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FACTORS TO CONSIDER IN ASSESSING MOORE RIVER
COMPANY'S APPLICATION TO RENEW SUBDIVISION
APPROVAL FOR GUILDERTON SOUTH (MOORE RIVER SOUTH)
ESTATE.

Submission by Friends of Moore River Estuary (Inc.)

Factors to consider in assessing Moore River Company's application to renew subdivision approval for Guilderton South (Moore River South) estate.

Friends of Moore River Estuary (FOMRE)(Inc.)

October 2018

1 Summary

The Friends of Moore River Estuary (Inc) (FOMRE) is a community-based group established 25 years ago to promote the following objectives.

1. To foster and promote an appreciation of the natural landscapes of the Moore River Estuary;
2. To write, publish, or make submissions or join with any person in producing or publishing any material in support of appreciating or protecting the natural landscapes of the Moore River Estuary;
3. To become affiliated with or subscribe to any other association or bodies whose object are similar to the objects of the Friends and, if thought fit, to withdraw;
4. To do and perform all acts, matters and things necessary to be done and performed so as to encourage the protection of the Moore River Estuary natural landscapes and environment.

FOMRE has followed and made submissions on several planning issues affecting the area and development on both sides of the Moore River Estuary. We have represented the Guilderton community and the wider community on planning advisory committees including the Moore River Company's Foreshore Management Plan for the Moore River South development.

FOMRE only became aware of the Moore River Company (MRC) application for a renewal of their expired subdivision approval, through the minutes of the Gingin Shire. The Shire is required to respond to a referral by the Western Australia Planning Commission (WAPC). There was no public consultation process. In view of our long association with the Moore River South proposal and our extensive knowledge of issues that may be overlooked by agencies unfamiliar with the history and issues we are making this submission to help planning authorities in considering whether renewal of the subdivision makes good planning sense considering changing criteria.

We have based our submission on three factors:

1. The subdivision is inconsistent with Statement of Planning Policy – Urban Growth and Settlements (SPP 3) and the Statement of Planning Policy 2.6 State Coastal Planning Policy.
2. The declaration of the area including and surrounding Moore River South as bush fire prone – Statement of Planning Policy Bushfire Prone Areas, December 2017 (SPP 3.7) invalidates the basis for earlier approvals and non-compliance with SPP 3.7 provides adequate reason not to approve the renewal application and to retract the original approval.
3. Environment referral required under EBPC Act has not been made by the Moore River Company although they are aware of this requirement due to the presence of threatened environmental species on their site.

In addition to these specific factors FOMRE is working with other interested groups to make a separate submission to Government on the value of creating a regional park encompassing the Wilbinga Conservation Reserve, some undeveloped Crown land and possibly including negotiation for the MRC holding. This would create a green belt north of the Perth Urban sprawl through to the Moore River.

2 History

The proposal to develop south of the Moore River Estuary has been a long drawn out process. The original Outline Development Plan (ODP) approved in 2000, was for a much larger development than the current one. In September 2004 the WAPC refused the initial subdivision plan as it did not meet their current planning strategy and it was inconsistent with the approved ODP. The Moore River Company appealed to the State Administration Tribunal (SAT) which after conducting a review hearing determined not to recommend the application essentially on sustainability grounds defined in SPP 3. The Moore River Company then appealed the SAT decision to the Supreme Court. The appeal remained listed and unheard for a long period. Following a change of Government in 2009, the new Planning Minister Mr John Day called in the application from the Court and recommended that Moore River Company develop a reduced Outline Development Plan (ODP). Whilst the reduced ODP was subjected to a consultation process the Minister had conditioned the consultation and approval process with a statement that the question of whether the land should be developed was resolved and beyond dispute. Subsequently the revised ODP and subdivision applications were approved although in many aspects contradicted the policies contained within the State Planning Framework.

