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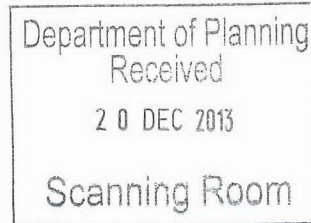
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17 December 2013

NSW Department of Planning and Infrastructure  
PO Box 39  
Sydney, NSW 2001.



**By email:** marian.pate@planning.nsw.gov.au

**Attention:** **Marian Pate**, Sutherland Shire LEP Review

Dear Ms Pate

**LP/03/79340, Amended Draft Sutherland Shire Local Environmental Plan 2013**

We act for RVA Australia Pty Ltd (**RVA**). RVA is the owner of the former Scout Association land at Bundeena known as **Spring Gully**.

We have provided the enclosed submission to Sutherland Shire Council in response to the exhibition of the above draft local environmental plan. We understand that an independent review has been appointed to examine the Council's draft plan. This letter (including attachments) is a submission to the independent review.

Our submission to Council dated 9 September 2013, made on behalf of RVA, is enclosed.

In summary the submission says:

- RVA intends to operate an eco-tourism encampment at Spring Gully.
- The draft LEP is proposing that Spring Gully is to be rezoned from a special uses recreation zone to an environmental conservation zone (the E2 zone). Existing protection for a mapped wetland is to be extended to the entire Spring Gully site. A new overlay protecting terrestrial (non-aquatic) biodiversity is to be imposed. An earlier proposal (in the previous draft LEP) that Spring Gully be zoned for private recreation (RE2) has been dropped.
- In order for the E2 zone to have an ecological purpose, there must be 'high ecological values'.
- We have seen no evidence that the Council has obtained the required ecological assessment.
- RVA has commissioned an ecological assessment which has found that Spring Gully did not meet the requirements for an E2 zone, that is, high ecological or scientific value.
- There is no proper basis for zoning the Spring Gully land as E2.
- There are 19 separate sites to be zoned as E2 under the draft LEP that are destined to be acquired by a public authority, but Spring Gully is not destined to be so acquired. This means that a different zoning approach is required for Spring Gully.

- Spring Gully, and the adjacent stretches of 'Bournemouth Street' and 'Sussex Street' should be zoned RE2 Private Recreation.
- It is clear that a private recreation (RE2) zone is intended to be applied to natural environment landscapes, such as that at Spring Gully.
- If an RE2 zone is imposed, there is no credible prospect that some of the urban land uses notionally permitted with consent in the zone could be pursued by the landowner. The planning law does not give an entitlement to a development consent just because a development type is permitted within a zone with consent.
- Spring Gully is identified as 'Biodiversity' land in the draft LEP's Terrestrial Biodiversity Map. This means that there is no need for the E2 zoning (in any event), because these overlays ensure the environmental issues must be considered in the consideration of future development applications.
- Furthermore, there is no basis for any special environmental controls to be applied by the LEP to **all** of Spring Gully.
- In our submission, the overlays referred to above (or any E2 zoning) should only be applied to the small patch of Coastal Freshwater Lagoon in the north-west of the site.
- Adjacent to Spring Gully is land that appears in the relevant plan of subdivision as roads. These two 'roads' are described as 'Bournemouth Street' and 'Sussex Street'. It seems that no roads have ever actually been built on this land.
- RVA is the owner of half of 'Bournemouth Street' and 'Sussex Street' (to the middle line) where those 'roads' are adjacent to Spring Gully.
- It seems to us that it is likely that the other half of the relevant stretch of 'Bournemouth Street' is presently owned by the NPWS and the other half of the stretch of 'Sussex Street' is presently owned by Sutherland Shire Council.
- RVA wishes to purchase the Council's interest in its half of 'Sussex Street' that is adjacent to Spring Gully and use that land in conjunction with Spring Gully.
- In the draft LEP, development for a 'recreational camp' and 'eco-tourist facilities' are to be additional permitted uses (with development consent) at Spring Gully, but not for the adjacent 'Sussex Street' and 'Bournemouth Street'.
- The additional permitted uses identified for Spring Gully should also be identified for the RVA land within the adjacent 'Sussex Street' and 'Bournemouth Street'.
- The appropriate planning approach would be to also apply those same additional uses to the other half of the adjacent 'Sussex Street' and 'Bournemouth Street'.

We hope that you will consider the enclosed submission carefully.

Following the lodgement of the 9 September 2013 submission, we received a letter from the former mayor, Cr Kent Johns, dated 20 September 2013. This letter raised further issues that we have addressed in a letter to John Rayner, general manager of Sutherland Shire Council, dated 27 September 2013. This letter is also attached.





The letter clarifies and confirms RVA's ownership of the relevant portions of 'Bournemouth Street' and 'Sussex Street'. RVA's ownership of this land is a key consideration that should be taken into account in relation to the zoning and planning decisions regarding this land.

We are instructed by RVA that it has made no reportable political donations within the relevant two year period. Furthermore, to the knowledge of RVA, none of its associates, within the meaning of the legislation, have made such a donation.

Should you require further information, please do not hesitate to contact Ron van Ardenne, RVA director, on 0400 069 994.

Yours sincerely

  
 Anthony Whealy  
Partner  
Aaron Gadriel  
Director

Accredited Specialist Local Government & Planning

Enc

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9 September 2013

The General Manager  
Sutherland Shire Council  
Locked Bag 17  
Sutherland NSW 1499

**By email:**        [ssc@ssc.nsw.gov.au](mailto:ssc@ssc.nsw.gov.au)

**Attention        Mark Carlon**  
**Manager, Environmental Planning Unit**

Dear Mark

**LP/03/79340, Amended Draft Sutherland Shire Local Environmental Plan 2013**

We act for RVA Australia Pty Ltd (RVA).

RVA is the owner of the former Scout Association land at Bundeena known as **Spring Gully**. The property is located at 60-70 Bournemouth Street, Bundeena and its title reference is Lot 3 DP 213924.

This submission relates to Spring Gully and the adjacent land identified as 'Bournemouth Street' and 'Sussex Street' in DP 1782 (to the west and the south of Spring Gully respectively). This adjacent land is presently bushland, and it seems that no roads have ever been built on it.

In summary, this submission says:

- RVA intends to operate an eco-tourism encampment at Spring Gully.
- The draft LEP is proposing that Spring Gully is to be rezoned from a special uses recreation zone to an environmental conservation zone (the E2 zone). Existing protection for a mapped wetland is to be extended to the entire Spring Gully site. A new overlay protecting terrestrial (non-aquatic) biodiversity is to be imposed. An earlier proposal (in the previous draft LEP) that Spring Gully be zoned for private recreation (RE2) has been dropped.
- In order for the E2 zone to have an ecological purpose, there must be 'high ecological values'.
- We have seen no evidence that the Council has obtained the required ecological assessment.
- RVA has commissioned an ecological assessment which has found that Spring Gully did not meet the requirements for an E2 zone, that is high ecological or scientific value.
- There is no proper basis for zoning the Spring Gully land as E2.
- There are 19 separate sites to be zoned as E2 under the draft LEP that are destined to be acquired by a public authority, but Spring Gully is not destined to be so acquired. This means that a different zoning approach is required for Spring Gully.



- Spring Gully, and the adjacent stretches of 'Bournemouth Street' and 'Sussex Street' should be zoned RE2 Private Recreation.
- It is clear that a private recreation (RE2) zone is intended to be applied to natural environment landscapes, such that at Spring Gully.
- If an RE2 zone is imposed, there is no credible prospect that some of the urban land uses notionally permitted with consent in the zone could be pursued by the landowner. The planning law does not give an entitlement to a development consent just because a development type is permitted within a zone with consent.
- Spring Gully is identified as 'Biodiversity' land in the draft LEP's Terrestrial Biodiversity Map. This means that there is no need for the E2 zoning (in any event), because these overlays ensure the environmental issues must be considered in the consideration of future development applications.
- Furthermore, there is no basis for any special environmental controls to be applied by the LEP to all of Spring Gully.
- In our submission, the overlays referred to above (or any E2 zoning) should only be applied to the small patch of Coastal Freshwater Lagoon in the north-west of the site.
- Adjacent to Spring Gully is land that appears in the relevant plan of subdivision as roads. These two 'roads' are described as 'Bournemouth Street' and 'Sussex Street'. It seems that no roads have ever actually been built on this land.
- RVA is the owner of half of 'Bournemouth Street' and 'Sussex Street' (to the middle line) where those 'roads' are adjacent to Spring Gully.
- It seems to us that it is likely that the other half of the relevant stretch of 'Bournemouth Street' is presently owned by the NPWS and the other half of the stretch of 'Sussex Street' is presently owned by Sutherland Shire Council.
- RVA wishes to purchase the Council's interest in its half of 'Sussex Street' that is adjacent to Spring Gully and use that land in conjunction with Spring Gully.
- In the draft LEP, development for a 'recreational camp' and 'eco-tourist facilities' are to be additional permitted uses (with development consent) at Spring Gully, but not for the adjacent 'Sussex Street' and 'Bournemouth Street'.
- The additional permitted uses identified for Spring Gully should also be identified for the RVA land within the adjacent 'Sussex Street' and 'Bournemouth Street'.
- The appropriate planning approach would be to also apply those same additional uses to the other half of the adjacent 'Sussex Street' and 'Bournemouth Street'.

