (Landscaping and Clearing)

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## 1. The Proposal

The development application form describes the proposed development as: *Landscaping and clearing to provide for a Recreation Camp on Lot 3 DP 213924.*

*The application only relates to half of the paper roads known as Bournemouth Street and Sussex Street (to the middle line) adjacent to Lot 3 in DP 213924.*

On 30 June 2015 the Land and Environment Court granted leave to the Applicant to amend this proposed development so that:

*'The application only relates to half the land known as Sussex Street (to the middle line) immediately adjacent to the land explicitly identified as Lot 3 in DP 213924, as depicted on page 38 of the report *Bushfire Assessment and Recommendations 'Eco-Tourism' Development Bundeena Bush Valley (RVA Australia Pty Ltd) Lot 3 Deposited Plan 213924, 60-70 Bournemouth Street Bundeena NSW 2230 dated 3 November 2014.**

## 2. The Site

**Street Address:** Sussex Street, Bundeena

**Lot/DP:** Paper Road identified as Sussex Street, immediately to the south of Lot 3 in DP 213924 and bounded by Bournemouth Street to the west.

**Lot Description Dimensions:** The 'site' comprises the northern half of this paper road only. The site is rectangular in shape. Its northern and southern boundaries are approximately 342 metres in length and the western and eastern boundaries are approximately 10 metres in length.

**Site Area:** Approximately 3420m<sup>2</sup>.

**Topography:** The terrain within the Sussex Street paper road slopes from south to north, with a more gentle slope in the western and central portions, and a steeper slope across the eastern portion, sloping down to a creek in the north east corner leading to Spring Gully.

**Vegetation:** Council's GIS mapping system identifies that Coastal Sandstone Heath-Mallee occupies the western and eastern portions of the site, with Coastal Sand Apple-Bloodwood Forest throughout the central portion. Council's GIS system also identifies the vegetation communities of Coastal Dune Heath and Sydney Sandstone Ridgetop Woodland on lands immediately adjoining the Sussex St Paper Road to the south. It is

unclear from the information available whether these communities also extend onto the subject site.

**Existing Improvements:** The land is undeveloped. There are no structures, services, or access roads within the site.

### **3. The Locality**

The site is located to the south of 60-70 Bournemouth Street, Bundeena. The site is half of Sussex Street paper road. Land adjoining Sussex Street to the east, south and west is part of the Royal National Park, in the ownership of the Minister Administering the National Parks and Wildlife Act, 1974. The land to the south has recently been transferred from Sutherland Shire Council to the NPWS.



### **4. Statutory Controls**

#### **(a) Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)**

- Relevant clauses include 3, 4, 5, 6, 8, 11, 21, 22, 51, 53 and 56.
- SSLEP 2006 zones the site as Zone 12 – Special Uses. The zoning map provides that Recreation Camp is permissible on the site. The proposed development is permissible with consent.

#### **(b) Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)**

- The land is zoned E2 – Environmental Conservation pursuant to SSLEP 2015.
- The permitted uses in the E2 zone are Environmental facilities; Environmental protection works; Flood mitigation works; Information and education facilities; Roads.

- A recreation Camp or Eco-Tourist facility is not permissible in the zone nor on this site as an additional permitted use.

**(c) Sutherland Shire Development Control Plan 2006 (SSDCP 2006)**

Chapter 1 – Design Principles and Site Analysis  
 Chapter 4 – Natural Resource Management  
 Chapter 5 – Environmental Risk  
 Chapter 7 – Vehicular Access, Traffic, Parking & Bicycles  
 Chapter 8 – Ecologically Sustainable Development

**(d) Planning for Bushfire Protection 2006 (PBP)**

**(e) NSW Rural Fire Service 10/50 Vegetation Clearing Code of Practice (10/50 Code)**

**5. Actions of the Council**

Chronology of Development Application (DA14/1239)

- 13 November 2014 – Council receives Development Application No 14/1238 (for a Recreation Camp) and Development Application 14/1239 (for Landscape and Clearing works on Sussex and Bournemouth Streets, Bundeena)
- DA14/1238 and DA 14/1239 were notified to surrounding and affected property owners and approximately 1200 individual and proforma submissions were received.
- 17 May 2012 – the Applicant files two Class 1 applications in the Land and Environment Court concerning the deemed refusal of DA14/1238 and DA14/1239.
- 15 June 2015 – Council determines to refuse DA14/1238 and DA14/1239.

