

09013
29 July 2009

Mr Sam Haddad
NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Mr Haddad

**CLAUSE 6 DECLARATION AND PRELIMINARY ENVIRONMENTAL ASSESSMENT
6 BUNDABAH ROAD, BUNDABAH**

We are writing on behalf of Tea Gardens Farm Pty Ltd, the proponent for the development of a new residential and eco-tourist resort at 6 Bundabah Road, Bundabah. The site, described as Lots 101, 103 and 104 DP 1049845 and Lot 102 DP 1076610, is the subject of an Order under Section 75B(1) of the *Environmental Planning and Assessment Act 1979* ("The Act") dated 22 May 2008 making future development on the site subject to Part 3A of the Act (**Attachment 1**).

The purpose of this letter is to:

- 1) Request that the Minister authorise the submission of a Concept Plan for the development and, should she do so
 - a) Request that the Director General issue the requirements for the preparation of an Environmental Assessment to accompany the Concept Plan for the proposed development.
- 2) Request that the Minister initiate the concurrent re-zoning of the site to facilitate the proposed development by way of either:
 - a) including the site as a State Significant Site (SSS) under Schedule 3 of State Environmental Planning Policy (Major Development) 2005 (the Major Development SEPP); or
 - b) initiating an amendment to Great Lakes LEP 1996 under s54 of the Act.

To support the request for the Director General's requirements relating to the Part 3A environmental assessment, a State Significant Site study or the preparation of Planning Proposal for rezoning, a Preliminary Assessment relating to the project follows. The Preliminary Assessment provides detail on the site location and an outline of the project, and identifies the key likely environmental and planning issues associated with the proposal.

1.0 THE PROJECT

Tea Gardens Farm Pty Ltd wishes to develop a portion of the 400 hectares of land it owns at 6 Bundabah Road, Bundabah in the Great Lakes LGA for residential and eco-tourist purposes. The project specifically incorporates the following components:

- Up to 200 residential allotments along the western foreshore of the site facing North Arm Cove and existing cleared areas on the ridgetop of the western portion of the site;

- A eco tourist facility on an existing cleared area at the south-western point of the site;
- An 18-hole golf course along the northern and eastern boundaries of the site;
- Internal access roads, and associated infrastructure and utilities.

A plan showing the proposed development envelopes is at **Attachment 1**.

The capital investment value of the project is \$50 million

2.0 REZONING OPTIONS

There are two options available to the Minister to initiate a concurrent rezoning of the site to facilitate the proposed development:

2.1 State significant site listing

Schedule 3 of the Major Projects SEPP identifies a list of State significant sites and development on those sites to which Part 3A of the EP&A Act applies. Schedule 3 also enables a new planning regime to be established for land identified as a State Significant Site (SSS).

The current planning instruments applying to the site are Great Lakes LEP 1996. A new planning regime is required to facilitate the comprehensive redevelopment of this strategic site for the proposed range of uses.

Great Lakes Council is currently preparing its new Comprehensive LEP. It is understood that the Council principally intends to transfer the existing LEP into the new Local Environmental Plan format, effectively restricting the ability for the site to be developed as envisaged. The Concept Plan proposal presents an opportunity to maximise the efficiency of the site and to better reflect the sort of land uses expected in, and appropriate for, a the Mid North Coast.

Given Council's comprehensive LEP programme, it is requested that the Minister nominate the site as a potential SSS and initiate an amendment to Schedule 3 of the Major Projects SEPP to establish the future planning controls for the site. It is intended that the new statutory planning framework will include:

- The vision and key principles for the site;
- Zoning and permitted land uses;
- Relevant performance criteria applying to different types of development as may be determined through the concept plan preparation process; and
- A list of exempt and complying development and interim development provisions.

2.2 Minister initiated amendment to Great Lakes LEP

As a result of recent amendments to the Act, the Minister is able to initiate the preparation of an LEP. The Minister may then direct that the Director General is the relevant planning authority for the proposed LEP.

Section 54(2) of the Act provides a number of cases under which the Minister may direct the Director General as the relevant planning authority for a proposed local environmental plan. Two of the listed cases are

- 1) where matter is, in the opinion of the Minister of State or regional environmental planning significance
- 2) where the local environmental plan will make a provision that, in the opinion of the Minister, is consequential on the approval of the concept plan for a project under Part 3A of the Act.

It is considered that the proposed development at Fame Cove satisfies both these cases.

Should the Minister authorise the submission of a concept plan for the proposed development on the site, and also decide to initiate an amendment to Great Lakes LEP a Planning Proposal must be prepared by the proponent or the relevant planning authority.

