



Office of
Environment
& Heritage

Our Ref: DOC18/234879
Your Ref: MP05_0083 MOD 7

Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Emma Butcher - Planning Officer Regional Assessments

Dear Ms Butcher

**Re: Proposed Concept Approval Modification - Residential Subdivision Sandy Beach - Part 3A
– MP05_0083 MOD 7**

Thank you for your email dated 18 April 2018 about the proposed Modification 7 to the residential subdivision concept approval at Sandy Beach NSW seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input and apologise for the delays in formally responding beyond our earlier telephone and email responses.

MOD 7 proposes to reinstate those areas that were not approved as part of the original application being parts of Stage 1, Stage 2 and Stage 6, along with associated infrastructure and further changes to the original stage designs.

We note that a substantial history of comments and correspondence has been provided by the OEH (and its predecessor organisations) to the Department of Planning and Environment (DPE) on MOD 6 and other earlier modification proposals, as well as the original Sandy Beach concept proposal.

Your most recent request for comments specifically relates to flooding and biodiversity and we have not received nor reviewed any additional documents relating to Aboriginal or historic heritage and/or estuary management with respect to this modification. The current proposal may also have implications for the Solitary Island Marine Park Authority (SIMPA) and its views on this proposal are not included in our response.

We have reviewed the documents supplied and advise that several issues are apparent with the assessments for estuaries and flooding, biodiversity, Aboriginal cultural heritage and National Parks and Wildlife Service Estate. These issues are discussed in detail in **Attachment 1** to this letter.


In summary the OEH recommends that:

1. the Department of Planning and Environment should refuse the modification and should:
 - a. retain the existing concept approval layout that restricted the extent of loss of endangered ecological communities and provided buffers to other sensitive biodiversity and natural resource values.

- b. retain existing Condition B6 requiring perimeter roads on the lake side of the development to have a finished level of 3.6m AHD, and existing condition C12 requiring residential properties at a minimum finished floor level of 4.1m AHD, of the Concept Approval.
- c. require the proponent to design and submit a proposal that is consistent with the DPEs original concept approval
- d. ensure that future urban development on the site is set back at least 50m from RL3.5m AHD.
- e. exclude development from proposed stages 1 and 2 where coastal hazard mapping indicates significant risk from coastal hazards by 2100.
- f. require, as originally intended, the dedication of areas outside the original concept approval to be added to the Coffs Coast Regional Park and managed accordingly, instead of the proposed establishment of a community titled Conservation Area
- g. seek approval/endorsement for any proposed additions to the Coffs Coast Regional Park from the Coffs Coast Regional Park Management Board.
- h. require the costs of changes to Reserve Management Plans and the costs of implementing these changes to be borne by the proponent.
- i. ensure the conditions of the existing concept approval consistently refer to the prohibition of keeping/ownership of companion animals (dogs and cats) and require the identification of a workable mechanism for this to be enforced.

If you have any further questions about this issue, Mr Ross Wellington, Senior Conservation Planning Officer, Regional Operations, OEH, can be contacted on 6640 2514 or at ross.wellington@environment.nsw.gov.au.

Yours sincerely

 5 June 2018

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Regional Operations

Contact officer: ROSS WELLINGTON
6640 2514

Enclosure: Detailed OEH Comments - Proposed Concept Approval Modification - Residential Subdivision Sandy Beach - Part 3A - MP05_0083 MOD 7

Attachment 1: Detailed OEH Comments - Proposed Concept Approval Modification - Residential Subdivision Sandy Beach - Part 3A – MP05_0083 MOD 7

In 2009 a concept proposal for a 280-lot residential subdivision was submitted under Part 3A Major Projects to the then NSW Department of Planning (DoP) now DPE. The proposal was located on an approximate 50ha parcel of land in the immediate coastal zone at north Sandy Beach in the Coffs Harbour Local Government Area.

The subject land was determined to have significant constraint associated with biodiversity values (threatened species habitat and Endangered Ecological Communities), coastal hazards, flooding, estuary management and Aboriginal cultural heritage, as well as being immediately adjacent to the Coffs Coast Regional Park and the Solitary Islands Marine Park.

