

# CENTRAL COAST COUNCIL

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number</b>	DA58249/2020
<b>Delegation level</b>	Delegated
<b>Property Lot &amp; DP</b>	LOT: 51 DP: 23080 LOT: 52 DP: 23080 LOT: 1 DP: 119203
<b>Property Address</b>	4406 Wisemans Ferry Road SPENCER NSW 2775 4404 Wisemans Ferry Road SPENCER NSW 2775 4402 Wisemans Ferry Road SPENCER NSW 2775
<b>Site Area</b>	8,745 m <sup>2</sup> 8,239 m <sup>2</sup> 79,500 m <sup>2</sup>
<b>Zoning</b>	E2 ENVIRONMENTAL CONSERVATION E2 ENVIRONMENTAL CONSERVATION E2 ENVIRONMENTAL CONSERVATION
<b>Proposal</b>	Land Filling to Reinstate Landscape Damaged in Storm Event & Minor Realignment of Driveway to Improve Vehicle Access
<b>Application Type</b>	Development Application - Local
<b>Application Lodged</b>	23/04/2020
<b>Applicant</b>	B Cavers
<b>Estimated Cost of Works</b>	\$ 15,000
<b>Notified Only</b>	06 May 2020 to 25 May 2020
<b>Submissions</b>	Two
<b>Disclosure of Political Donations &amp; Gifts</b>	No
<b>Recommendation</b>	Refusal

### Assessment

This application has been assessed using the heads of consideration specified under Section 4.15 of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans.

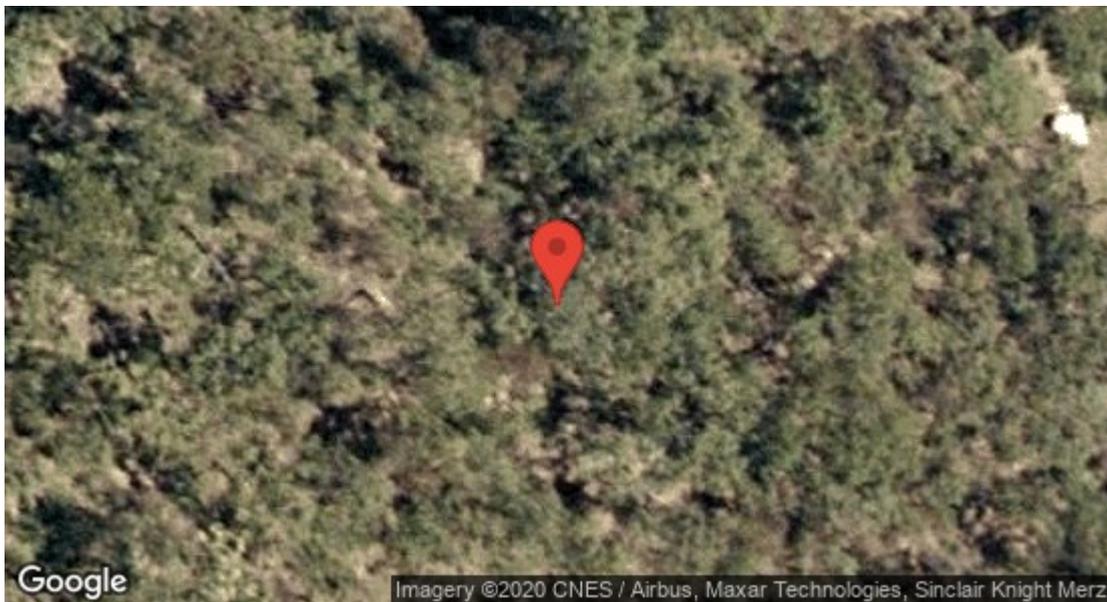
### Background

Extensive landfilling and earthworks were commenced as unauthorised development until the owner was ordered to stop work.

An application was then submitted on behalf of the owner by Access Environmental Planning to regularise the fill and seek approval for some retaining walls and other minor works ancillary to the filling.

### Site & Surrounds

The site is located in a residential area and mapped as bush fire prone land on Council's maps. The proposal has been considered against the provisions of Planning for Bush Fire Protection with the appropriate BAL level being Low. This is due to the proposal consisting of earth filling and non-combustible retaining walls.



## The Proposal

The proposal comprises:

- Importation and placement of certified fill over the lower portion of three allotments held in common ownership.
- Re-align an existing driveway through an adjoining property also held in common ownership.
- Construct sandstone retaining walls to retain lower edges of filled area across two properties held in common ownership.

## Applicable Planning Controls

The following planning policies and control documents are relevant to the development and were considered as part of the assessment.