All of the key propositions in this submission are backed up by the relevant LEP practice notes of the Department of Planning and Infrastructure.

## 1. Existing and proposed zoning

### 1.1 Under the current *Sutherland Shire Local Environmental Plan 2006* (the **current LEP**):

- (a) Spring Gully is zoned as Zone 12 Special Uses – Recreation Camp. The adjacent 'Sussex Street' has the same zoning.

- (b) The adjacent 'Bournemouth Street' is zoned 'Zone 23 – Road'.
  - (c) A small portion of Spring Gully (less than 10 per cent of the overall site area, in the north- west of the site) and part of 'Bournemouth Street' are identified as 'Wetlands'. There is a requirement to give particular consideration to biodiversity issues in relation to applications for development on that part of the land mapped as Wetlands.
- 1.2 Under the *Draft Sutherland Shire Local Environmental Plan 2013* exhibited in March 2013 (**the previous draft LEP**):
- (a) Spring Gully was proposed to be zoned as RE2 Private Recreation. The same zoning was proposed for the adjacent 'Sussex Street'.
  - (b) The adjacent 'Bournemouth Street' was proposed to be zoned as E2 Environmental Conservation.
  - (c) Development for a 'recreational camp' was to be permitted (with development consent) at Spring Gully, but not for the adjacent 'Sussex Street' and 'Bournemouth Street'.
- 1.3 Under the most recent *Draft Sutherland Shire Local Environmental Plan 2013* now on exhibition (**the draft LEP**):
- (a) Spring Gully is proposed to be zoned as E2 Environmental Conservation. The same zoning is proposed for the adjacent 'Sussex Street' and 'Bournemouth Street'.
  - (b) Development for a 'recreational camp' and 'eco-tourist facilities' are additional permitted uses (with development consent) at Spring Gully, but not for the adjacent 'Sussex Street' and 'Bournemouth Street'.
  - (c) All of Spring Gully is identified as 'Riparian Lands and Watercourses' land and 'Biodiversity' land in the Terrestrial Biodiversity Map/Riparian Lands and Watercourses Map. Neither of the adjacent 'Sussex Street' and 'Bournemouth Street' have this status.
  - (d) None of the land is identified for acquisition by the council or any other public authority in the Land Reservation Acquisition Map.
- 1.4 In short, Spring Gully is to be rezoned from a special uses recreation zone to an environmental conservation zone. Existing protection for a mapped wetland is to be extended to the entire Spring Gully site. A new overlay protecting terrestrial (non aquatic) biodiversity is to be imposed. An earlier proposal that Spring Gully be zoned for private recreation has been dropped.
- 2. RVA's plans for Spring Gully**
- 2.1 RVA intends to operate an eco-tourism business at Spring Gully. RVA believes that site's proximity to Sydney and its bushland setting make it ideal for this purpose.
- 2.2 RVA acquired Spring Gully in good faith on the strength of its existing zoning: 'Zone 12 Special Uses – Recreation Camp'. This zoning was entirely consistent with RVA's desire to deliver an environmentally friendly tourist attraction for individuals and small groups seeking nature oriented accommodation.
- 2.3 RVA's proposal for Spring Gully can be summarised as follows:
- (a) Six semi-permanent two-person tents. Each tent will be constructed on platforms that are level with the ground on at least one side.



- (b) Other proposed facilities will include a kitchen, toilets, showers and picnic areas. These would all be semi-permanent tent constructions with minimal environmental impact.
  - (c) The encampment will include caretaker's accommodation. The accommodation will be constructed suitable for rating up to Bushfire Attack Level 29. It will be largely constructed off-site and assembled on-site in a matter of days.
  - (d) All structures are intended to be steel framed and located on screw-in piers on the existing landscape. RVA's aim is to limit ground works on the land to almost zero.
  - (e) The encampment will meet its own power, water and sewage requirements without any external off-site reticulation.
  - (f) RVA's guests will be looking to enjoy the area's tranquil environment, with the opportunity to explore and enjoy what the Royal National Park and the villages of Audley, Maianbar and Bundeena have to offer.
- 2.4 RVA's intention is that the ecotourism venture will give Spring Gully an economic use. RVA believes that this will ensure that funds are available to support the management of the land. RVA's aim is to work within the requirements of the relevant authorities and manage the bush fire risk for the encampment and on neighbouring properties, while respecting the need to appropriately conserve Spring Gully's environmental qualities.
- 2.5 RVA's plans for Spring Gully complement the plans of the National Parks and Wildlife Service (NPWS) for the old Bundeena Sanitary Depot (a Council site) adjoining Spring Gully. The NPWS has indicated that when Council transfers the depot land to it, the NPWS intends to establish a parking area for people using the coastal walking track. The NPWS may install some bathroom facilities at this location. (This NPWS plan is outlined in Sutherland Shire Council Minute Number: 942 Council Meeting Date: 24/06/13.)
- 2.6 RVA informs us that the NPWS has acknowledged (in a meeting late last month):
- (a) the value of the proposed encampment at Spring Gully as a provider of accommodation to the Royal National Park's visitors; and
  - (b) the benefits of having a neighbour who is actively interested (and is able to informally monitor) conditions in the Park.
3. **E2 Environmental Conservation Zone**
- 3.1 The draft LEP proposes to rezone Spring Gully from its existing special uses zone (recreation camp) to E2 Environment Conservation. The proposal in the previous draft LEP to zone Spring Gully RE2 Private Recreation has been dropped.
- 3.2 The objectives of the E2 zones are as follows:
- 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** (bold added).
- 3.3 The zone objectives are clear. **In order for the E2 zone to have an ecological purpose, there must be 'high ecological values'.**
- 3.4 These zone objectives are reinforced by the Department of Planning and Infrastructure's LEP

practice note (PN 09-002, *Environment Protection Zones*):

This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. ...

It is anticipated that many councils will generally have **limited areas** displaying the characteristics suitable for the application of the E2 zone. ...

Prior to applying the relevant zone, the environmental values of the land should be established, preferably on the basis of a strategy or from an environmental study developed from robust data sources and analysis. **This is particularly important where land is identified as exhibiting high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves.** ...

The zones are to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses.

... [The Council] council should ensure, wherever possible, that the range of proposed land uses assists in retaining the land in private ownership....

**The use of the E2 zone needs to be supported by an appropriate assessment** of the area meeting the zone objectives of high ecological, scientific, cultural or aesthetic values of this zone (some bold added).

3.5 The practice note makes it emphatically clear that:

- (a) The use of the E2 zone should be limited. Overuse is to be avoided as that will debase the zone's value.
- (b) The use of the E2 zone needs to be supported by an appropriate assessment (relevantly) showing high ecological values.

3.6 We have seen no evidence that the Council has obtained the required ecological assessment. In the light of the proposed E2 zoning proposed for Spring Gully (and in the absence of any appropriate Council study), RVA commissioned Ecological Australia to carry out an assessment of the ecological features of the site. Its Ecological Due Diligence Assessment is dated 14 August 2013 and enclosed with this letter (**tab 2**).

3.7 This report concludes that:

[T]he vegetation [at Spring Gully] is not highly constrained ecologically, as a result of factors including past land use and fire history, moreover the vegetation types that occur on the slopes and plateau are well represented in adjacent conservation areas. ... Additional habitat features that would be of ecological significance to the threatened species known from the locality such as rock overhangs, mid-storey shrub thickets and dense groundcover are absent.

The vegetation that occurs in the north-west portion of the site [the wetland that is mapped in the current LEP] is the only vegetation type which is listed as a ... [threatened ecological community (TEC)], although this vegetation would not be affected by the proposed development ...

