



**AMENDED STATEMENT OF FACTS AND CONTENTIONS**  
(Recreation Camp)

**COURT DETAILS**

Court Land and Environment Court of New South Wales  
Class 1  
Case number 15/10468

**TITLE OF PROCEEDINGS**

Applicant **RVA Australia Pty Ltd**  
Respondent **SUTHERLAND SHIRE COUNCIL**

**FILING DETAILS**

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# PART A – FACTS (Recreation Camp)

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## 1. The Proposal

The development application form describes the proposed development as: *Construction of a Recreational Camp and comprises of 6 guest accommodation tents, a large communal gathering tent, a reception tent, refuge building with assembly area and garage, a workshop and caretaker's dwelling.*

*The application only relates to the land explicitly defined to be part of Lot 3 DP 213924 and does not include any part of the paper roads known as Bournemouth Street and Sussex Street.*

## 2. The Site

**Street Address:** 60-70 Bournemouth Street, Bundeena

**Lot/DP:** Lot 3 in DP 213924

**Lot Description Dimensions:** The site is trapezoid in shape. Its southern boundary which adjoins Sussex Street is 342.703 metres, its western boundary adjoining the Bournemouth Street paper road is 260.388 metres, the northern boundary is 392.843 metres and the eastern boundary is 68.364 metres.

**Site Area:** Approximately 5.633 hectares.

**Topography:** The terrain of the site is mixed, with a relatively level area along the south western corner of the site. The majority of the site slopes steeply down towards a wetland in the north eastern portion of the site and the Spring Gully creek line on the northern and eastern boundaries of the site. Several first order streams traverse the site. The site is located almost entirely upon the highly erodible Hawkesbury soil landscape.

**Vegetation:** The site is well vegetated with native tree and shrub plantings typifying a "virgin bushland" character.

Four vegetation communities have been identified on the site consisting of:

- Coastal Sand Apple-Bloodwood Forest, which covers approximately 2/3 of the site and on the western boundary forms a transition zone with the adjoining Coastal Enriched Sandstone Dry Forest,
- Coastal Freshwater Wetland in the north western corner of the site,
- Coastal Sand Bangalay Forest along the margins of the wetland and

- Coastal Heath-Mallee in the south western corner of the study area.

The Coastal Bangalay Forest and Coastal Freshwater Wetland communities are identified as Endangered Ecological Communities under the *Threatened Species Conservation Act*.

**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 Beachcomber Avenue, bound by an unmade portion of Bournemouth Street to the west and the unmade Sussex Street to the south. Land adjoining the site on the western side of Bournemouth Street and on the southern side of Sussex Street and to the east of the subject site 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.

- Recreation Camp would fall within the definition tourist and visitor accommodation and is not permissible within the E2 zone.
- An eco-tourist facility is permissible as an additional permitted use of the land prescribed by clause 2.5 and Schedule 1.

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

Chapter 1 – Design Principles and Site Analysis  
 Chapter 3 – Urban Design  
 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 (DA14/1238)

- 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.
- 22 December 2014 Letter received from the Office of Environment & Heritage.
- 5 March 2015 further information received from Applicant.
- 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.
- 26 June 2015 General Terms of Approval received from the Rural Fire Service.

## **Part 2 Contentions**

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### **1. ACCESS**

There is no legal vehicular access to the site. Vehicular access to this site is a fundamental requirement and the proposed development should not be approved without permanent legal access.