3 Inconsistency with Statement of Planning Policy – Urban Growth and Settlements (SPP 3)

3.1 Objectives of SPP 3

- *To promote a sustainable and well planned pattern of settlement across the State, with sufficient and suitable land to provide for a wide variety of housing, employment, recreation facilities and open space.*
- *To build on existing communities with established local and regional economies, concentrate investment in the improvement of services and infrastructure and enhance the quality of life in those communities.*
- *To manage the growth and development of urban areas in response to the social and economic needs of the community and in recognition of relevant climatic, environmental, heritage and community values and constraints.*
- *To promote the development of a sustainable and liveable neighbourhood form which reduces energy, water and travel demand whilst ensuring safe and convenient access to employment and services by all modes, provides choice and affordability of housing and creates an identifiable sense of place for each community.*
- *To coordinate new development with the efficient, economic and timely provision of infrastructure and services.*

3.2 Is Moore River South a new settlement or an extension of the existing town of Guilderton?

The proposed subdivision now referred to as Moore River South was once known as Guilderton South. The new name is a means by which the developer tries to separate their proposal from the existing township. The proposal when considered in respect to SPP 3 can only logically be considered an extension of Guilderton as the subdivision is less than a kilometre from the existing settlement. The proponent argues that infrastructure within the proposed subdivision will include services to residents of Guilderton and surrounding rural estates. Likewise, community facilities already established in Guilderton would be available to residents of the proposed development. Without a direct link between Guilderton and South

Guilderton it means that a 50 kilometre round trip by road is required by residents to access all the proposed and existing infrastructure.

SPP 3 has the purpose to ensure that in regional areas existing towns and infrastructure should be extended rather than new settlement established that would compete with existing settlements. (SPP 3 Section 4, Section 5).

SPP 3 Section 5.3 Creating Liveable Neighbourhoods talks about making neighbourhoods walkable and reducing car dependence. We come back to the issue is the proposed development an extension of Guilderton or the establishment of a new settlement within a kilometre of an existing town contrary to SPP 3.

Implementation of SPP 3 requires State Authorities and Local Government to take this planning statement into account to ensure integrated planning for planning of urban growth and settlements.

This did not happen for the original consideration of the proposal. It is incumbent on planners to adhere to SPP 3 when considering the current application to renew the subdivision approval.

3.3 A bridge – the elephant in the room

State Planning Policy – State Coastal Planning Policy No. 2.6 (SPP 2.6) and SPP 3 require planners to encourage urban development to be concentrated in and around existing settlements for sharing of infrastructure and services. The lack of a physical link between the proposed subdivision and Guilderton is therefore problematic.

The question of the provision for a bridge has been avoided at all stages of planning for this proposal. Regardless of when it would be provided a bridge across the Moore River Estuary is inevitable if South Guilderton goes ahead. There has been some vague discussion on a suitable location for a bridge, but this appears only as a line on the map to a location east of Guilderton. It is doubtful whether the location indicated is the most suitable and has not been subjected to any engineering assessment. The proposed bridge location and access roads, cross over private land not owned by the proponent. Environmental considerations associated with a bridge are also ignored. This is particularly concerning as the site of the proposed location is a known high acid sulfate risk zone. Nor has any consideration been given to who pays for a river crossing and what the developer contribution might be. The need for a river crossing is solely dictated by the proposed development.

The issue of a bridge was supposed to be subject of discussion between the Moore River Company, the Shire of Gingin and the WAPC but seems to have been ignored. State Planning Policy Development Contributions for Infrastructure (SPP 3.6) lays out the conditions for determining contributions. Since a river crossing has been identified in the Outline Development Plan and the subdivision application albeit in an unspecified timeframe, the time to resolve contributions is before the subdivision is approved. It would be unfair on the Moore River Company not to define a future impost before they proceed to further development costs.

Moore River Company has reluctantly committed to contributing to a pedestrian bridge across the estuary but challenges the need for such a link. Again, no engineering assessment or siting of the pedestrian crossing has been done. Although at one stage the Moore River Company indicated a cost of more than \$3 million was expected. A pedestrian crossing alone would not resolve the issue.

So, on one hand the Moore River Company plays on the advantage of the new subdivision in providing services to the existing community but make access only via a long road trip. Yet, the Moore River Company, the Gingin Shire and the WAPC seem to avoid the question of a river crossing and entering into negotiations on contributions.

FOMRE believes, given that the proposed subdivision is within less than a kilometre of the town of Guilderton and justified on the premises of sharing infrastructure, then it must be considered as an extension of Guilderton rather than a new settlement. Therefore, the question of a river crossing must be considered when assessing the Moore River Company request for a renewal of their subdivision approval.

The Shire of Gingin's Local Planning Strategy supports the contention that the proposed subdivision is an extension of the Town of Guilderton.