Environmental Planning & Assessment Act 1979 - Section 4.15  
Local Government Act 1993 - Section 89  
State Environmental Planning Policy (Coastal Management) 2018  
Gosford Local Environmental Plan 2014  
Gosford Development Control Plan 2013

## Draft Environmental Planning Instruments

The following draft Environmental Planning Instruments apply to this application:

- Draft Central Coast Local Environment Plan

## Permissibility

The subject sites LOT: 51 DP: 23080 is zoned E2 ENVIRONMENTAL CONSERVATION, LOT: 52 DP: 23080 is zoned E2 ENVIRONMENTAL CONSERVATION, LOT: 1 DP: 119203 is zoned E2 ENVIRONMENTAL CONSERVATION The proposed development is defined as land filling which is permissible in the zone with consent of Council.

## State Environmental Planning Policies

### Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River (No 2 - 1997)

The site is affected by Sydney Regional Environmental Plan (SREP) No 20 - Hawkesbury Nepean River (No 2 - 1997). This planning instrument requires Council to consider the general planning considerations outlined in Clause 5 and specific

planning policies and recommended strategies of Clause 6 prior to granting consent to a development application.

The applicant has failed to address the impacts that the land filling will have on the adjacent SREP 20 coastal wetland.

## Gosford Local Environmental Plan 2014

The Gosford LEP 2014 was considered during assessment of this application. There are no variations in relation to the proposed development.

### Zone E2 Environmental Conservation

The objectives of the E2 zone are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.
- To ensure that development is compatible with the desired future character of the zone.
- To limit development in areas subject to steep slopes and flooding.

In this instance, it is considered that the application has failed to demonstrate that it is consistent with the stated objectives of the zone and has failed to demonstrate that it is consistent with the principles of Ecologically Sustainable Development as specified within the Local Government Act 1993.

### 7.1 Acid sulfate soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in Clause 7.1 of Gosford Local Environmental Plan 2014 have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposed works are not considered to impact on Acid Sulfate Soils.

## Gosford Development Control Plan 2013

Development Standard	Description	Required	Proposed	Compliance with Controls	Compliance with Objectives
3.1.2.1 - Building Height	Maximum building height required			Yes	Yes
	Number of storeys required			Yes	Yes
	Building height Outbuildings and Detached Ancillary Development required			Yes	Yes
3.1.2.2 - Site Coverage	Site coverage required			Yes	Yes
3.1.2.3 - Floor Space Ratio	FSR required			Yes	Yes
3.1.3.2a - Front Setbacks	Front setback for large lots required	20m	0m (retaining wall)	No - see comments below	Yes - see comments below
3.1.3.2b - Rear Setbacks	Rear setback excluding outbuildings required			Yes	Yes
	Rear setback for agricultural outbuildings required			Yes	Yes
	Rear setback for outbuildings - other required			Yes	Yes
3.1.3.2c - Side Setbacks	Side setback excluding outbuildings required	10m	0m	No - see comments below	Yes - see comments below

Development Standard	Description	Required	Proposed	Compliance with Controls	Compliance with Objectives
	Side setback for agricultural outbuildings required				
	Side setback for outbuildings - other required				
3.1.6.1 - Earthworks	Earthworks maximum depth required				
	Earthworks maximum fill required	Unrestricted as fill not proposed to support the construction of a dwelling.	1.9m	Yes	Yes
3.1.6.2 - Retaining Walls and Structural Support				Yes	Yes
3.1.6.3 - Drainage				Yes	Yes

### **Spencer**

The three properties on which work is proposed to take place are categorised by three separate character zonings which are, Woodland Hillside, River Grazing Flats and Scenic Conservation.

The majority of the development however has taken place of the lower sections of each allotment, predominantly categorised as Woodland Hillside and River Grazing Flats. As such the desired character features of these character zonings has been considered.

These have been detailed further below under the specific character statements.

### **Spencer 3: Woodland Hillside - Desired**

The applicant has provided a landscape plan demonstrating how they propose to re-vegetate the site. This has been reviewed by Councils Ecologist and supported subject to conditions which require the plant stock used in landscaping to be from provenance specific seed/material collected from locally endemic species to maintain genetic diversity. Non-provenance specific material is prohibited.

The proposed landscape plan and conditions of consent are considered to satisfactorily address the revegetation of the site whilst also giving consideration to asset protection zones required by Planning For Bushfire Protection.

Overall the works are deemed to satisfactorily ensure the proposal will comply with the objectives of the control.

### **Spencer 7: River Grazing Flats - Desired**

Whilst the desired character statement seeks to avoid "extensive landfilling or terracing", the proposed use of natural sandstone blocks and revegetation of the affected area are deemed to satisfactorily ensure the proposal will comply holistically with the objectives of the control.