In regards to the proposal to rezone the site as E2 Environmental Conservation under the DSSLEP 2013, the application of this zoning is for lands of high ecological, scientific, cultural or aesthetic values ... **[T]he structure, floristics and habitat value of the vegetation on the site have been reduced in quality as a result of past land use, fire history and recent disturbances.** ...

**No threatened plant species were recorded on the site** and it is likely that the proposed development would not significantly reduce the existing available foraging and sheltering opportunities for threatened fauna species.



... It would appear that the proposed development complies with [the ecologically sustainable development] aim, because a large proportion of the existing tree canopy will be retained and maintained, bushfire safety for houses in Beachcomber Avenue will be improved and a low-impact tourist facility will be established.

The retention of the proposed 'RE2 – Private recreation' zoning at the site will allow more flexibility in the development of the subject site for low-impact camping facilities, **with a rezoning of to 'E2 Environmental Conservation' not considered to accurately reflect the objectives of such as zone as of 'high ecological (or) scientific value' ... (bold added)**

- 3.8 RVA also commissioned a report on arboricultural issues (**tab 3**). We are instructed that the findings of this report are consistent with those of Ecological Australia.
- 3.9 RVA has sought to establish whether Spring Gully contains any items of Aboriginal heritage that might mean it has a 'high cultural value', including searches of the Office of Environment and Heritage's Aboriginal Heritage Information Management System. We are instructed that Spring Gully contains no such Aboriginal heritage.
- 3.10 In light of the above, and based on the information available to us, **we can see no proper basis for zoning the Spring Gully land as E2.**
- 3.11 We further note that, as the Department's practice note warns, an E2 zone can create difficulties where land is to be retained in private ownership.
- 3.12 The draft LEP's Land Reservation Acquisition Map identifies 19 separate sites zoned as E2 and it nominates them for future acquisition by the ministerial corporation managed by the Department of Planning and Infrastructure.
- 3.13 Spring Gully, 'Sussex Street' and 'Bournemouth Street' stand out **because they are not amongst these sites.** That is, the draft LEP makes it clear that there is no intent for these sites to be acquired, unlike numerous other sites proposed for inclusion in the E2 zone.
- 3.14 Indeed, the OEH wrote to RVA on 17 April 2013 (enclosed at **tab 4**) and stated that:

[F]unding to purchase this land [Spring Valley] would not be available in the immediate future. The land is considered a relatively low priority for purchase, in comparison with other priorities across the state.
- 3.15 This is also consistent with discussions between Council officers and the NSW Government, as documented in the Council officers' *Response to Submissions* which was prepared following the exhibition previous draft LEP:

Discussions with the Office of Environment and Heritage indicate that this land [Spring Gully] is not a priority acquisition site, nor do they have funding to include this site as part of the National Park.
- 3.16 The same report by Council officers also stated that:

However, whilst development of the land is constrained, drawing the permissible uses too constrictively, as per the E2 zone, may result in an acquisition liability. The [Department of Planning and Infrastructure] considers that for land reserved for public purposes, an acquisition authority should be nominated in the plan. Council has no plans to acquire this land for open space purposes, nor can S94 Open Space contributions be used for conservation purposes.

- 3.17 In short, 19 separate sites to be zoned as E2 under the draft LEP are destined to be acquired by a public authority, but Spring Gully is not destined to be so acquired. In our submission, this means that a different zoning approach is required for Spring Gully.

#### 4. RE2 Private Recreation zone

- 4.1 The objectives of the E2 zones are as follows:

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To **protect and enhance the natural environment** for recreational purposes.
- To ensure the scale, density and form of development reflects the nature of the recreational use of the land **and is compatible with the surrounding urban form and natural setting** (bold added).

- 4.2 It is, in our opinion, clearly evident that a private recreation zone is intended to be applied to natural environment landscapes. If this zone were solely for use in urban contexts, there would be little point in a provision which (for example) envisages the protection and enhancement of the natural environment.

- 4.3 Indeed, the Department of Planning and Infrastructure's LEP practice note (PN 09-006, *Providing for tourism in Standard Instrument local environmental plans*) makes it emphatically clear that the RE2 zone is intended to be used in non-urban contexts, when, for example, it nominates possible uses for the zone as 'camping ground' and 'ecotourism'.

- 4.4 While a range of land uses is notionally permitted in a RE2 zone, under the *Environmental Planning and Assessment Act 1979* (**the Act**), there is no entitlement to an approval merely because a particular development type is permitted with consent.

- 4.5 For example, indoor recreation facilities (such as theme parks, stadiums and race courses) are a permitted (with consent) in a RE2 zone. However, there is little chance of a development application for such uses being granted consent at Spring Gully (assuming an RE2 zone is imposed). That is because section 79C(1) of the Act, still requires a merit consideration of any development application against the following criteria:

- (a) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- (b) the suitability of the site for the development; and
- (c) the public interest.

Additional factors, such as whether the development is ecologically sustainable can also be taken into consideration: *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC 399.

- 4.6 If the impacts of a proposed development are not acceptable (and this includes matters such as traffic impacts) or the site is not suitable for a development of a particular kind (because, for example, there is a lack of appropriate access), then a consent authority is able to refuse the development application.



4.7 In short:

- (a) the RE2 zone is appropriate for a natural setting such that at Spring Gully; and
- (b) if an RE2 zone is imposed, there is no credible prospect that some of the urban land uses notionally permitted with consent in the zone could be pursued by the landowner.

4.8 In our submission, Spring Gully, and the adjacent stretches of 'Bournemouth Street' and 'Sussex Street' should be zoned RE2 Private Recreation.

**5. Use of overlays**

5.1 We have already outlined, in our view, a very strong case as to why the use of the E2 zone for Spring Gully is unjustified and the use of the RE2 zone is appropriate.

5.2 However, there is another very significant reason why the use of the E2 zone is entirely unnecessary to ensure that environmental issues are appropriately addressed, when future development applications are considered.

5.3 Spring Gully is identified as 'Biodiversity' land in the draft LEP's Terrestrial Biodiversity Map.

5.4 According to clause 6.13 of the draft LEP, the purpose of this identification is to:

- (a) protect native fauna and flora;
- (b) protect the ecological processes necessary for their continued existence; and
- (c) encourage the conservation and recovery of native fauna and flora and their habitats.

5.5 When development applications are considered, the draft LEP imposes a requirement for particular consideration of key biodiversity issues. Additionally, development consent cannot be granted for any proposal unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives - the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.

5.6 Spring Gully is also identified as 'Riparian Lands and Watercourses' land in the draft LEP's Riparian Lands and Watercourses Map.

5.7 According to clause 6.15 of the draft LEP, the purpose of this identification is to protect and maintain:

- (a) water quality within watercourses;
- (b) the stability of the bed and banks of watercourses;
- (c) aquatic and riparian habitats; and
- (d) ecological processes within watercourses and riparian areas.

- 5.8 When development applications are considered, the draft LEP imposes a requirement for particular consideration of potential impacts on water quality, water flows, aquatic and riparian biodiversity and the stability of the bed and banks of the watercourse. Additionally, development consent cannot be granted for any proposal unless the consent authority is satisfied that:
- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
  - (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- 5.9 The inclusion of Spring Gully in these overlays means that environmental issues will be front and centre in the consideration of any future development application, irrespective of whether the land is zoned E2 or not. (We should add, that if the land is zoned RE2, the need to protect the natural environment will also need to be considered as it is part of the objectives for that zone.)
- 5.10 The Department of Planning and Infrastructure's LEP practice note (PN 09-002, *Environment Protection Zones*) makes it clear that overlays of this kind can be considered as an **alternative** to an 'E' zone. While the draft LEP has sought to rely on both overlays and 'E' zone, a perfectly acceptable standard of environmental protection can be achieved via the use of overlays alone. In particular, the practice note says that:
- Local environmental provisions may be applied where zone provisions need to be augmented in order to ensure that special environmental features are considered. For example, rural land that is still principally for agriculture but which contains environmentally sensitive areas may be zoned RU1 or RU2 and the environmental sensitivities managed through a local provision and associated ('overlay') map.
- 5.11 In our view, the same logic applies here. Spring Gully should be used for private recreation, but to the extent that there are important environmental features on part of the site (that is, the wetland in the north-west corner, accounting for less than 10 per cent of the overall site), overlay maps can be used to ensure appropriate environmental management without the need for an 'E' zone.
- 5.12 We submit that the inclusion of Spring Gully in the Terrestrial Biodiversity Map and the Riparian Lands and Watercourses Map means that an 'E' zoning is completely unnecessary.
- 6. Split zoning**
- 6.1 In light of the ecological assessment (enclosed at **tab 2**) we submit that there is no basis for any special environmental controls to be applied by the LEP to **all** of Spring Gully.
- 6.2 If the land is zoned RE2, any future development application will need to consider both the environmental impacts in the locality and the zone objectives which include objectives:
- (a) to protect and enhance the natural environment for recreational purposes; and
  - (b) to ensure the scale, density and form of development reflects the nature of the recreational use of the land and is compatible with the surrounding natural setting.
- 6.3 In our submission, these existing provisions are sufficient for all of the site, apart the small patch of Coastal Freshwater Lagoon in the north-west of the site. This approach is consistent with the



Wetlands Map in the current LEP (which does not identify all of Spring Gully, just the actual wetlands).