3.0 THE SITE AND LOCALITY

Located on the southern side of Bundabah Road, between Pindimar Road and Bundabah township (see Figures 1 and 2), the site comprises four lots currently owned by Tea Gardens Farms Pty Ltd and legally described as Lots 101, 103 and 104 in DP 1049845 and Lot 2 in DP 1076610.

The waterfront site is located within the coastal zone and is currently largely vacant, with the exception of a number of ancillary farm buildings near the Bundabah Road entrance. A number of access roads and tracks traverse the site associated with the agricultural operations or constructed as part of previous development consents on the site for residential development, work on which has ceased. The site is currently used for agricultural purposes and enjoys access to Port Stephens and Fame Cove (an inlet) which bisects the site. To the south, the site adjoins a small isolated section of the Myall Lakes National Park at Fame Point.

The surrounding locality generally comprises large rural residential properties. However, more intense residential uses characterised by a mix of dwellings of different scale and type are located immediately to the north-west in the Bundabah village, and along the western foreshore of North Arm Cove. To the immediate east of the site is the village of Pindimar. Tea Gardens, 13 kilometres east of the site, is the closest established town centre and accommodates a range of retail and support services.

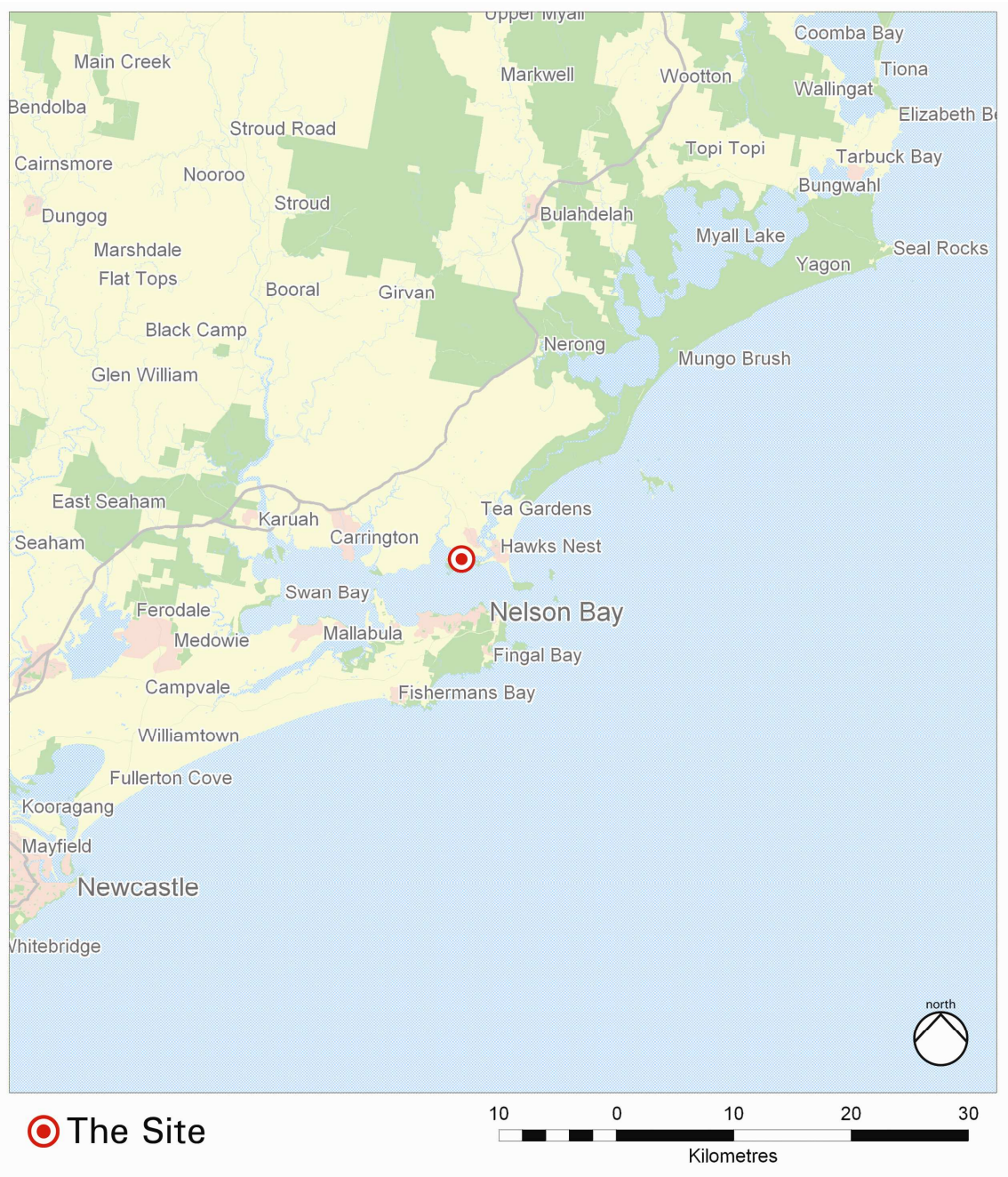


Figure 1 – Regional Context



Figure 2 – Site Plan – Local Context

4.0 BACKGROUND AND DEVELOPMENT HISTORY

The site has been subject to various development proposals in the past, including four valid DA consents for one dwelling on each of the four allotments and an internal partially constructed access road. More recently a 67 lot residential subdivision adjoining the Bundabah Township was proposed by a previous landowner and remains undetermined.