#### **Particulars**

- a. The Applicant proposes to obtain access to the site over an existing track through the Royal National Park from Beachcomber Avenue and then over Sussex Street, a road which is owned by Edith Wolstenholme, or her estate.
- b. The Applicant has failed to demonstrate that it has legal access permitting vehicular access to the site.
- c. Legal vehicular access is required over the life of the development.
- d. Vehicular access is essential for the functioning of the proposed development, being necessary to transfer guests and permanent residents to the site.
- e. Legal vehicular access is necessary to service the proposed development by the transfer of waste, water, LPG, sewage and other supplies.
- f. Further, legal vehicular access is an essential requirement for the evacuation of persons from the property in the event of a bush fire emergency.
- g. The General Terms of Approval (GTAs) from the Rural Fire Service dated 26 June 2015 rely on the provision of legal access to the site and such access must be upgraded to a public road standard in accordance with section 4.1.3 (1) of PBP. In the absence of a legal entitlement to those lands, there is no certainty that consent for such works will be issued, and therefore development consent should not be granted.
- h. The proposal offends:-
  - a. Objectives in section 5 (a) (i) and (ii) of the EP&A Act;
  - b. Section 79C (1)(c);
  - c. SSLEP 2006 clause 21(d);
  - d. Sections 4.1.3 (1) and 4.2.7 in PBP.
- i. There has been no cumulative assessment of the environmental impacts of the application and the works that would be required to form appropriate access to the subject land.

## **2. OWNERS' CONSENT**

The proposed development necessarily involves works required on land not owned by RVA Australia Pty Ltd and there is no landowners' consent for these works.

### **Particulars**

- a. The GTAs and the proposed development requires the construction of a road over Sussex Street, a road which is wholly or partly owned by Edith Wolstenholme, or her estate.
- b. The GTAs and the proposed development also require the establishment and ongoing maintenance of an Inner Protection Area (IPA) over Sussex Street. The 20m IPA to the south of the dwelling and workshop extends beyond that half of the road which the Applicant claims ownership of.
- c. There is no owners' consent for this development application from either the National Parks and Wildlife Service or from the owner of Sussex Street for these works.
- d. The development application does not comply with clause 49 (1)(b) of the EP&A Regulation 2000.

## **3. DWELLING**

The proposed 'caretaker's dwelling' is a separate and independent use of the land and is prohibited within the Zone 12 - Special Uses zone.

### **Particulars**

- a. Dwelling houses are prohibited in the Special Uses zone.
- b. The relative size of the dwelling, the siting of the dwelling and separate access road to it, the staging of the proposal and the comparative costs of construction of the dwelling demonstrate that the dwelling is not ancillary to the recreation camp.

## **4. BUSHFIRE SAFETY**

The proposed development does not provide an adequate level of bushfire safety. The GTAs are based on a deficient bushfire report and erroneous assumptions regarding the proposed development. In any event, the proposed development cannot comply with the GTAs.

## Particulars

- a. The Applicant's bushfire report fails to adequately address the following matters:
  - i. The report assesses the proposed development on the basis that it is an eco-tourist facility not a recreation camp. A recreation camp is characterised as a form of tourist accommodation, which under the provisions of PBP, does not have the benefit of less stringent criteria available for eco-tourist accommodation.
  - ii. The bushfire report assumes that road access and maintenance of such roads to the required standard will be achieved. However the track currently proposed for use is on land owned by the National Parks and Wildlife Service. The Applicant has failed to demonstrate a legal entitlement to use this land.
  - iii. The Applicant's bushfire report incorrectly identifies the slope of the Inner Protection Area (IPA) as being in the range of 15-18 degrees. This measurement includes the wetland at the base of the slope which is not part of the IPA. The actual slope of the proposed IPA exceeds 18 degrees and therefore it cannot comply with clause 4.1.3 of Planning for Bushfire Protection 2006 (PBP). This will result in an unacceptable bushfire risk as the IPA is unlikely to be managed over the life of the development due to the steep terrain of the land.
  - iv. The bushfire report does not adequately address procedures to ensure the safety of the occupants of the dwelling in the event of a bushfire or forecast periods of heightened bushfire danger (Fire Danger Index of severe or above);
  - v. The Statement of Environmental Effects states that the proposed development includes *facilities for the holding of events, functions, training, conferences and the like*. Such events have not been considered in the Applicant's bushfire report.
  - vi. The proposed development fails to provide a refuge of sufficient size to cater for the proposed number of staff, guests, residents and attendees at *events, functions, training, conferences and the like*; and also fails to provide sufficient space for the emergency escape vehicle.
  - vii. Planning for the refuge does not consider the combustible tents and LPG supply for cooking and refrigeration in the outdoor kitchen and dining tent which, if ignited, would threaten the refuge building and occupants therein.
  - viii. It is proposed that emergency communications will rely on wi-fi and mobile phones, reception for which is limited in Bundeena and unreliable in emergencies.
  - ix. The bushfire report relies on an emergency escape vehicle. This is unenforceable over the life of the development.