- 6.4 In our submission, the overlays referred to above (and if any 'E' is contemplated despite this submission, that E zone) **should only be applied to the Coastal Freshwater Lagoon**.
- 6.5 We note that if the Council were to apply these controls **only** to this small portion of the site it would be acting in accordance with the Department of Planning and Infrastructure's practice note (PN 09-002, *Environment Protection Zones*). This practice note says that:

Where council wishes to acknowledge different land capabilities on a single allotment, **council may consider applying more than one zone across the land**. For example, this approach may be considered appropriate over an allotment to distinguish between areas of environmental value and areas for agricultural purposes (bold added).

## 7. Equity considerations

- 7.1 The imposition of unnecessary environmental controls on the Spring Gully land will, in RVA's view, be likely to make the development assessment process too uncertain and too expensive for RVA or anyone else pursue. That is, the value of Spring Gully as private land would be sterilised.

## 8. Bushfire planning

- 8.1 We recognise the fact that Spring Gully is considered to be bushfire prone land. However, this is not a reason for land to be zoned something other than RE2. This is because section 79BA of the Act ensures that bushfire issues must be addressed when any future development application for the encampment is determined. It means that development consent cannot be granted unless the proposal confirms to the relevant bushfire requirements.
- 8.2 The imposition of an RE2 zoning represents a continuation of the status-quo. It does not, in our submission, sanction a more intense use of the site (in comparison with the current zoning). It would be, in our opinion, premature and inappropriate to deny to Spring Gully an RE2 zoning based on bushfire concerns.
- 8.3 In the context of this site, the appropriate time to address bushfire issues is at the time that a development application is made. Only at that time will the specific proposal and the necessary expert reports be available for detailed review.

## 9. 'Bournemouth Street' and 'Sussex Street'

- 9.1 Adjacent to Spring Gully is land that appears in the relevant plan of subdivision (DP 1782) as roads. These two 'roads' are described as 'Bournemouth Street' and 'Sussex Street'.
- 9.2 Enclosed with this submission is a satellite image titled *Spring Gully and the adjacent 'Bournemouth Street' and 'Sussex Street' (tab 1)*. As this image shows, these 'roads' are, in fact, bushland.
- 9.3 It seems that no roads have ever been built on this land. We are instructed that it is impossible for a road to be built in the future because of cliffs and the wetlands.

### *Ownership of 'Bournemouth Street' and 'Sussex Street'*

- 9.4 At the time that the plan of subdivision was registered, the mere registration of a plan depicting a road was **not** sufficient for land to actually become a public road. This means that the ownership

of the land has not necessarily passed from private to public hands.

- 9.5 The dedication of a public road prior to 1920 was governed by the common law (the plans of subdivision is dated 1886). This meant that, in order for a dedication of land as a public road to take place, there must have been:
- (a) a manifest intention by the then landowner to dedicate the land as a public road; and
  - (b) acceptance by the public of the dedication, usually inferred by sufficient use of the land by the public as a road or a passageway.

(*Permanent Trustee Co of NSW v Campbelltown Corporation* (1960) 105 CLR 401).

Based on the material before us, there is no basis for a conclusion that the public ever accepted the land dedication. Accordingly, in our view, 'Bournemouth Street' and 'Sussex Street' are not presently public roads.

- 9.6 Under section 45A of the *Real Property Act 1900*, there is a rebuttable rule of construction that the title of the 'roads' depicted has been conveyed with the adjacent allotments (see *Casson v Leichhardt Council* [2011] NSWLEC 243 for an example of the application of this rule). In our opinion, based on the information before us, **RVA is the owner of half of 'Bournemouth Street' and 'Sussex Street'** (to the middle line) where those 'roads' are adjacent to Spring Gully.
- 9.7 It seems to us that it is likely that **the other half** of the relevant stretch of:
- (a) 'Bournemouth Street' is presently owned by the National Parks and Wildlife Service (due to its ownership of Lot 6 Section H DP 1782); and
  - (b) 'Sussex Street' is presently owned by Sutherland Shire Council (due to its ownership of lots 16-18 of section K in DP 1782).

***RVA's desire to make use of Council's portion of the adjacent 'Sussex Street'***

- 9.8 The Council's half of the stretch of 'Sussex Street' adjacent to Spring Gully can play an important role in ensuring that RVA's use of Spring Gully is consistent with community aspirations.
- 9.9 RVA believes that the most suitable location for the encampment, within Spring Gully, is the plateau levels near the south side of the property. In RVA's view, this location enables all of the new structures to be kept under the ridgeline. For this location to be viable in a bushfire planning sense, RVA believes that it is necessary for there to be an 'asset protection zone' that includes **all** of the adjacent land known as 'Sussex Street'.
- 9.10 We are instructed that the use of 'Sussex Street' in this way:
- (a) allows for proper maintainable north-south and east-west special fire advantage zones that help protect Bundeena and Spring Gully from bushfires that might come through the gully or over the ridge;
  - (b) allows RVA to locate its encampment as far away as possible from the significant canopy and understorey (the significant parts of the canopy and understorey are located on the north facing slope and valley part of Spring Gully); and
  - (c) ensures that the encampment is obscured behind the canopy (minimising its visibility to the residents of Bundeena).



- 9.11 For this reason, **RVA wishes to purchase the Council's interest in its half of 'Sussex Street' that is adjacent to Spring Gully.**

*Implications for zoning*

- 9.12 In the draft LEP, development for a 'recreational camp' and 'eco-tourist facilities' are to be additional permitted uses (with development consent) at Spring Gully, but not for the adjacent 'Sussex Street' and 'Bournemouth Street'.
- 9.13 In our opinion, given RVA owns half of the adjacent 'Sussex Street' and 'Bournemouth Street' (to the centre line) there can be no proper basis for distinguishing between this RVA land and the adjacent Spring Gully land also owned by RVA. That is, the additional permitted uses identified for Spring Gully should also be identified for the RVA land within the adjacent 'Sussex Street' and 'Bournemouth Street'. (We also submit that the zoning of the two 'roads' should be the same as for Spring Gully.)
- 9.14 For simplicity, it seems to us that the appropriate planning approach would be to also apply those same additional uses to the other half of the adjacent 'Sussex Street' and 'Bournemouth Street'.
- 9.15 Furthermore, given that RVA is actively proposing to purchase the Council's half of the adjacent 'Sussex Street' from it, it would be prudent for Council to support the addition of the permitted uses on all of Sussex Street, pending a decision by Council on what it will do with its land. We note that there are only two potential owners of Council's half of the adjacent 'Sussex Street' RVA or the NPWS (assuming Council proceeds with the transfer of the historical 'night soil depot'). RVA met with the NPWS regional manager Mike Patrick, together with relevant Council staff, late last month. We are instructed that, at that meeting, Mr Patrick said that the NPWS had no particular interest in the unformed 'roads', including the section of 'Sussex Street', south of Spring Gully.
- 9.16 For completeness, the approach outlined above is consistent with (and in fact implements) the relevant LEP practice note published by the Department of Planning and Infrastructure (PN 10-001, *Zoning for Infrastructure in LEPs*) inasmuch as it would apply to a public road:

wherever possible, the zone applied should be the same as that applied to adjoining land, **and which provides for a range of land uses** to assist with flexibility in land use planning (bold added).

We are instructed by RVA that it has made no reportable political donations within the relevant two year period. Furthermore, to the knowledge of RVA, none of its associates, within the meaning of the legislation, have made such a donation.