The DoP received comments from various NSW Government agencies and ultimately gave concept approval to a reduced area in accordance with the obvious constraints to the development of the site and hence restricted concept approval to those areas where some development was considered appropriate.

The proponent has subsequently made a series of development modification proposals which amongst other minor changes, have endeavoured to reinstate all the areas excluded from the original concept approval.

The OEH has made comment on previous modification proposals and the original concept. Proposed Modification 7 is the most recent iteration, which also endeavours to reinstate the previously excluded Stages 1, 2 and 6, with other minor adjustments in layout.

Biodiversity

In its original determination report the DoP determined that it could only accept limited development within the identified Endangered Ecological Community (EEC) areas of the subject land and provided concept approval that restricted EEC impacts below what was considered to be an unacceptable level of loss, amongst other considerations. The original concept approval also considered appropriate buffers to the EECs and to the sensitive Hearnese Lake Intermittently Closed and Open Lakes and Lagoon (ICOLL). The DPE concluded that by restricting the development footprint and requiring the remaining areas to be added to the Coffs Coast Regional Park (CCRP), other impacted threatened species habitat and buffer areas would be secured in the CCRP (DoP, 2010; Condition B1).

The OEH is unable to support the extent of EEC loss in the locality proposed by MOD 7 given the EEC's high conservation status and sensitivity, its role in connectivity values in the locality, its habitat values for several threatened species, and the important buffering it provides to the sensitive Hearnese Lake ICOLL and the Coffs Coast Regional Park.

We supported the DPE in its original determination to reduce the extent of the original concept approval and its reasons for doing so stating "impact on the vegetation communities and threatened species habitat in the locality is excessive" (DoP, 2010). The proposed MOD 7 would reinstate parts of the development footprint in areas of EEC vegetation, as well as other threatened species habitat that was to be included in the CCRP as a condition of the original concept approval (Condition B1).

Vegetation mapping now provided as a 'new' appraisal in support of the current proposal (Cumberland Ecology, 2018), relies on the 1:100 year flood line mapped by the Coffs Harbour City Council (CHCC) to define the extent of the coastal floodplain. It then limits the mapped extent of Swamp Sclerophyll Forest (SSF) EEC to areas below this flood line on the site. However, the NSW Scientific Committee's final determinations for SSF EEC states that it also occurs on soils and landforms associated with coastal floodplains. Indicating that floodplain EECs can and do occur above and/or in association with the coastal floodplain.

This specific question was considered by the NSW Land and Environment Court in Motorplex (Australia) Pty Limited v Port Stephens Council [2007] NSWLEC 74, a case where Cumberland Ecology (Dr Robertson) put the same argument that appears to have been put in the current report. Justice Preston CJ ruled against the position of Dr Robertson and others at that time, finding that the EECs also occurred on soils and landforms associated with coastal floodplains.

During the site's original constraints analysis undertaken by Sainty and Associates in 2006 and following a further independent review by Dr Stephen Phillips of Biolink in 2010, vegetation on the site was shown to conform to the supplementary factors within the SSF EEC Final Determination for soils and their location.

Cumberland Ecology does not appear to have considered the “associated with coastal floodplains” aspect of the final determinations and on this basis, the vegetation mapping provided in the revised Environmental Assessment (EA) report lodged in support of MOD 7 does not appear justified.

The proposed modification will impact vegetation that has been excluded from the assessment on the basis that it is not EEC vegetation and thus significantly underestimates the extent of impact on EEC vegetation.

Further to this, there are other threatened species matters relating to Wallum Froglets and their Wallum Sedge habitat as well as Koalas and Koala habitat, amongst others, that were also raised as issue for the original concept proposal. The original concept approval took into consideration impacts on the other threatened species habitat when areas were excluded from concept approval. The areas now proposed for re-inclusion as part of the current MOD 7 proposal differ little from the original concept that was lodged but subsequently not approved in its entirety and seek to reinstate the areas that were not approved.

The OEH considers that increasing the scale and location of development beyond the existing concept approval would also likely result in an unacceptable level of impact on water quality and ecological functions of the Hearn's Lake ICOLL, as well as seriously impacting on the ecological processes within the narrow coastal vegetated strip comprising the adjacent CCRP.