An objective of the LPS is to facilitate a high quality, environmentally sensitive and integrated form of urban expansion south of Moore River as part of the Guilderton townsite expansion plan and to maintain the attraction and importance of Guilderton as a tourist destination and recognise its popularity for non-permanent residents. (Minutes Shire of Gingin Council 21/08/2018)

Accepting the view that the South Guilderton development is part of the existing town, planners need to be satisfied that divide presented by the Moore River Estuary requiring a 50 kilometre round trip to traverse can support the contention that a united town and community is a practical reality. This brings us back to the issue described above that a link between the northern and southern part of the town is essential if the objectives of SPP 3 are to be met.

The Commission's Liveable Neighbourhoods policy intends that the neighbourhood should be the basic building block for urban development with interconnected and integrated neighbourhoods clustered into well defined towns and communities. New urban areas will be comprehensively planned as sustainable communities which provide local facilities, services, public transport and job opportunities within easy reach by walking or cycling, reducing dependence on the private car for travel ... (SPP 3 Section 5.4 Planning for Liveable Neighbourhoods)

FOMRE argues that a bridge will be a necessary infrastructure in the intermediate and longer term for the compliance with SPP 3. Further, this issue must be addressed now so that there is a clear understanding by all stakeholders as to where and when a bridge will be constructed and who shares the cost.

3.4 Potential employment

The subdivision plans for a settlement housing 5,000 residents. While it is conceded by the Moore River Company that many potential homes will be for holiday makers and retirees, it is not feasible to expect that such a limited demography can sustain the conditions of SPP 3. An important issue addressed in SPP 3 is the potential for local employment opportunities. With the most optimistic assessment there is no evidence that the subdivision will attract sufficient employment opportunities. The subdivision plan provides for limited retail and service opportunities. There is also an area set aside for light industrial. But realistically, what is the likelihood of industries being set up so remote from the larger markets in the Perth metropolitan area?

One of the "selling points" from the developer is the provision of a school. They therefore believe some of the potential population will be permanent residents with children. With the limited local employment many residents will have to seek work in the Perth metropolitan area and commute by car daily, a two hundred kilometre round trip. Guilderton South will then be a major contributor to the continued expansion of the Perth metropolitan sprawl. The continued urban sprawl has already been identified as a significant planning problem that should be avoided.

Considering the sustainability implications of limited employment opportunities FOMRE does not believe the proposed development meets the sustainability standards outlined in SPP 3.

4 State Planning Policy 2.6 – State Coastal Planning Policy

The objectives of this Policy are to:

- 1. ensure that development and the location of coastal facilities takes into account coastal processes, landform stability, coastal hazards, climate change and biophysical criteria;*
- 2. ensure the identification of appropriate areas for the sustainable use of the coast for housing, tourism, recreation, ocean access, maritime industry, commercial and other activities;*
- 3. provide for public coastal foreshore reserves and access to them on the coast; and*
- 4. protect, conserve and enhance coastal zone values, particularly in areas of landscape, biodiversity and ecosystem integrity, indigenous and cultural significance. (SPP 2.6 Section 4)*

Shire of Gingin planners expressed concern that the subdivision application fails to provide for a coastal foreshore reserve over the north-western portion of the development area, namely land zoned for Tourism purposes. Further that the Moore River Foreshore management Plan may require modification to reflect changes arising from modification to the coastal foreshore reserve. They conclude:

It is the Officer's view that SPP 2.6 has not been adequately addressed and further investigation by the developer is required, with additional information be supplied to the WAPC and the Shire prior to a determination on the current subdivision proposal being made. (Shire of Gingin Minutes 21/08/2018)

FOMRE agrees with this assessment and that compliance with SPP 2.6 is an essential element prior to approving the subdivision application.

5 Bushfire Prone Area

Since September 2014, when this subdivision proposal was approved, new knowledge and rules have come about which should be applied to this application for renewal, especially given that much of the current ODP relies on standards and information from the 1990s.



We especially refer to SPP 3.7, Planning in Bushfire Prone Areas. Given the new assessments of bushfire risk over the area of this proposal we submit that it is impossible to make a safe development in this cul-de-sac between Moore River Estuary, the ocean and the surrounding bushland, especially in the presence of the prevailing south westerly winds.

The Moore River Company's application for renewal of the subdivision approval concedes that their proposal does not meet the requirements pertaining to a declared Bushfire Prone Area as detailed in SPP 3.7. The main point of contention is the requirement to provide dual egress/regress routes. With only a single road in and out of the subdivision it is effectively a cul-de-sac settlement. Recent experience with fires within the State has proved this to be a poor strategy and was a driving factor in the development of the State Planning Policy No 3.7 – Bushfire Prone Areas (SPP 3.7).