Yours sincerely



 Anthony Whealy  
Partner



Aaron Gadiel  
Director

Accredited Specialist Local Government & Planning

cc Cr Kent Johns - Mayor

Sutherland Shire Council  
Locked Bag 17, Sutherland 1499

By email: [mayor@ssc.nsw.gov.au](mailto:mayor@ssc.nsw.gov.au)

cc	Cr Kevin Schreiber - Deputy Mayor	Sutherland Shire Council Locked Bag 17, Sutherland 1499  By email: <a href="mailto:kschreiber@ssc.nsw.gov.au">kschreiber@ssc.nsw.gov.au</a>
	Cr Carol Provan JP CMC	Sutherland Shire Council Locked Bag 17, Sutherland 1499  By email: <a href="mailto:cprovan@ssc.nsw.gov.au">cprovan@ssc.nsw.gov.au</a>
	Cr Scott Williams	Sutherland Shire Council Locked Bag 17, Sutherland 1499  By email: <a href="mailto:swilliams@ssc.nsw.gov.au">swilliams@ssc.nsw.gov.au</a>
	Mr Lee Evans, MP, Member for Heathcote	Shops 1 & 2 17 - 23 Station Street ENGADINE NSW 2233  By email: <a href="mailto:heathcote@parliament.nsw.gov.au">heathcote@parliament.nsw.gov.au</a>
	Juliet Grant, Regional Director, Sydney Region East, NSW Department of Planning and Infrastructure	GPO Box 39 Sydney NSW 2001  By email: <a href="mailto:juliet.grant@planning.nsw.gov.au">juliet.grant@planning.nsw.gov.au</a>

Enc:

1. Spring Gully and the adjacent 'Bournemouth Street' and 'Sussex Street' (Satellite image with cadastral information)-
2. Ecological Due Diligence Assessment by Ecological Australia, dated 14 August 2013.
3. Report of Site Inspection – Arboricultural Issues, dated 15 August 2013.
4. Letter from the Office of Environment and Heritage, dated 13 April 2013.



## Lot 3 DP 213924

Spring Gully and the adjacent "Bournemouth Street" and "Sussex Street"



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Ref: 13SUTECO-0055

14<sup>th</sup> August 2013

Dear Ron,

### **Ecological Due Diligence Assessment, 60-70 Bournemouth Street, Bundeena**

Thank you for the opportunity to undertake a due diligence assessment for the development of a proposed building envelope and APZ, extending over a large portion of the property at 60-70 Bournemouth Street, and adjoining part of unformed road, Sussex Street, Bundeena. Please find below a report addressing our understanding of the project and our findings.

#### **Introduction**

The subject site at 60-70 Bournemouth Street, Bundeena (Lot 3 // DP 21392), is located approximately 1 kilometre (km) south of Bundeena shops in Beach Street, and approximately 25 km south of Sydney, New South Wales. The property extends from the back fences of residences on Beachcomber Ave, upslope to a cleared area which had previously been used as a night-soil dump. Vegetated areas of the Royal National Park extend to the east, south and west of the site. Access to the site is currently available from the track which links a small car park with the Coast Walk. The site has been previously used as a scout camp. **Figure 1** indicates the location of the site, in relation to Bundeena township and adjacent areas of the Royal National Park.

Eco Logical Australia Pty Ltd (ELA) was commissioned to undertake a due diligence assessment to identify any ecological constraints present within the study area, including threatened species, populations, ecological communities and migratory species listed under the NSW *Threatened Species Conservation Act 1995* (TSC Act) and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The assessment includes the subject site (the property) and adjacent vegetated areas (the study area), and is prepared to inform future land use potential and the submission of a Development Application for the establishment of a recreational camping area and associated facilities.

The land is currently zoned 'Zone 12 – Special Uses (Recreation Camp)', under the Sutherland Shire Local Environment Plan 2006, with a new 'Draft Sutherland Shire LEP 2013' (DSSLEP) (SSC 2013) currently on exhibition. The DSSLEP proposes a revised zoning of 'RE2 – Private Recreation', although a recent resolution by Sutherland Shire Council (CCL006-14, 5 August 2013) has proposed that the subject site be zoned 'E2 – Environmental Conservation', with 'recreation camp' and 'eco-tourist facilities' to be added as permissible uses.



This Due Diligence Assessment has been carried out with two aims:

- i) To assess the conservation significance of the site in the context of the proposed development; and
- ii) To determine whether the proposal to re-zone the site as E2 Environmental Conservation rather than RE2 – Private Recreation has merit which can be supported by available data.

The scope of this report does not include a detailed flora and fauna impact assessment.

## Methods

A desktop review was undertaken of relevant literature and data including a search of the Atlas of NSW Wildlife (DECCW 2010). No historical records of threatened flora or fauna occur within the study area.

A site inspection was undertaken by Gary Leonard (Senior Ecologist, ELA) on Wednesday 13<sup>th</sup> August 2013. The inspection involved traversing the site over two hours to map the extent of vegetation communities and revise the existing vegetation mapping published by Tozer et al. (2006) (**Figure 2**). Habitat potential for threatened flora and fauna species was assessed; targeted searches for *Genoplesium baueri* (Brittle Midge Orchid) and *Prostanthera densa* were undertaken in areas of potential habitat. Searches were also undertaken for potential threatened fauna habitat.

## Results

### Plant communities

The desktop review identified four vegetation types mapped within the study area:

- Coastal Freshwater Lagoon
- Coastal Sandstone Gully Forest
- Coastal Sandstone Ridgetop Woodland
- Coastal Sandstone Plateau Heath

### Validation of vegetation mapping

It is apparent that much of the vegetation has been affected by bushfires, especially on the upper slopes and plateau, which mostly consists of a monotypic patch of *Corymbia gummifera* (Red Bloodwood), with minimal mid-storey vegetation and a sparse understorey of *Pteridium esculentum* (Bracken). The Red Bloodwoods all appear to be less than twenty years old, indicating that many of the trees in this patch are seedlings or lignotuberous regrowth from the January 1994, or perhaps even from the December 2001 bushfires.

Much of the area in which Coastal Sandstone Ridgetop Woodland and Coastal Sandstone Plateau heath occur on the Tozer et al. (2006) mapping has been disturbed as a result of clearing and weed invasion, as well as by bushfire. Recent disturbance to these vegetation types include clearing for an informal BMX track and for the installation of water quality monitoring wells. As Red Bloodwood is a common occurrence in both vegetation types, it is reasonable to assume that there are components of both vegetation types along the upper slopes and plateau.

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The vegetation type with the most extensive occurrence on the site is Coastal Sandstone Gully Forest, although this vegetation type has also been simplified both structurally and floristically by previous land use and bushfires. This vegetation occurs over most of the slopes and into the gully floor. The most commonly occurring mature canopy tree is *Angophora costata* (Smooth-barked Apple), although seedlings and juvenile specimens of this species are scarce. Occasional mid-storey species include *Xylomelum pyriforme* (Woody Pear), *Banksia serrata* (Old Man Banksia), *Banksia marginata* (Silver Banksia) and *Xanthorrhoea media* (Grass Tree). In most patches, the groundcover consists of a sparse cover of *Pteridium esculentum* (Bracken). Like the vegetation on the upper slopes, there are extensive patches of Red Bloodwood which are generally less than 20 years old. Several mature specimens of Red Bloodwood also occur, of which three are hollow-bearing.

At the north-western end of the site, in the gully floor is a patch of Coastal Freshwater Lagoon, which follows a drainage line. This patch was not surveyed in detail, because it is likely that this area will be the subject of a land exchange with the NSW National Parks and Wildlife Service (NPWS), moreover there is no intention to disturb this area. It is noted in Sutherland Shire Council's DCP for Bundeena and Maianbar (2006) that the drainage line in which the patch of Coastal Freshwater Lagoon occurs is identified in the Structure Plan as a "....missing corridor link to be established".

#### Threatened ecological communities

The only Threatened Ecological Community (TEC) which occurs on the site is the small patch of Coastal Freshwater Lagoon, which is a component of Freshwater Wetlands on Coastal Floodplains, listed as 'endangered' under the TSC Act. As indicated in **Figure 2**, this vegetation type begins in the north-western portion of the site and extends westwards into a section of the Royal National Park where it becomes much more extensive. As noted above, this patch of TEC on the site will be the subject of a land exchange, and does not relate to and will not be affected by the proposed development.