## **Chapter 2.2 Scenic Quality**

The visual and scenic impact has been assessed and it has been determined that after the proposed revegetation and landscaping has occurred the development will be consistent with the objectives of scenic quality. The proposed development does not unreasonably contribute to the loss of characteristics of the natural or built environment, nor does it unreasonably dominate the local area.

### **3.1.2.1 Building Height**

Complies- no structures other than retaining walls proposed.

### **3.1.2.2 Site Coverage**

Complies- no structures other than retaining walls proposed.

### **3.1.2.3 Floor Space Ratio**

N/A- no structures other than retaining walls proposed.

### **3.1.3.2a Front Setbacks**

A 100% variation to the front setback for the retaining walls is supported for the following reasons.

- The wall is proposed of natural sandstone and is less than 1m high.
- The property and retaining walls is separated from the road boundary by a right of way that is approximately 20m wide
- The impacts of the variation have been considered as negligible.

### **3.1.3.2c Side Setbacks**

The proposal seeks to build retaining walls up to and over property boundaries. This is supported for the following reasons:

- The properties are held in common ownership.
- The retaining walls are required to secure the toe of the earth batter.
- The impacts of the variations are considered negligible.

### **3.1.6.1 Earthworks**

The proposal seeks variations to a couple of aspects of the development control. For example the control requires that no retaining wall for fill is to be within 1m of a side or rear boundary unless within 1.5m of any external wall of a dwelling. It also requires that adequate erosion control measures are designed and installed in accordance with the Erosion and Sedimentation Control chapter of this DCP.

The variation in relation to the side boundary setback has been addressed and supported earlier in the report under Side Setbacks however, the applicant has failed to address the request from Environmental Health to demonstrate adequate Erosion and Sedimentation Control.

### **3.1.6.2 Retaining Walls and Structural Support**

This clause is easily satisfied by the inclusion of a condition of consent that requires retaining walls that are more than 600mm above or below existing ground level and within 1m of any boundary, or more than 1m above or below existing ground level in any other location, must be designed by a professional engineer.

### **3.1.6.3 Drainage**

Other than a small comment in the Statement of Environmental Effects which states that the proposal will reduce the effects of stormwater, the proposal does not adequately demonstrate how the modified overland flow is going to be managed to its final point of discharge in a manner that will not adversely impact on the development site, adjoining properties or the road reserve.

### **6.3 Erosion Sedimentation Control**

The applicant has failed to address the concerns raised and information requested by Environmental Health with regard to Erosion and Sediment Control.

### **6.4 Geotechnical Requirements For Development Applications**

The lots being developed are mapped as High and Immediate High landslip risk. In addition the site has shown evidence of landslip in the past and landslip is cited by the applicant as one of the reasons for the development occurring and subsequent application being lodged.

The applicant has failed to provide the geotechnical assessment report requested by the assessing officer.

### **6.5 On-site Effluent and Greywater Disposal**

A referral was sent to Councils Environmental Health Officer for Onsite Sewage Management. They raised no concerns regarding the development.

### **6.6 Tree and Vegetation Management**

Councils Ecologist has assessed the proposal and provided conditions of consent to address the Tree and Vegetation Management for the site in relation to the existing and proposed works.

### **6.7 Water Cycle Management**

n/a- No impervious or hardstand areas being created. No retention or detention requirements imposed by the GDCP 2013 or Basix.

## **7.2 Waste Management**

n/a- No construction waste being generated.

## **Other Matters for Consideration**

The applicant has failed to provide evidence of consolidation of titles or the creation of a right of carriageway easement that would allow the properties 4404 and 4402 Wisemans Ferry Road to be serviced by a driveway which crosses through and interfaces Wisemans Ferry Road via 4406 Wisemans Ferry Road.

## **Development Contribution Plan**

The proposed development is a development type that is not subject to section 7.11 or 7.12 development contributions under the Contribution Plan. Therefore, no contributions are applicable.

## **Referrals**

Internal Referral Body	Comments
Engineering	Not supported
Environment	Supported, subject to conditions
Environmental Health	Insufficient information – the following information is to be provided before further assessment
Environmental Health (OSSM)	Supported, without conditions
Vehicle Access Crossings	Insufficient information – the following information is to be provided before further assessment

## **Environment Summary**

The objectives of the relevant policies, zoning objectives and potential environmental impacts associated with the proposal have been considered. Council's Ecologist has no objection to the proposal subject to the attached conditions being included within any consent granted.

External Referral Body	Comments
Roads & Maritime Services - State & Regional Roads	No response received within timeframe

## **Political Donations**

During assessment of the application there were no political donations declared by the applicant, applicant's consultant, owner, objectors and/or residents.

## **Public Submissions**

Two public submissions were received in relation to the application. Those issues associated with the key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 4.15 of the Environmental Planning and Assessment Act 1979.

