



Your ref: MP 05\_0083 MOD 7  
Our ref: 0934/09DA (PN 2223815)

20 June 2018

NSW Department of Planning & Environment  
Attention: Emma Butcher  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

## **Notice of Modification – Residential Subdivision at Sandy Beach North (MP 05\_0083 MOD 7)**

Reference is made to the modification application described above and to the Department's correspondence dated 30 May 2018 inviting Council's comment in relation to the application.

It is requested that the following be taken as Council's submission to the application:

- **Draft Coffs Harbour Local Environmental Plan 2013 (Amendment no.8)**

Draft Coffs Harbour Local Environmental Plan 2013 (Amendment No.8) applies to the land. Under this Plan the development site is proposed to be zoned R2 Low Density Residential and E2 Environmental Conservation. The proposed minimum lot size shown for the development site on the draft 'Lot Size Map' is 400m<sup>2</sup> for that part of the land zoned R2 and 40 hectares for that part of the land zoned E2.

It is noted that the modified proposal involves stages 5, 6, and parts of stage 1 being located in that part of the site proposed to be zoned E2 and subject to a minimum lot size of 40 hectares. It is also noted that the land contained in stage 5 is proposed to be zoned E2 in accordance with the amended Section 65 Certificate issued for draft Coffs Harbour Local Environmental Plan 2012 (now LEP 2013) and dated 29/8/12 (your ref 09/01667-1).

Whilst the subdivision of land zoned E2 is permissible under the draft planning controls, none of the proposed lots that sit within these parts of the site would meet the proposed minimum lot size of 40 hectares.

- **Draft Coffs Harbour Development Control Plan 2015 (Deferred Lands Amendment)**

The development site is also contained within a Hearnese Lake / Sandy Beach Masterplan included in the draft Coffs Harbour Development Control Plan 2015 (Deferred Lands Amendment). The Masterplan shows conceptual road layouts that align with stages 1, 3 and 4 of the proposal. However, stages 5 & 6 of the modified proposal are not reflected in the Masterplan and as such, the modified proposal is considered to be inconsistent with the Development Control Plan 2015 (Deferred Lands Amendment).

Given the above, Council considers the modified proposal to be inconsistent with the Draft Coffs Harbour Local Environmental Plan 2013 (Amendment no.8) and the accompanying Draft Coffs Harbour Development Control Plan 2015 (Deferred Lands Amendment).

The draft controls that apply to the land have been informed by extensive and recent studies, which aim to balance future residential opportunities with the sensitive environmental values of the land.

Council requests that the Department take the draft planning provisions that apply to the site into consideration as part of the assessment process.

- **Environmental Matters**

- Development Impact Offsets

- It is noted that the modified concept, in addition to the offsets proposed to be accommodated on the land to be dedicated as Regional Park, states that *“the impacts of the development will be further offset by the acquisition of offsite offsets and a total of 633 BioBanking credits will be retired”*.

- This statement implies that these matters will be satisfied some time in the future. It is presumed that this will be proposed as part of a future development application. It is noted that the Flora and Fauna report by Cumberland Ecology, February 2018, has calculated that 527 credits are required for the stages 1 (part), 2 and 6, but that the supporting document by ADW Johnson February 2018, discusses retiring 633 credits. It is assumed that the additional 136 credits are required for stage 5 however no details are provided regarding the calculation of the additional credits, or confirmation as to their purpose.

- It is Council's view that there is currently no legal capacity for offsite 'offsets' to be considered with a development application. This is Council's view for the following reasons.

- The Biodiversity Conservation Act 2016 (BCA) and subsequent amendments to the Environmental Planning & Assessment Act 1979 commenced on 25 August 2017. The Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BCSTR) identifies Interim Designated Areas, of which Coffs Harbour is one.

- Clauses 27 and 28 of the BCSTR provide that development applications submitted prior to 24 November 2018 in an Interim Designated Area must be assessed as if the BCA had not commenced.

- This means that the potential impacts of the development must be assessed under s5A of the EP&A Act, which requires certain matters to be considered when determining whether there is likely to be a significant impact on threatened species, populations or ecological communities, or their habitats.