OEH Recommendations:

- That DPE refuses this modification and retains the existing concept approval layout that restricted the extent of EEC loss and provided buffers to other sensitive biodiversity and natural resource values.
- The proponent should design and submit a proposal that is consistent with the DPEs original concept approval.

Flooding, Coastal Hazards and Estuary Management

The Hearn's Lake Estuary Management Study and Plan (HLEMSP) was prepared in conjunction with the OEH and was adopted by the CHCC in August 2009. The plan assessed coastal hazards and the effects of climate change and sea level rise, to provide a scientifically based strategic direction and specific focus for the sustainable management of Hearn's Lake and its surrounding foreshores. The OEH endorsed the recommendations of the HLEMSP.

As Hearn's Lake is an ICOLL, the entrance berm height can determine the natural breakout or flood level in the lake. The HLEMSP determined that the present (2009) maximum breakout level was expected to be in the range of 2.2 to 3.0m AHD. With an increase in sea level rise of 0.9m for 2100, the natural breakout or flood level could be as high as 3.1 to 3.9m AHD. The HLEMSP used 3.5m AHD, mid-value within the range of maximums, for 2100 natural breakout level and as a basis for environmental buffers. The HLEMSP recommended that future development should not be permitted to encroach too close to the lake foreshore and/or its tributaries. To maintain ecological integrity of the ICOLL and accommodate future sea level rise, future urban development should be set back at least 50m from RL3.5m AHD.

i) Flooding

To be consistent with the Concept Approval, filling would be required for the proposed modification. Flooding in Hearn's Lake and its surrounds is determined by back water flooding from the ocean when the entrance is opened or the breakout level determined by the berm height when the ICOLL is closed. Flooding may also occur due to local flooding and conveyance of flood waters via Double Crossing Creek to the north west of Hearn's Lake.

The 2100 maximum natural breakout (flood) level is reflected in the original Concept Approval with condition B6 requiring perimeter roads on the lake side of the development to have a finished level of 3.6m AHD, and condition C12 requiring a minimum finished floor level of 4.1m AHD (approximately

0.5m freeboard above the 100-year flood level). These conditions ensure there is safe access in a 100-year ARI flood event and that residential development is above the 100-year ARI flood level with both allowing for future sea level rise of 0.9m by 2100.

OEH Recommendations:

- Future urban development on the site should be set back at least 50m from RL3.5m AHD.
- Condition B6 requiring perimeter roads on the lake side of the development to have a finished level of 3.6m AHD and condition C12 requiring residential properties a minimum finished floor level of 4.1m AHD of the Concept Approval be retained.

ii) Coastal Hazards

The modification application does not give adequate justification for the modification from a coastal hazard perspective. Mapping from the council's adopted Coastal Zone Management Plan (CZMP) contains mapping from the Coffs Harbour Coastal Processes and Hazard Definition Study prepared by BMT WBM in 2011 (CHHDS). This mapping indicates that Stage 1 and Stage 2 of the proposed development will be significantly affected by both coastal inundation and coastal erosion/shoreline recession by 2100, and stage 6 by coastal inundation by 2100.

Within the current application to amend the Concept Approval, the applicant has only stated that the development is 'set back from the foreshore and will not impact coastal processes'. It fails to address the fact that coastal hazards (both coastal inundation and erosion/shoreline recession) have potential to impact the development footprint as shown in the coastal hazard maps taken from the CHHDS:

- Coastal Process Hazard Definitions Immediate Planning Horizon (Drawing J-9)
- Coastal Process Hazard Definitions 2050 Planning Horizon (Drawing K-9)
- Coastal Process Hazard Definitions 2100 Planning Horizon (Drawing L-9)

The proposal should have undertaken a more detailed assessment of coastal hazards referencing the CHHDS and its associated mapping and should have considered a scaled overlayed map of the proposed development footprint on the coastal hazard mapping within the CHHDS as well as describe in detail how the development would avoid, adapt to, or mitigate the risk to life and property from projected coastal hazards.

The OEH is unable to support the proposed modification due to coastal hazard mapping indicating significant risk to stages 1 and 2 from coastal hazards by 2100.