A summary of the submissions are detailed below.

1. The development has modified stormwater flow in a way that will possibly damage adjoining properties.  
Comment - Other than a small comment in the Statement of Environmental Effects which states that the proposal will reduce the effects of stormwater, the proposal does not adequately demonstrate how the modified overland flow is going to be managed to its final point of discharge in a manner that will not adversely impact on the development site, adjoining properties or the road reserve.
2. If removed, a Pinus Radiata proposed for removal will impact on the wastewater treatment system and colorbond fence on the adjoining property to the south as the roots come onto that property.

Comment - It is unclear exactly how this may impact on the OSSM system or fence however, it is noted that in most cases the opposite is true and the retention of trees have an adverse effect on OSSM systems and structures such as fences.

3. Large amounts of the recently deposited fill on the applicant's property has also been deposited on my land (adjoining neighbour) and greatly damaged my recently constructed access driveway and drainage works.

Comment - The application seeks to retrieve soil deposited on the adjoining property. Any issues regarding the damage of adjoining property would be a civil matter.

4. The proposal lacks significant information on the extent of the works completed to date as well as the proposed works  
Comment - The assessing officer has requested further information to be provided from the applicant on a number of matters. This information has not been provided.

5. The application only references one property (4404 Wisemans Ferry Rd) when in fact it also includes 4402 and 4406 Wisemans Ferry Rd.

Comment - The application does nominate all three properties being impacted by the development.

6. The site plans do not accurately reflect the true boundary locations.

Comment - A condition of consent would be applied to the consent requiring the true boundary lines to be identified by a survey prior to works commencing. Additionally a survey may be requested which accurately plots the boundary lines.

7. The plans do not accurately reflect the full extent of area being developed with the placement of fill (fill has been placed beyond the areas indicated on the plans).

Comment - A survey should be requested which accurately plots the extent of the existing fill.

8. The proposal does not meet the objectives of the E2 zone with regard to limiting development in areas subject to steep slopes and flooding.

Comment - With the appropriate environmental control measures, landscaping and re-vegetation the proposal is not considered to result in a significant or unreasonable departure from the desired objectives of the zone with regard to developing a steep slope. The property attributes do not nominate the properties as flood affected.

9. The proposal seeks access on to the adjoining property to carry out remediation works.

Comment - The adjoining property owner has indicated they won't allow access unless the applicant completes the restoration of the adjoining driveway and reinstates the adjoining land to its former state prior to the completion of any further works being done to the applicants land that are the subject of this application. The applicant may need to provide written consent from the neighbour for them to carry out works on their land.

10. The objector requests further information to be provided in order to further assess the works proposed with the view to possibly providing further comment.

Comment - The objector was advised that further information has been requested and subject to that information being appropriate to divulge, that information would be provided to them in due course.

## Conclusion

This application has been assessed against the heads of consideration of section 4.15 of the Environmental Planning & Assessment Act 1979 and all relevant instruments and policies. Based on the assessment outlined earlier in this report, it is considered that the application be **refused** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the reasons outlined in this report.

## Recommendation

- A. Council as consent authority refuse consent to the Development Application No 58249/2020 for Land Filling to Reinstatement Landscape Damaged in Storm Event & Minor Realignment of Driveway to Improve Vehicle Access on Lot 1 DP: 119203, Lot 52 DP:23080. Lot 51 DP:23080 4402, 4404 and 4406 Wisemans Ferry Road for the following reasons:
- The applicant has failed to provide a geotechnical report to allow a proper assessment of the proposal in relation to landslip risk.
  - The applicant has failed to provide information to enable an assessment of the potential environmental impacts related to sedimentation and erosion control.

- The applicant has failed to demonstrate how legal vehicle access can be gained from Wiseman's Ferry Road to each property by either consolidation of titles or the creation of a right of carriageway easement.
- The applicant has failed to provide details of the driveway construction to confirm it complies with Part 7.1 of the Gosford DCP 2013 and Australian Standard - AS 2890.1.

- B. The applicant be advised of Council's decision and of their right to apply to review Council's determination under Section 8.2, 8.3, 8.4, 8.5 of the *Environmental Planning and Assessment Act 1979* and appeal in the Land and Environment Court under section 8.7, 8.10 of the *Environmental Planning and Assessment Act 1979* six (6) months after the date on which the applicant receives notice in respect to Council's decision.
- C. The objector/s be notified of Council's decision.
- D. The External Referrals be notified of Council's decision.

<b>Recommendation:</b>	Refusal
<b>Assessing Officer:</b>	Nicolas Appleby Building Surveyor
<b>Recommendation Reviewed by:</b>	Wayne Herd Peer Review Complete - Section Manager