SPP 3.7 does provide for acceptable alternatives where one of its requirements cannot be met. The Moore River Company has failed to nominate an acceptable alternative. They propose a partial solution in constructing a new road which does not go all the way to the development. They also refer to making the main access road more fire resistant by clearing land. There are enormous environmental implications with this which will be in direct contravention of the assurances given in the ODP about environmental protection.

To their credit the Shire of Gingin recognised this non-compliance to SPP 3.7 and recommended to the WAPC that the proposal should not be approved until compliance with SPP 3.7 is achieved. Other agencies, particularly the Department of Fire and Emergency Services, will need to comment on this aspect of the proposal.

The Precautionary Principles state that if a proponent does not demonstrate compliance or has submitted a satisfactory alternative then, the application may not be approved. (SPP 3.7 Section 6.11).

6 Referral of proposal under the Environmental Protection and Biodiversity Act 1999 (EPBC Act)

The proponent was requested in 2013 to submit a referral for assessment under the EPBC Act by both the Gingin Shire Council and the Compliance and Enforcement Branch of the former Department of Sustainability, Environment, Water, Population and Communities, given that critically endangered species have been located on the subject land, namely the Carnaby's Black Cockatoo.

Since the original approval of the structure plan and subsequent subdivision, Banksia Woodlands of the Swan Coastal Plain have been listed as an endangered Threatened Ecological Community, and Tuart Woodlands and Forests are in the process of being listed. These Threatened Ecological Communities have not been included in the field survey. Three of the four key species which make up the Banksia Woodlands of the Swan Coastal Plain, and 29 significant Tuart trees have been recorded on the subject site.

State Planning Policy 3.7 (SP3.7) was gazetted in December 2015. The Moore River Company land and the areas adjacent have been assessed as being Bush Fire Prone. As a result, the subject site will require large scale additional clearing. Therefore, conditions have changed substantially since 2013. FOMRE is seeking an intervention for the subdivision to be called in and re-assessed under current legislation.

FOMRE has been in constant contact with the Department of the Environment and Energy (and its predecessors) about the issue and the requirement under the EPBC Act.

The land subject to the application for renewed subdivision approval contains threatened ecological communities and the Moore River Company is fully aware of its obligation to seek a referral under the Act as are the Shire of Gingin and the WAPC.

Referral under the EPBC Act must be done before any further approvals are made and cannot be put off until later stages of development which is a ploy frequently used by the Moore River Company. There are significant penalties for not making a referral.

7 A final word.

FOMRE questions the need or wisdom of extending the town of Guilderton south of the Moore River Estuary. Apart from the issues already stated, the need for a link across the river, the impact of the bushfire prone area classification and the coastal foreshore management, we question as to whether any extension of the town is required in the foreseeable future. There are dozens of properties in Guilderton currently for sale either for immediate occupation or redevelopment. The market has been very slow and suppressed over the last ten years.

When demand improves there is ample already cleared degraded land on the north side that can be developed without the problems articulated on the proposal to develop south of the estuary.

The idea of having Guilderton as a split town north and south of the Moore River Estuary, as proposed in the 2013 ODP, is quite absurd.

Building a bridge to link the two parts of the town brings with it engineering problems and likely considerable cost, all of which would be unnecessary if a northern side expansion of the town as a future strategy is adopted.

A pedestrian bridge although likely to be cheaper is hardly a practical solution.

An earlier decision of the WAPC acknowledged the notion of a north and south Guilderton was not sustainable as defined by SPP 3. An appeal to the State Administration Tribunal confirmed the WAPC decision. It was only the intervention by the then Minister for Planning to put aside these early decisions and to approve the development south of the Moore River. This decision made no sense then and makes no sense now.

Planning authorities have now the opportunity to put planning for the area on a sensible basis again. The Moore River Company has not acted on its subdivision approval which has now lapsed. They are applying for a renewal of the subdivision approval, however conditions pertaining at the time of the original approval have changed.

As it stands this application to renew should be rejected on planning grounds as it does not comply with SPP 3, SPP 3.7 SPP 2.6 and the referral requirements of the EPBC Act 1999, plus the failure to resolve the question of costs according to State Planning Policy – Development Contributions for Infrastructure No. 3.6 (SPP 3.6).

Friends of Moore River Estuary ask for the Ministerial intervention to ensure an essentially very poor planning proposal is not allowed to progress further.