- In addition, no justification has been provided for using the Biobanking and the Biobanking assessment methodology (BBAM) under the now repealed Threatened Species Conservation Act 1995 to determine the appropriate offset. There do not appear to be any applicable savings and transitional provisions for the application of this methodology. Council has been advised by

the Office of Environment & Heritage that the BBAM should no longer be used to determine appropriate offsets for development.

### Solitary Islands Marine Park

Hearnes Lake forms part of the Solitary Islands Marine Park (SIMP) and has been zoned as Habitat Protection in recognition of the lake's biological diversity, habitat, ecological processes, natural features and cultural features. There is no discussion regarding the impacts to the SIMP in the submitted documentation.

Hearnes Lake is one of the largest Intermittent Closed and Open Lake or Lagoon (ICOLL) in the SIMP. It has a small very steep catchment that has largely been developed for intensive horticulture use and housing and as such it is already under threat.

Hearnes Lake supports a large area of saltmarsh that must be protected from both the immediate effects of development and rising sea levels. The filling of the development land adjacent to Hearnes Lake will effectively form a barrier preventing saltmarsh and mangrove communities from migrating up slope and adapting to rising sea levels.

Water levels in ICOLLs vary significantly as a response to varying beach berm heights. A study, conducted by the Department of Natural Resources in 2005, determined historic berm heights at Hearnes Lake typically reached between 3m and 4m AHD with the berm height in 1974 reaching 5.7m AHD. Beach berm heights, and consequently lake levels, are predicted to become higher as a result of rising sea levels.

Water levels in Hearnes Lake were surveyed at 2m AHD in February 2018. Documents supporting the development application indicate that the land will be filled to a finished surface level of 3.6m AHD. The proposed footprint of the development is in some places within 30m of the 2m AHD water level that was surveyed in February 2018.

Aside from the risk to built assets, high water levels will lead to increased and ongoing community pressure to artificially open the lake. Estuary entrance modifications have been identified in the Statewide Threat and Risk Assessment of the Marine Estate as the greatest threat to the marine environment in northern New South Wales. Responsible and sustainable development is required to avoid this outcome.

### Coastal Hazards

The application provides no consideration of coastal hazards and processes. Part of the modified proposal is within the Council's Coastal Hazard Zone Policy area as informed by the adopted *Coffs Harbour Coastal Processes and Hazard Definition Study 2010*. As per the policy, development needs to take into account the effects of coastal processes and ensure that residential development is free from the effects of coastal processes for a planning period of 100 years.

Coastal risks are an area of growing concern to all levels of government and the community. Inappropriate and unsafe development must be avoided.

As mentioned previously, water levels in Hearnes Lake were recently surveyed at 2m AHD with the development proposing a 3.6m finished ground level. Council has accepted that sea levels

are likely to rise by 0.9m over the next 100 years and as berm heights are predicted to rise along with rising sea levels, it is reasonable to assume that lake levels 0.9m above 2m AHD could become common. Under this scenario, coastal inundation on top of the higher lake levels presents a significant risk to the proposed development.

Council recommends that the applicant be asked to provide an assessment, by a suitably qualified coastal engineer, to demonstrate that the modified proposal is free from the effects of coastal processes for a planning period of 100 years.

### Threatened Ecological Communities

The Flora and Fauna report by Cumberland Ecology, February 2018, makes the argument that some areas of Subtropical Coastal Floodplain Forest, Swamp Sclerophyll Forest, and Swamp Oak Floodplain Forest cannot be considered Endangered Ecological Communities (EECs) as they occur above the 100 year flood level as defined by Coffs Harbour City Council Flood Mapping. Council refutes this rationale on the following basis:

- While the scientific determination for all three EECs states refers to floodplains as *'level landform patterns on which there may be active erosion and aggradation by channelled and overbank stream flow with an average recurrence interval of 100 years or less'* this is part of an ecological definition and should not be confused with the definition of a floodplain in the NSW Government Floodplain Development Manual, April 2005, for which the purpose is to manage flood liable land. The Floodplain Development Manual defines a floodplain as an *'area of land which is subject to inundation by floods up to and including the probable maximum flood extent..'* and was used to determine Council's 100 year flood level.
- Flooding associated with ICOLLs is variable and the 100 ARI is not considered to be an appropriate determining factor in EEC delineation in such a volatile area of coastal floodplain.
- The data informing Council's 100 year average recurrence interval flood extent is not considered accurate enough data to make a determination of this magnitude.
- The joint Council and OEH mapping of EECs in the Coffs Harbour LGA is based on comprehensively ground truthed and cross-checked floristics data and notes that information on soil types is required to verify EEC status.
- In the absence of any provided information on soil types Council maintains the accuracy of the existing EEC mapping that was a consideration in the original refusal of stages 1 (part), 2 and 6.

### Regional Park

The modified concept includes a much greater area to be dedicated as Regional Park. No evidence in the form of a landholder's agreement has been provided to demonstrate acceptance of the land to the Regional Park. Given that the proposed land dedication is integral to the development it is Council's view that the modification cannot be approved without formal landholder's agreement from the Coffs Coast Regional Park.

Additionally, the inclusion of Stage 2 as an isolated incursion into the proposed Regional Park will create a host of boundary and management issues. Such issues relate to weed and feral animal incursions, boundary encroachment, and unauthorised access.

### State Environmental Planning Policy (Coastal Management) 2018

While the modification was lodged prior to the commencement of *State Environmental Planning Policy (Coastal Management) 2018* (SEPP) on 3 April 2018, part of the area under the modified concept now includes impacts to areas mapped as a coastal wetlands and littoral rainforests area. These areas were not previously mapped under either State Environmental Planning Policy no.14 – Coastal Wetlands or State Environmental Planning Policy no. 26 – Littoral Rainforest. The inclusion of these areas in the Coastal Management SEPP demonstrates the environmental value and sensitivity of the site.

It is also apparent that the modified concept proposes to develop areas mapped as a coastal wetland. While not a direct issue for this application, this has the effect that later Development Applications for any dwellings located within a coastal wetland will be declared designated development under clause 10(2) of the SEPP. It is Council's view that no development (including infrastructure) should be approved within the coastal wetlands and littoral rainforests area.

In addition, the entire site is mapped as a 'Coastal Environment Area', most of the area is mapped as a 'Coastal Use Area' and Hearn's Lake is listed as a 'Coastal Lake' in Schedule 1 of the SEPP. Again, this highlights the environmental value and sensitivity of the site.

- **Flooding**

Parts of the development site are identified as flood prone. It is noted that the issue of flooding has been the subject of numerous studies as part of the assessment of the concept approval application. The current application, however, does not provide any additional information relating to potential flooding impacts for the modified concept.

Council recommends that the applicant be asked to provide information, which demonstrates that the modified concept is unlikely to result in unacceptable flooding impacts.

- **Stormwater**

Council has significant concerns in relation to the management of stormwater. This relates to both quality and quantity and the impacts that the modified concept may have on groundwater, Hearn's Lake and adjoining residential areas.

- **Traffic**

It is noted that no additional information has been provided, which considers the potential traffic impact of the modified concept on the local road network.

Council recommends that the applicant be asked to provide information, which demonstrates that the modified concept is unlikely to result in adverse traffic impacts. This information should include, but not be limited to, consideration of potential impacts to Solitary Islands Way/Diamond Head Road, Diamond Head Road/Pine Crescent and Diamond Head Road/Ti-Tree Road intersections.

- **Consistency with Development Application**

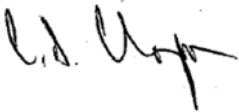
In November 2017, the developer lodged a development application with Council for a Subdivision (Community Title), including 169 Residential lots, Community Lot, Roads and Public Reserve. This application relies on the Concept Approval issued by the Department.

It is noted that the modified concept is inconsistent with the development proposed under this development application in relation to matters, including but not limited to, lot numbers and footprint and amount of land to be dedicated as Regional Park.

Given the matters outlined above, Council objects to the modified concept.

For further information, please contact Renah Givney on 6648 4647.

Yours faithfully

A handwritten signature in black ink, appearing to read 'C. Chapman', written over a faint circular stamp.

Chris Chapman  
Director, Sustainable Communities