- x. The Bushfire Emergency Evacuation Plan indicates that people will remain on-site. There are no details as to who will remain on-site and procedures in place to ensure their protection.
  - xi. The Bushfire Emergency Evacuation Plan does not deal with *events, functions, training, conferences and the like*.
- b. The General Terms of Approval (GTAs) and the Bush Fire Safety Authority (BFSA) issued by the Rural Fire Service cannot be satisfied as:
- i. The existing 'road' to the east referred to in condition 6 is an access track which is not of a public road standard or width. This 'road' is required to be maintained to a public road standard, however, the Applicant does not own this land nor have a legal right to use, upgrade or maintain it. This proposal cannot comply with clause 4.1.3 (1) of PBP.
  - ii. The creation and ongoing management of an APZ in perpetuity is required by condition 2 over land which is not owned by the Applicant. The IPA around the dwelling is extended by condition 3 from 10m to 20m. The IPA therefore extends further into the Sussex Street road reserve, and even on the Applicant's case, beyond the middle line of Sussex Street.
  - iii. The IPA by condition 3 cannot comply with the requirements of clause 4.1.3 of PBP, as it is located on slopes exceeding 18 degrees and on highly erodible soils. Therefore it does not achieve the required IPA maintenance performance criteria in this clause (see table on page 19 of PBP).
  - iv. The plans dated 4 March 2015 ref PR124192 Issue C approved by the RFS do not show the entire extent of the IPA and the OPA/SFAZ1 and SFAZ2.
  - v. Condition 7 requires clearly defined management procedures for closing the facility on days of Total Fire Ban which may occur on days of very high fire danger. This is not addressed in the Applicant's Bushfire Evacuation Plan. Further, section 4.2.1.4 of the SEE proposes that occupants of the facility will be required to attend off site compulsory day tourist activities. This is unenforceable.
- c. The GTAs raise the following issues which are not adequately addressed in the Applicant's plans and documentation:
- i. Condition 4 specifies water requirements. The Applicant has not demonstrated how a separate and sufficient water supply for fire fighting purposes can be achieved.



- Further, the RFS require hard stand areas at each water source for truck access to within 4m of the water source.
- ii. Condition 5 specifies access requirements which the Applicant has not demonstrated can be achieved. Including 12m turning circles to the dead end road or a loop road around the refuge building. The proposal does not currently comply with 4.2.7 of PBP.
  - iii. The Application does not include road design on the site other than showing an indicative location and layout. The indicative layout does not comply with the requirements of condition 5 of the GTAs. Compliance will require significant redesign of the proposal and may have unacceptable environmental impacts.
  - iv. Condition 2 requires a 50m IPA to the west and a 62m IPA to the north of the refuge building. These requirements are not accurately reflected on the Applicant's plan PR 124192 D01 Issue D sheet 2 of 2 dated 29.10.2014.
- d. The proposal offends clause 21 of SSLEP 2006 and clauses of PBP outlined above.
  - e. No details of the works required to meet the GTAs/BFSA have been submitted to enable assessment of bushfire safety on the subject site.

## **5. ECOLOGICAL IMPACTS**

The proposed development should be refused as the application does not adequately assess the environmental impacts of the proposed development. It has an unacceptable environmental impact on the land due to the extent of clearing, landscaping and ongoing maintenance work required for the IPA and the OPA/SFAZ1 and SFAZ2. The ecological assessment does not adequately assess the impact of the required clearing for bushfire management on the EECs located in close proximity to the proposal.

### **Particulars**

- a. The ecological assessment does not map vegetation beyond the site boundary where works and clearing is required beyond the boundary of the site.
- b. The ecological assessment fails to consider the edge effects on flora and fauna including the noise, light and hydrology impacts of the proposal.
- c. The ecological assessment has not sufficiently identified the number of trees, species of trees, their size and the area of vegetation required to be removed for the proposal in all APZs.
- d. The ecological assessment has not sufficiently identified the location and tree number of the hollow bearing trees within the APZs which are to be removed, trimmed or retained.