Tea Gardens Farms has ceased undertaking all works on the site associated with the existing consent pending the outcome of the concept plan application. Minor works associated with routine agricultural activities and farm dam stabilisation will continue.

5.0 RELEVANT PLANNING PROVISIONS

5.1 Regional Significance of the Site and Proposal

The regional significance of the site and proposal can be attributed to the opportunities to:

- achieve conservation outcomes through retention of vegetation and conservation of the most sensitive parts of the site (potentially as a conservation off set), thereby protecting an array of vegetation communities, flora and fauna species, and natural landscape features;
- obtain an environmental gain from the resulting conservation outcome and provide an enduring conservation legacy for the community and future generations;
- preserve sensitive coastal ecology within Fame Cove and North Arm Cove;
- provide public access to and along the foreshore that is not currently available, and protect the visual and natural attributes of the site, consistent with the State Government's coastal policy;
- protect sensitive coastal waterway areas by ensuring appropriate land/water interfaces;
- clearly define a sustainable development footprint, including a small scale tourist resort;
- providing an appropriate scale of residential and tourist uses that satisfactorily addresses EP & A Act objectives regarding the efficient and economic use of land;
- deliver the State Government's *Towards 2020 – NSW Tourism Master Plan* and North Coast Regional Tourism Plan objectives which collectively seek to:
 - provide increased investment in quality tourist product;
 - protect the natural and cultural drawcards of the Region;
 - embracing the principles of ecologically sustainable development
 - proactively address emerging growth sectors such as the "experiential: traveller
- strengthen the viability of nearby existing townships and villages including Hawks Nest and Tea Gardens; and
- incorporate water sensitive design controls into the site to manage stormwater and minimise hydrological impacts (pollutants, sediments, increased export of stormwater) of the future development.

Further, the Mid North Coast Regional Strategy proposes a growth in population of almost 100,000 people between now and 2031. to support this growth Manning Valley / Great Lakes are expected to contribute 15,000 new dwellings.

5.2 Zoning and Permissibility

All 4 lots that comprise the site are zoned **1(a) Rural** under Great Lakes LEP 1996. The zone objective for the **1(a) Rural zone** is to restrict development to those uses which will not:

- compromise the agricultural production potential of land in the 1(a) Rural zone;
- generate significant additional traffic;
- have a significant impact on the area's water resources; and
- create unreasonable or uneconomic demands for the provision or extension of public amenities or services.

Residential uses and the proposed golf course are consistent with the zone objectives and permissible with development without consent. The proposed eco-tourist facility however is currently prohibited in the 1(a) Rural zone.

The following development standards apply to the 1(a) Rural Zone:

- Clause 17: minimum lot size – 40 hectares;
- Clause 18: maximum 2 dwellings per lot.

The proposed range of uses and scale of development is inconsistent with the permissible uses and zone objectives. As outlined above, the Concept Plan development will require a rezoning and will be supported by a State Significant Site listing proposal or LEP planning proposal.

The following environmental planning instruments and strategic plans also apply to the proposed development:

- State Environmental Planning Policy (Major Development) 2005 – see Section 6;
- State Environmental Planning Policy (Infrastructure) 2007 – in relation to traffic generating development;
- Mid North Coast Regional Strategy; and
- North Coast Urban Design Guidelines 2009;

The following Great Lakes Development Control Plans are relevant:

- Car Parking Policy 2008;
- Erosion and Sediment Control Policy;
- DCP 31 – Subdivision; and
- Draft DCP 34 – Acid Sulfate Soils.

6.0 SECTION 75B(1) ORDER

The site is the subject of an Order under Section 75B(1) of the Act dated 22 May 2008 (Gazetted 26 May 2009) which makes the following development subject to Part 3A:

The development on land comprising Lots 101, 103 and 104 DP 1049845 and Lot 102, DP 1076610, Bundabah Road, Bundabah (known as Fame Cove), within the Great Lakes Local Government Area, for one dwelling and various sheds (comprising of DA 279/2008, DA 243/2008, DA 422/2007, DA 420/2007, DA 415/2007, DA 418/2007, DA 245/2008, DA 244/08) and any future development on the site.