#### Conservation Value of the other vegetation types on the site

Coastal Sandstone Gully Forest and Coastal Sandstone Ridgetop Woodland both have a wide distribution across the Sydney Basin. There are estimated to be 125,400 ha of these two associated vegetation types, of which 47,600 ha occur within conservation reserves (Tozer et al. 2006). Of the 16,100 ha of Coastal Sandstone Plateau Heath in the Sydney Basin, approximately 11,300 ha occur within conservation reserves (Tozer et al. 2006).

An examination of the vegetation mapping for the Royal National Park indicates that there are large, complete and continuous patches of these vegetation types to the south, north-east, and west of the site. Moreover, the conservation value of the vegetation on the site has been reduced by:

- Fragmentation, as a result of residential development to the north and clearing for the night-soil dump to the south; and
- Reduction in biodiversity as a result of past land use and bushfires.

#### Flora

**Figure 3** indicates the locations of threatened flora species which occur within a 5 km radius of the site. No individuals or populations of any threatened flora species were recorded during the site assessment.

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Within the township of Bundeena there are specimens of *Eucalyptus scoparia*. This species is not indigenous to the Sydney Basin, therefore these specimens are considered to be horticultural plantings. There are also specimens of *Syzygium paniculatum* (Magenta Lilly-Pilly) within the township. It is possible that these individuals have been planted, although it is also recognised that there is appropriate habitat for this species along sandy creeklines, which are lined with rainforest species in the locality. No appropriate habitat for Magenta Lilly-Pilly occurs within the subject site.

The plant species which could possibly occur on the site are *Prostanthera densa* and *Genoplesium baueri*: *Prostanthera densa* mainly occurs on coastal headlands and has been recorded in the Royal National Park near Jibbon Head, as well as in a small reserve in Cronulla, and near Marley and Little Marley (Fairley 2004). *Genoplesium baueri* grows in dry eucalypt forest on sandy soils and possibly emerges after fire (Bishop 2000). Despite searches over the site, no individuals of *Prostanthera densa* were recorded and no terrestrial orchids were observed. It is, however, recognised that many terrestrial orchid species will not become visible until after September.

Other species which have been recorded within a 5 km radius include: *Chamaesyce psammogeton* and *Senecio spathulata*, which occur on beach dunes, *Wilsonia rotundifolia*, which occurs in salt or brackish lagoons and *Diuris aequalis*, which occurs in "...montane eucalypt forest with a grassy-heathy understorey, growing in gravelly clay-loam..." (Bishop 2000). No appropriate habitat for these species occur on the site.

### Fauna

The site includes foraging habitat for a wide range of fauna species. Some shelter is available in the form of the hollows in up to 10 mature trees on the site, although no rock overhangs were recorded on the site (the only exposed rock surfaces consist of vertical plates in the drainage line in the south-west of the site). The recorded occurrences of threatened fauna species within a 5 km radius of the site are indicated in **Figure 3**. In **Figure 4**, there are records in vegetation adjacent to the site. Of these species, it may be assumed that the following threatened fauna species potentially use the available habitat on the site for roosting, shelter, or, more typically, for occasional foraging visits to the site:

Powerful Owl (*Ninox strenua*), Grey-headed Flying Fox (*Pteropus poliocephalus*), Little Lorikeet (*Glossopsitta pusilla*), Swift Parrot (*Lathamus discolor*), Eastern Pygmy-possum (*Cercartetus nanus*) and Rosenberg's Goanna (*Varanus rosenbergi*). Foraging and roosting habitat for threatened microbats is also present at the site in the form of hollow bearing trees and defoliating bark.

The most important foraging and habitat components on the site are:

- Flowering and fruiting trees and shrubs
- Hollows in mature trees for nesting and sheltering

The habitat components that are lacking, which may be used by those threatened fauna known from the 5 km locality and potentially occurring onsite include:

- Dense mid-storey shrub thickets which would provide nesting and sheltering opportunities for small birds
- Rock ledges with overhangs or exfoliated material for shelter
- Dense groundcover of sedges, forbs and grasses for reptiles and small animals
- Termite mounds for Rosenberg's Goanna



To meet the aims of providing bushfire-safe camping sites, the ground-cover and mid-storey will need to be regularly reduced. As the mid-storey is currently sparse, it should be acceptable to retain the existing mature *Banksia* plants, in order to maintain the existing nectar and shelter source. No mature trees need to be removed, although some branches which overlap adjacent trees would require removal. Two of the tree hollows are currently occupied by *Apis mellifera* (European Honey Bee). These hives should be removed by an apiarist, as they pose a nuisance to campers but also tend to discourage native fauna. The most extensive clearing relates to the patches of regrowth Red Bloodwood, which will require complete removal within the building footprint as well as thinning within the APZ.

It is apparent that the vegetation on the site does not have a particularly high conservation value, in the context of the suite of flora species, available fauna habitat and considerable amount within conservation areas. With careful management, and the implementation of a Vegetation Management Plan, it is likely that the existing ecological values of the vegetation on the site could be improved, while still providing the opportunity for the use of the site as a low-impact camping site with associated facilities.

## Conclusion

With respect to the conservation significance of the subject site in the context of the proposed development, the vegetation is not highly constrained ecologically, as a result of factors including past land use and fire history, moreover the vegetation types that occur on the slopes and plateau are well represented in adjacent conservation areas. Available fauna habitat consists of several mature hollow-bearing trees, although this habitat resource is also readily available in the adjacent conserved lands. Additional habitat features that would be of ecological significance to the threatened species known from the locality such as rock overhangs, mid-storey shrub thickets and dense groundcover are absent.

The vegetation that occurs in the north-west portion of the site is the only vegetation type which is listed as a TEC, although this vegetation would not be affected by the proposed development and it is understood that this section of the property is to be subject of a land swap with NPWS. As noted, your DA will require the submission of a Flora and Fauna Impact Assessment, although the works undertaken for this constraints analysis would form much of the background to the preparation of such a report.

In regards to the proposal to rezone the site as E2 Environmental Conservation under the DSSLEP 2013, the application of this zoning is for lands of high ecological, scientific, cultural or aesthetic values (DoP 2009a, b). Whilst the subject site retains intact vegetation, some hollow bearing trees and an area of TEC, it is evident from **Figure 2** that this vegetation type forms a small component of the property, in comparison with the extent of Coastal Sandstone Gully Forest on the site. As noted above, the other vegetation types which occur on the site are well represented in adjacent conservation areas. Moreover, also as noted above, the structure, floristics and habitat value of the vegetation on the site have been reduced in quality as a result of past land use, fire history and recent disturbances. It is also understood that a car park for the Coast Track is proposed by NPWS, which is likely to exacerbate the existing fragmentation along the southern boundary of the property if developed.

No threatened plant species were recorded on the site and it is likely that the proposed development would not significantly reduce the existing available foraging and sheltering opportunities for threatened fauna species. It is possible that, with appropriate management, the biodiversity of the existing vegetation could be increased – indeed this should be the aim of developing and maintaining a low-impact camping area.

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It is noted that DCP 2006 lists an aim of encouraging development that is ecologically sustainable. It would appear that the proposed development complies with this aim, because a large proportion of the existing tree canopy will be retained and maintained, bushfire safety for houses in Beachcomber Avenue will be improved and a low-impact tourist facility will be established. The retention of the proposed 'RE2 – Private recreation' zoning at the site will allow more flexibility in the development of the subject site for low-impact camping facilities, with a rezoning of to 'E2 Environmental Conservation' not considered to accurately reflect the objectives of such as zone as of 'high ecological (or) scientific value', and potentially inhibiting development at the site, which may be counter-productive in the long term.

If you have any further queries regarding the above assessment, I can be contacted on the below numbers or at the below email address. We look forward to working with you again in the near future.