Recommendation:

- The DPE should refuse the proposed modification due to coastal hazard mapping indicating significant risk to stages 1 and 2 from coastal hazards by 2100.

iii) Potential impacts to Hearnese Lake

The development proposal identifies that the ongoing stormwater from this development will be discharged directly into Hearnese Lake after treatment, but the level of treatment is not described. As this modification indicates an increase in the development footprint and additional lots, this will increase the potential impacts of stormwater discharge into Hearnese Lake. The applicant has stated that the development will incorporate stormwater treatment for the life of the development and erosion and sediment controls during the construction phase of the development.

The Hearnese Lake Estuary Management and Study Plan 2009 (HLEMSP) lists the prevention of artificial opening of the lake as a critical priority of the management plan to be implemented in the short term to maintain the health of the lake. The objectives of the HLEMSP do not appear to have been met by the proposal and consequently places the health of the Hearnese Lake estuary at risk. The proposal would also likely impose an artificial opening management regime on council should flooding and poor water quality issues arise as a result of the development. An ongoing water quality monitoring program needs to be implemented within stormwater management programs for any existing or future development approvals to ensure potential impacts to Hearnese Lake can be monitored and changes made to stormwater treatment if required to ensure the ongoing health of the lake.

Aboriginal cultural heritage

The OEH has reviewed the documentation provided for MOD7 and earlier iterations and notes that evidence of the completion of the full program of recommended sub-surface archaeological testing has not been provided. We acknowledge the proposed development and implementation of an archaeological sub-surface investigation program to ascertain the location, nature, scale and significance of the Aboriginal cultural heritage values located within the potential archaeological deposit identified as PAD1 as described in the project Environmental Assessment report. However, the OEH requires evidence that the recommended subsurface investigation has been completed for all areas proposed for staged development. Documentation of such an investigation is required to enable an informed review of how those results have been used to inform and consult with the registered Aboriginal parties regarding the project and for all management recommendations developed for the project area.

The OEH further notes the current information available does not provide any detail on how the Statement of Commitments (10.1.3), relating to the management of the site identified as SBN1, will be achieved in accordance with the recommendations in the archaeological assessment report.

National Parks and Wildlife Service Estate

The proposed Stage 2 and eastern extension of Stage 1 development would have detrimental impacts on the Coffs Coast Regional Park (CCRP). Reference to Figure 14: "Sapphire Beach development" confirms these impacts. Occupants of residences at that development have opened up the dunes east of their properties within the Regional Park with "private" beach accesses. This can be confirmed as per a submission from a resident of this development to the Draft Plan of Management where they suggest reducing the 7 tracks down to three. The *National Parks and Wildlife Act 1974* cannot formalise beach accesses for such gated communities, as it is inconsistent with the Act.

The CCRP Trust Board has not been informed by the landowner of an expanded "20.58 ha addition" to the Regional Park as discussed on page 5 of the ADW Johnson supporting document. The owner has not approached the Trust Board with such a proposal and now is requesting the deletion of Conditions C11 and C13 which allow for the agreements to be made as per boundary fences and trails. As well as "suitable funding for the amendment of existing reserve specific fire pest weed and management plans", funding would need to be sufficient to ensure actions within the amended plans relevant to the new additions are able to be completed.

The eastern boundary of Lot 22 DP 1070182 forms a common boundary with the CCRP. Local NPWS staff have recently identified the following issues that are likely to arise if the proposed development was to proceed. The highlighted issues are common problems where linear urban development has occurred adjacent to NPWS estate. Experience has shown developments such as that proposed rarely factor in the full range of adverse community and environmental impacts on adjacent public lands. It is then up to the public land manager to manage these issues, often at great public expense.

There are no provisions for designated beach accesses through the dunes in the CCRP to Hearnese Lake Beach adjacent to the proposed development. Beach access can be achieved at the northern end of Sandy Beach Drive. History has shown that many residents who do not have access tracks to the beach relatively close to where the adjoining property boundary is, will create their own, whether or not a new single access is provided. NPWS Land managers often struggle to close these illegal access tracks as they are often covertly reopened by the nearby neighbour. This type of unauthorised development results in fragmentation of the sensitive adjoining dune vegetation and destabilisation of the dune system. NPWS considers that this type of unauthorised development is highly likely to occur if this development was to proceed as proposed.