- e. The ecological assessment has not considered the requirement for replacement planting on site for the loss of trees in accordance with SSDCP Chapter 4, Part 4 clause 4.b.3.
- f. The Tree Removal and Maintenance Plan Drawing No P01 identifies trees with a trunk of .015m or greater. However Chapter 4 clause 4.b (2) (a) of SSDCP 2006 specifies that trees with a diameter of 0.1m at 500mm above ground level is a tree. Trees satisfying clause 4.b (2) (a) are not indicated in the tree removal plan and therefore the tree removal plan is inaccurate as it underestimates the trees to be removed for the proposal.
- g. The ecological assessment has not considered the entire impacts of clearing the IPA and the OPA/SFAZ1 and SFAZ2.
- h. The ecological assessment has ignored the clearing permissible on the site due to the 10/50 legislation for the proposed tourist accommodation.
- i. The ecological assessment does not take into account the RFS GTA requirements.
- j. The siting and layout of the proposal fails to minimise environmental impacts due to the wide spread of the development across the site. For instance the caretakers dwelling and workshop spreads development further across the site and the individual tents also spread development further across the property thereby extending environmental impacts.
- k. Details of the proposed landscaping treatment after clearing the IPA and the OPA/SFAZ1 and SFAZ2 and gravel paths are not provided in order to enable an adequate assessment of their environmental impacts.
- l. The ecological assessment ignores the extent of bushfire clearing required on highly erodible Hawkesbury Soil Landscape on the site.
- m. The 7 Part Test fails to assess the ecological impacts (on all endangered species including fauna) based on a comprehensive understanding of the full extent of clearing required to manage bushfire risk (including the IPA and the OPA/SFAZ1 and SFAZ2) for the proposal, landscaping, creation of hardstand areas.
- n. Banksias and ground cover to be removed from the IPA and OPA/SFAZ1 and SFAZ2 are an important habitat of the Pygmy Possum, which have been recorded in close proximity to the site and have not been considered by the ecology report.
- o. There are no details of the sewerage and grey water systems proposed by the Applicant. These are critical to assess and understand impacts on the Coastal Freshwater Wetland, the Bangalay Sand Forest and ground water dependant ecosystem. Particularly having regard to the soil erodibility, the slope exceeding 18 degrees and ground cover removal for bushfire management.
- p. Approval under the Water Management Act is required for the removal of vegetation within a riparian zone of 10m within the creeks on the site. The SFAZ 2 extends to the northern boundary of Lot 3 and further, the OPA/SFAZ1 extends to the western area of the site within the area of the creeks.
- q. There has been no assessment of the clearing effects on the destabilisation of soil, erosion and sedimentation which, due to the

topography of the site, may result in impacts to the Coastal Freshwater Wetland or the Coastal Sand Banagalay Forest at the bottom of the gully.

- r. There has been no environmental assessment of the impact on removal of trees and vegetation required within Sussex Street and the National Park for access to the property.
- s. The proposal fails to comply with the principles of ecologically sustainable development set out in clause 51 in SSLEP 2006.
- t. The proposal has not complied with the requirements of Part 5A of the EP&A Act and the TSC Act.
- u. There has been no assessment of the ecological impacts of the disturbance required to achieve vehicular and pedestrian access to the subject site.
- v. The ecological assessment has not sufficiently identified all of the different species of fauna found on the site, or assessed the impacts of the proposal on this fauna.

## **6. VEHICULAR ACCESS, PEDESTRIAN SAFETY AND PARKING**

The proposal relies on vehicular access for construction and ongoing servicing of the proposal along a heavily used public walking track owned by the NPWS. Further, there is no car parking provided on-site and the Applicant seeks to rely on the use of the public carpark within the Royal National Park for a private purpose.