Yours sincerely,

**Gary Leonard**

**Senior Ecologist**

T +61 2 42683489 | M +61 422 577 545| E: [garyl@ecoaus.com.au](mailto:garyl@ecoaus.com.au)

## References

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Figure 1: Location of the subject site and threatened flora records in the immediate vicinity



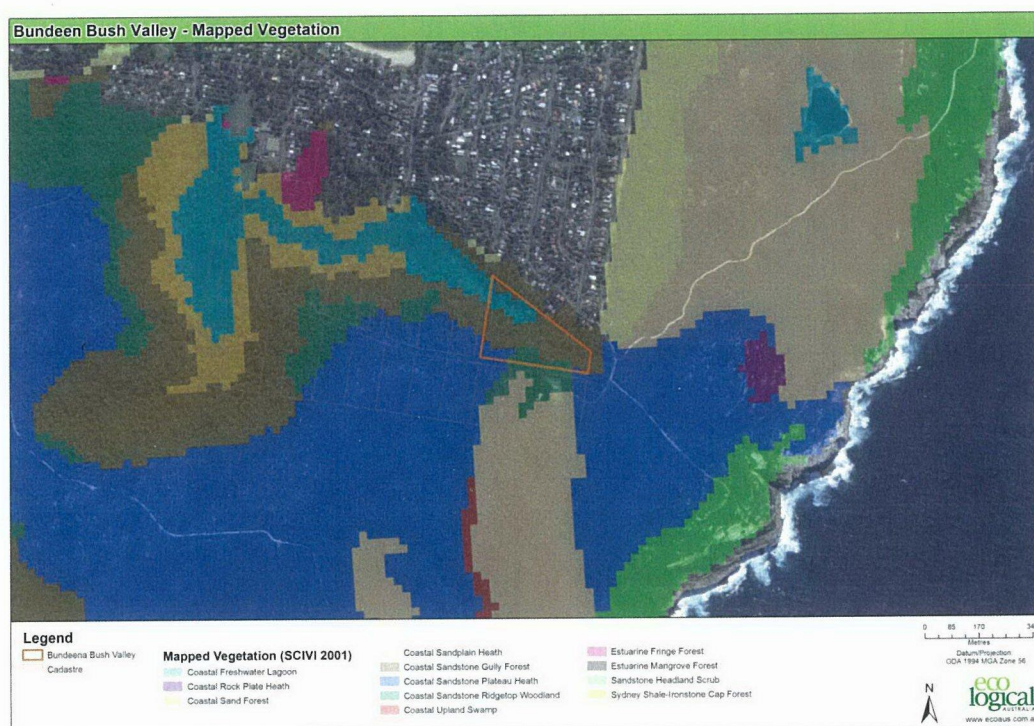


Figure 2: Native vegetation of the study area and locality

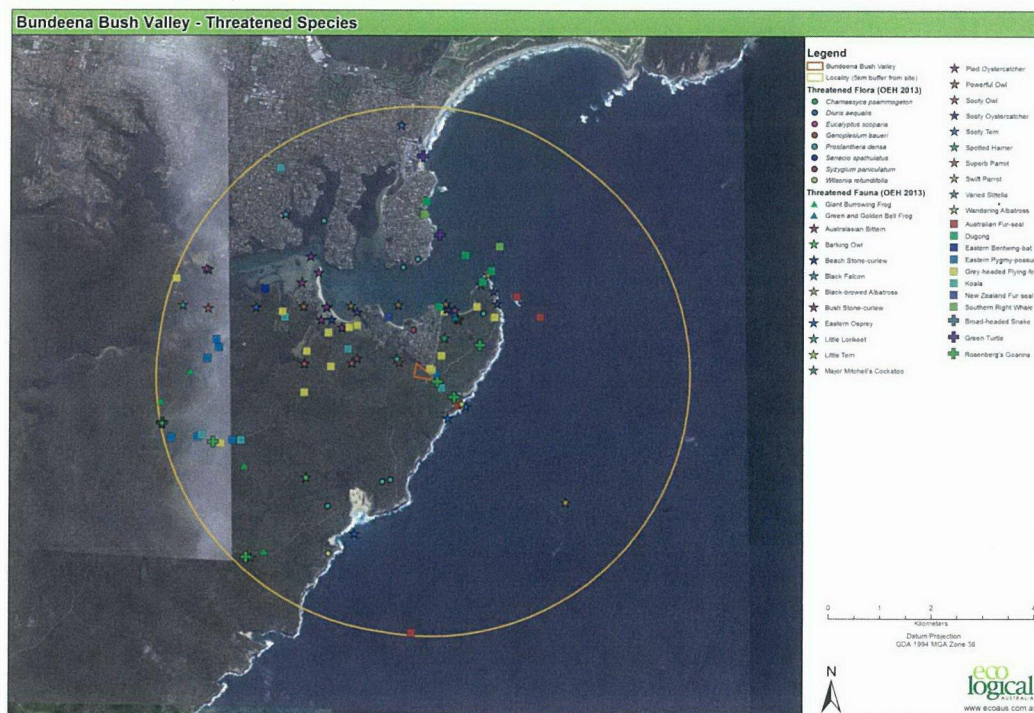


Figure 3: Threatened species records within a 5 km radius of the study area (i.e. the 'locality')



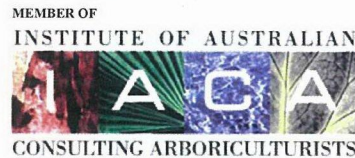


Figure 4: Threatened fauna records in near proximity to the site



# TREE & LANDSCAPE CONSULTANTS

Site Analysis, Arboricultural Assessments



**Peter A Richards**

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**15<sup>th</sup> August, 2013**

**RVA Australia PTY LTD**

6/1 Pitt Street  
Loftus 2232 NSW

**Reference: 3223**

**Site Inspection: Arboricultural Issues – Bundeena Bush Valley- Bundeena**

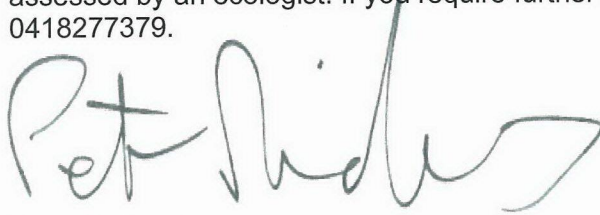
I write in response to an inspection carried out on the 13<sup>th</sup> August 2013 in regards to vegetation present within the area of influence identified within the attachment to this letter. The following observations and comments are provided in response to the site inspection.

- *The trees species observed within the area of influence were Xylomelum pyrifforme (Woody Pear), Corymbia gummifera (Red Bloodwood), Banksia serrata (Old Man Banksia), Angophora costata (Smooth Barked Apple).*
- *The main species present were Corymbia gummifera (Red Bloodwood), at the highest points or ridge of the area and Angophora costata (Smooth Barked Apple) on the lower sloping area to the north.*
- *The Corymbia gummifera (Red Bloodwood) at the highest points were mostly of smaller dimensions with minimal diversity of plant species observed beneath.*



- *The growth habit and close spacing of the Corymbia gummifera (Red Bloodwood) over the area appeared to be the result of either fire or past disturbance such as clearing.*
- *Several trees below the ridge to the north of the area exhibited hollows and decaying sections. The approximate location of these trees is identified within the attachment. These trees are larger specimens of Angophora costata (Smooth Barked Apple) & Corymbia gummifera (Red Bloodwood) which have remained since past disturbance.*