Appendix F (Landscape Plans) or Statement of Environmental Effects (SoEE) is inadequate in that it does not highlight the likely impacts residents will have on the adjoining CCRP. Additionally, the SoEE concludes that "additional public access is not required" and the "existing beach environment will not be impacted by the proposal". Recent urban developments in the Coffs Harbour local government area adjoining CCRP have demonstrated that a thorough assessment of beach access for residents and likely desire lines residents will take is essential. Recent public submissions to the

CCRP Draft Plan of Management will justify the above statements and on ground impacts developments in North Sapphire area are having on the CCRP.

NPWS considers that the maintenance of a healthy vegetation cover on the narrow coastal dune in the CCRP will be an important strategy in managing the long term coastal recession of Hearn's Lake Beach. The development proposal plans to clear vegetation to the boundary of the CCRP. NPWS considers this will create adverse 'edge effects' on this sensitive, narrow piece of dune vegetation. Examples of such 'edge effects' include increased invasion of exotic weeds, neighbour encroachments and exposure of the native vegetation cover.

The existing vegetation cover, is regrowth vegetation resulting from sand mining activities, believed to have been carried out in the late 1960's. NPWS considers the proposed development and its associated edge effects will have a deleterious effect on this already disturbed and regenerating vegetation cover. It is of note that the CHCC Coastal Hazard mapping documents possible future beach erosion and recession at Hearn's Lake Beach due to sea level rise estimated to be adjoining the proposed development by the year 2100. It is considered that additional social pressures from the landward side of this development may increase the vulnerability of this important coastal barrier at Hearn's Lake and Sandy Beach.

Increased occurrence of domestic animals in the CCRP from urban development is likely. Whilst the SoEE and Concept Approval states that "Dogs and cats are not permitted in the development" it does not stipulate how this will be enforced.

Increased illegal activities in this part of CCRP (rubbish dumping, party sites, 'cubby' and BMX construction) are also likely to occur. The expansion of urban development up against the park results in an increase in illegal activities within the park. Currently the park is relatively inaccessible to such illegal activities. The SoEE does not address or mitigate against any of these negative social impacts that are highly likely to occur from the proposed development.

A community titled conservation area and associated Conservation Area Management Plan (CAMP) with its Community Management Statement is not supported. The existing CAMP is inadequate in areas related to weed management timeframes. Funding arrangements for the CAMP works are not specific. The CAMP states that the CAMP "may" for part of the guidelines and controls for the community land. Cl.11c of the Concept Approval stipulates that "any offset is to be managed in accordance with a specific CAMP including details as per CL10".

The Draft Community Management Statement does not refer to the CAMP or how "Conservation Areas" are to be managed or levied. Cl 20 Draft Community Management Statement also allows for the keeping of dogs. This would seem to be in breach of Cl 8 of the Concept approval and contradicts the SoEE.

Existing conditions of concept approval already require that certain areas excluded from development are to be added to the CCRP before development commencement. This has not occurred and the concept approval is identified to have already lapsed through non-commencement. NPWS would appreciate confirmation of this.

NPWS considers that the compensatory measures should be in the form of dedication to the CCRP as originally conditioned with appropriate funding or else in the form of a Biodiversity Stewardship agreement.

OEH Recommendations:

- That the DPE not reinstate areas excluded from the original concept approval namely the eastern extension of Stage 1 and Stage 2 and their modifications. NPWS supports the DPE's original reasons for excluding these areas from the original concept approval. These modifications (besides other impacts) will result in serious impacts on the adjacent CCRP and will foreseeably result in substantial changes to management requirements of this reserve.
- That the proponent and DPE seek approval/endorsement for any proposed additions to the CCRP from the CCRP Management Board. Changes to Reserve Management Plans and the costs of implementation of these changes should be borne by the proponent.

- Conditions of existing concept approval should consistently refer to the prohibition of keeping/ownership of companion animals (dogs and cats). A workable mechanism for this to be enforced should be stated as the effectiveness of this condition has serious consequences for the CCRP.
- That DPE not support the establishment of a community titled Conservation Area and require, as originally intended, the dedication of compensatory areas outside the original concept approval to be added to the CCRP and managed accordingly.