### **Particulars**

- a. The access track within the National Park is heavily utilised by the public for access to the walking tracks within the national park. There has been no assessment of the requirement for a public road on this land and the requirement for separate and safe pedestrian access through the Royal National Park.
- b. The proposal provides no parking within the site. Instead it relies on parking within the Royal National Park carpark and on-street parking in Beachcomber Avenue, both of which are heavily utilised. In the absence of a legal entitlement to use the Royal National Park carpark, the application should be refused on the basis that there is no certainty that parking demands will be met.
- c. Currently the entrance to the access track through the Royal National Park is secured with a locked gate. There are no details of how access to and from the site will be managed through the National Park. In the absence of a legal entitlement to use the access track, the application should be refused.
- d. There has been no assessment of the traffic and parking generation arising from this proposal including visitors, staff, servicing, permanent residents and the proposed *events, functions, training, conferences and the like.*

- e. The proposal fails to comply with the requirements set out in section 5 of the GTA.
- f. The proposal offends objectives (a), (b), (c), of clause 1.a.1 (1) in Chapter 7 of SSDCP 2006
- g. No details to comply with the RFS GTAs and BFSA have been submitted and therefore no planning or ecological assessment of those works has been undertaken.

## **7. UNACCEPTABLE VISUAL IMPACT**

There is insufficient information to adequately assess the visual impact of the proposal from the rear of the properties to the north due to the extent of clearing required on the site for the IPA and the OPA/ SFAZ 1 and SFAZ2, buildings and future roads.

### **Particulars**

- a. Clause 49 (f) of SSLEP 2006 does not permit the approval of this proposal unless it has considered the extent to which the proposed development will preserve, enhance or reinforce specific areas of high visual quality, ridge line and landmark locations, including gateways, nodes, views and vistas.
- b. The application has not adequately considered the extent of clearing required (as outlined above) and therefore the visual impact of this proposal cannot be determined.
- c. The proposal requires consideration and assessment of the visual impact of the construction of the dwelling and workshop to FZ construction levels.
- d. No details of the clearing required for vehicular and pedestrian access to the subject site have been submitted to assess the cumulative impact of the clearing required for the proposal.

## **8. ABORIGINAL HERITAGE**

This may be conditioned by a deferred commencement consent condition as follows:-

‘An Aboriginal Cultural Heritage Assessment in consultation with the Aboriginal community is required to assess the significance of the site and determine whether any Aboriginal objects or places will be impacted by the proposed development. This shall be provided to Council prior to the development consent becoming operative.

In the event that an Aboriginal object or an Aboriginal place is to be impacted, an Aboriginal Heritage Impact Permit (AHIP) pursuant to s90 of the National Parks and Wildlife Act 1974 shall be obtained and provided to Council prior to the development consent becoming operative.’

## 9. INADEQUATE INFORMATION

The applicant has not provided sufficient information to assess the proposed development. In particular there is insufficient detail in the following matters:

### Particulars

#### Inadequate Ecological Reports

- a. Refer to contention 5 above.

#### Inadequate Bushfire Reports

- b. Refer to contention 4 above.

#### No access, traffic or parking study

- c. Refer to contention 6 above.

### Plans

- d. There is no plan showing the entirety of the clearing for IPA and OPA (including SFAZ1 and SFAZ2) and mapping the location of the EECs on the land.
- e. There is no landscape plan showing the detailed landscape treatment of the IPA and OPA / SFAZ1 and SFAZ2.
- f. The plans do not satisfy the requirements of the Rural Fire Service outlined in the GTAs.
- g. Plans before the Court are at A3 size, they are not to scale and are illegible.
- h. There are no plans for the workshop, nor details of plant and equipment proposed to be in the workshop.
- i. The applicant has not provided plans (including cross sections, grades, finished levels, extent of cutting and filling, long sections etc) of the proposed road access across Sussex Street and the National Park which is necessary to assess and understand the full environmental impact of the proposal, notwithstanding that all access ways do not form part of the subject application.

### Miscellaneous

- j. Inadequate details about the facility which includes 'facilities for the holding of events, functions, training, conferences and the like.' There are no details in the application which specify the building which will be utilised for these events, the number of people attending these events. The WC facilities for such events are inadequate, on-site bushfire protection, refuge lacking accommodation, evacuating them quickly, no parking facilities on-site.
- k. There are no details about the proposed production and storage of pellets made on-site of compressed bush litter.

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Janelle Amy

Date: 24 August 2015