## **Part 2    Contentions**

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### **1.            OWNER'S CONSENT**

There is no landowner's consent for this development application (DA 14/1239). The proposal requires works on land within the Sussex Street paper road which is not owned by RVA Australia Pty Ltd.

#### **Particulars**

- a. The proposal is for the *Landscaping and clearing* over Sussex Street.
- b. This land is not owned by RVA Australia Pty Ltd, the title for this property remains in the name of Edith Wolstenholme, or her estate.
- c. There is no landowner's consent for this development application.
- d. Further, the General Terms of Approval issued by the Rural Fire Service on 26 June 2015 (GTAs) for DA 14/1238 require a larger 20m IPA to the south of the dwelling and workshop which extends beyond that half of the road which the Applicant claims ownership of.
- e. The proposal for the recreation camp and the GTAs require the construction of a road over Sussex Street, which is wholly or partly owned by Edith Wolstenholme, or her estate.
- f. The development application does not comply with clause 49 (1)(b) of the EP&A Regulation 2000.

### **2.            THERE ARE NO GENERAL TERMS OF APPROVAL FROM THE RURAL FIRE SERVICE FOR THIS DA (DA 14/1239)**

#### **Particulars**

- a. This development application was referred to the RFS as integrated development and no GTAs have been issued for this development application.
- b. Council notes that GTAs were issued by the RFS for DA 14/1238 and those works extended onto this land. However, this is a separate development application and GTAs are required for this application.

### **3.            LANDSCAPING AND CLEARING WORKS**

The proposed landscaping and clearing within Sussex Street is interdependent with DA 14/1238 and Land and Environment Court Appeal no 15/10468 for a proposed recreation camp. Should that development application (DA 14/1238) for the recreation camp be refused then this development application for landscaping and clearing works in Sussex Street should also be refused.

#### 4. ECOLOGICAL IMPACTS

The proposed development should be refused, as there has been no assessment of the environmental impacts of the clearing and landscaping works on this land.

##### Particulars

- a. The ecological assessment lodged with this development application does not map vegetation beyond Lot 3 DP 213924. Therefore it does not consider nor assess the impact of the landscaping and clearing for bushfire management on the land the subject of this appeal.
- b. The Applicant has not identified the number of trees, species of trees, their sile and the area of vegetation required to be removed within Sussex Street.
- c. The Applicant has not sufficiently identified all of the different species of flora and fauna found on the site, or assessed the impacts of the proposal on this flora and fauna.
- d. The Applicant has not demonstrated that the proposal will be ecologically acceptable and satisfy section 5A of the Environmental Planning & Assessment Act 1979.

#### 5. INADEQUATE INFORMATION

There is sufficient information to assess the proposed development. In particular there is insufficient detail in the following matters:

- a. The applicant has not provided an ecological report demonstrating the environmental impacts on flora and fauna of the landscaping and clearing works.
- b. The applicant has not provided plans for this proposal.
- c. The ecological assessment has not sufficiently identified the number of trees, species of trees, their sile and the area of vegetation required to be removed within Sussex Street.
- d. The application has not identified where the replacement planting (at a rate of 4:1) for loss of trees and bushland is to occur onsite.
- e. The applicant has not provided a landscape plan showing the proposed finished environmental outcome of the proposed works.
- f. The applicant has not provided an SEE particular to the proposed landscaping and clearing works on this site.
- g. The applicant has not provided details (including cross sections, grades, finished levels, extent of cutting and filling, long sections etc) of the proposed road access across Sussex Street which is necessary to assess and understand the full environmental impact of the clearing.

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Janelle Amy

Date: 24 August 2015