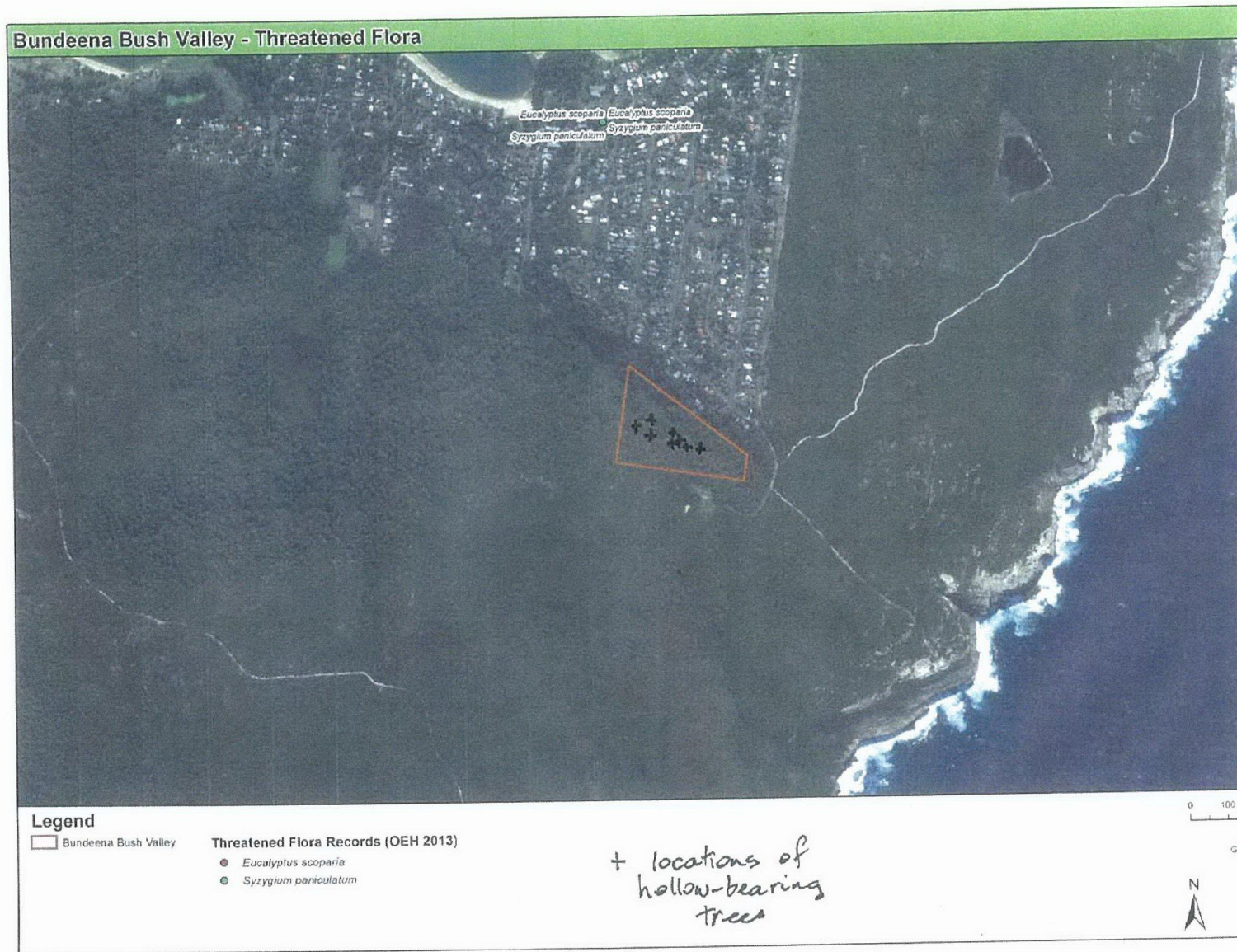
In my opinion the area assessed has no special conservation value but should be further assessed by an ecologist. If you require further information please contact me on 0418277379.

A handwritten signature in dark ink, appearing to read 'Peter Richards', with a stylized, flowing script.

Peter Richards  
**Tree & Landscape Consultants**

# Attachment

## Location of Hollow Bearing Trees







**Office of  
Environment & Heritage**  
NSW National Parks & Wildlife Service



Our reference: MD13/1698

Mr Ron van Ardenne and Ms Nicky Bangma  
Ron.van.ardenne@gmail.com

Dear Mr van Ardenne and Ms Bangma

I refer to your email to the Minister, the Hon Robyn Parker MP, regarding the land located at Lot 3 DP 213924 - 60-70 Bournemouth Street, Bundeena. The Minister referred your email to the Office of Environment and Heritage (OEH) for reply and I am responding on her behalf.

Scouts NSW wrote to OEH in August 2011 advising of the land for sale. Unfortunately, OEH was not in a financial position to acquire the lands and advised Scouts NSW accordingly. The letter to Scouts NSW in December 2012, advised that funding for the 2012/2013 Land Purchase Program had already been allocated and funding to purchase this land would not be available in the immediate future. The land is considered a relatively low priority for purchase, in comparison with other priorities across the state.

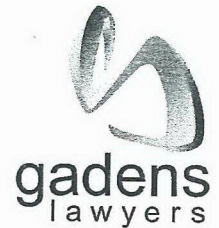
I trust that you find this information helpful and I thank you for taking the time to write to the Minister.

Yours sincerely

**MIKE PATRICK**  
**A/Director Metropolitan and Mountains**  
**National Parks and Wildlife Service**

17 April 2013

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Partner responsible Anthony Whealy  
Your reference CRMS: 772294050



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27 September 2013

The General Manager  
Sutherland Shire Council  
Locked Bag 17, Sutherland 1499

**Attention:** John Rayner

**By email:** [ssc@ssc.nsw.gov.au](mailto:ssc@ssc.nsw.gov.au)

Dear Mr Rayner

**Former Scout Association land at Bundeena known as Spring Gully**

We refer to the letter to us from the former mayor, Cr Kent Johns, dated 20 September 2013. The letter concerned the above land, which is owned by our client, RVA Australia Pty Ltd (**RVA**).

We appreciate Council's undertaking to consider the matters that we have raised about the future zoning of the Spring Gully land (Lot 3 DP 213924). We note, in particular, that the Council's Environmental Science Unit will be considering the ecological assessment that we have provided.

The former mayor's letter raises two further issues that should be addressed.

**1. RVA's ownership of the 'roads'**

- 1.1 RVA is disappointed that the Council does not yet recognise its status as the owner of half the stretches of 'Bournemouth Street' and 'Sussex Streets' (to the middle line) adjacent to the Spring Gully property.
- 1.2 You should be aware that we have investigated this matter on behalf of RVA. These 'roads' were originally contained within Certificate of Title Volume 3065 Folio 63 (**the 1920 certificate**), the registered proprietor of which was Edith Wolstenholm.
- 1.3 The 1920 certificate, by its terms, includes all land in the then DP1782, other than the land shaded yellow. It therefore explicitly encompassed both the roads and the land now known as Spring Gully. This fact is put beyond doubt by the certificate's express statement that:

This certificate of title is issued **subject to** all existing rights of way or other rights (if any) over the road and streets respectively coloured brown in the plan hereon and also shown as Deposited Plan No 1782 (bold added).
- 1.4 If the ownership of the roads was not conferred via the 1920 certificate of title, there would have been no purpose in declaring that title in the roads was qualified by 'all existing rights of way or other rights'. Such a qualification only makes sense if freehold title has been given.
- 1.5 The Spring Gully land then passed through a series of transfers to RVA (see certificates of title: volume 3916, folio 59; volume 4102, folio 224; and volume 9271 fol 160).



- 1.6 It is true that none of these transfers expressly included or excluded the roads concerned. However, the fact that a transfer does not expressly indicate that the land being conveyed extends to the centre of the road does not 'rebut' (cancel out) the presumption that ownership is conveyed. The case law concerning section 45A of the *Real Property Act 1900* is clear on this point.
- 1.7 The 1920 certificate still has continuing operation in relation to the 'residue' mineral rights. RVA's current title to the land does not include the minerals and the 1920 certificate is expressly referenced by the current certificate of title for Spring Gully in this respect. This means that the heirs of Edith Wolstenholm own the mineral rights in relation to Spring Gully (under the 1920 certificate). However, aside from the residue mineral rights, the 1920 certificate has been cancelled and has no continuing operation in relation to the Spring Gully land or the adjacent 'roads'.
- 1.8 RVA's title to half of the relevant roads is clear. RVA invites the Council to reconsider its position that RVA's title has been 'rebutted'.
- 2. Council's offer to negotiate a resolution**
- 2.1 We note the former Mayor's comment that there is 'little purpose' of argument and that the focus of the parties would be better spent on considering transfers of land as part of a solution.
- 2.2 RVA welcomes the former mayor's suggestion that RVA, Council and the National Parks and Wildlife Service (NPWS) should work co-operatively to find a solution to this matter.
- 2.3 Accordingly, RVA would support Council convening a three-way meeting between Council, RVA and the NPWS to discuss possible land transfers to resolve this matter. RVA also asks that a Council officer be nominated to progress this matter to a swift resolution. We would be grateful if the officer could contact RVA's director, Ron van Ardenne, on 0400 069 994 (email: [ron.van.ardenne@gmail.com](mailto:ron.van.ardenne@gmail.com)) as soon as possible.

RVA looks forward to working with Council to resolve all of the zoning and land ownership issues

Yours sincerely



Anthony Whealy  
Partner

Aaron Gadiel  
Director

Accredited Specialist Local Government & Planning

cc Councillor Steve Simpson, Mayor	By email: <a href="mailto:stevesimpson@ssc.nsw.gov.au">stevesimpson@ssc.nsw.gov.au</a>
Councillor Tom Croucher, Deputy Mayor	By email: <a href="mailto:tcroucher@ssc.nsw.gov.au">tcroucher@ssc.nsw.gov.au</a>
Phil Mansfield	By email: <a href="mailto:pmansfield@ssc.nsw.gov.au">pmansfield@ssc.nsw.gov.au</a>
Lani Richardson	By email: <a href="mailto:LRichardson@ssc.nsw.gov.au">LRichardson@ssc.nsw.gov.au</a>