A copy of the Gazetted Order is at **Appendix 1**.

7.0 MAJOR DEVELOPMENT SEPP 2005

Notwithstanding the above Order, Clause 1(1) of Schedule 2, "Coastal Areas", identifies the following types of development within the coastal zone as Major Development to which Part 3A applies:

- a) *subdivision of land that will lead to development that is not connected to an approved sewage treatment work or system into more than 100 lots,*
- b) *subdivision for residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location) into more than 100 lots,*
- c) *subdivision for rural-residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location) into more than 25 lots.*

The proposed development is within the coastal zone and is development of a kind referred to in the Schedule 2, Clause 1(1)(b) of the Major Development SEPP. Accordingly, the proposal would still meet the relevant criteria in the Major Development SEPP for a Part 3A Project.

8.0 KEY ENVIRONMENTAL IMPACTS

Initial site analysis and investigations have identified a number of environmental issues that will be of importance to the local community, the Council and Government agencies, and accordingly will need to be addressed in the EAR and potential the SSS listing.

The following section outlines the key environmental issues and impacts which could potentially arise from the project. Each is discussed below and will be addressed in detail in the Environmental Assessment Report (EAR) that will accompany the Concept Plan Application.

8.1 Site Suitability

The Concept Plan and rezoning will propose the following uses:

- residential;
- eco-tourist facility; and
- environmental conservation, open space and recreation areas.

The existing planning provisions under Great Lakes LEP 1996 are reflective of the current and historic use of the site for rural and rural residential purposes. In order to facilitate future development of the site consistent with the Concept Plan, a new planning regime will be required.

The suitability of the site for the proposed development will be tested and demonstrated by a range of technical assessments undertaken to inform the rezoning of the site, its urban structure, master planning and design. Similarly, the EAR will determine the suitability and capacity of the site for the proposed range of uses taking into account the site's opportunities and constraints.

8.2 Urban Design and Structure

Analysis will be undertaken to identify the broad urban structure including:

- residential and eco-tourist uses;
- road layout and access points;
- internal traffic and pedestrian circulation;
- infrastructure provision; and
- staging.

More detailed plans showing specific locations for key parameters such as individual lots, the eco-tourist facility and associated accommodation, roads, recreational spaces and infrastructure will also be included in the Concept Plan and EAR.

The design principles driving the development and the quality of the built form will be thoroughly evaluated to ensure that the proposal achieves a high environmental outcome.

8.3 Biodiversity

Preliminary ecological investigations undertaken for the site have confirmed the presence of several vegetation communities on the site including, Ironbark Forest; Paperbark Forest; Forest Red Gum Forests; Swamp Forest; Mangrove Forest; Smooth-barked Apple Forest; White Mahogany/Red Mahogany/Grey Ironbark/Gum Forest; Smooth-barked Apple-Sydney Peppermint Stringybark Forest; and Fig/Giant Stinger Closed Forest. Of these, two are identified as Endangered Ecological Communities under the *Threatened Species Conservation Act, 1997* (Paperbark Forest and Swamp Forest). Mangroves protected under the *Fisheries Management Act 1994*, coastal wetlands mapped under SEPP 14 Coastal Wetlands and salt marsh, are also present on the site.

The site could therefore contain threatened species that are listed in the schedules to the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). If

confirmed to be present on the site, a referral will be made to the Department of Environment, Water, Heritage and the Arts (Cwth) to determine if the proposal is a controlled action requiring approval under the EPBC Act.

The ecological investigations will be augmented by way of detailed marine and terrestrial flora and fauna surveys which will inform the strategic planning and conservation principles that will underpin the rezoning and Concept Plan EAR, namely:

- Consideration of the environmental attributes of the site through surveys and ground truthing;
- Determination of the impacts on existing native flora and fauna, including threatened species listed under the *Threatened Species Conservation Act, 1999* and *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*;
- Identification of significant ecological corridors that link flora and fauna both on and adjoining the site;
- Identification of the ecological attributes of the lands that may be considered for conservation and dedication to the State Government;
- Consideration of the management measures that will be required to mitigate the impacts of the development on threatened species and their habitat; and
- Assessment of any potential impact on surrounding waterways in terms of water quality and aquatic ecosystems.

Areas on the site are known to contain significant biodiversity and conservation attributes. The site is also contiguous with an isolated peninsula (Fame Point) of the Myall Lakes National Park. As part of the preparation of the environmental assessment, consultation will be undertaken with the Department of Environment and Climate Change (DECC) with regard to environmental offsets and/or dedication of land for conservation purposes. These areas, once evaluated and quantified, will be the subject of a Voluntary Planning Agreement.

8.4 Infrastructure Provision Staging

The required Electricity, water, stormwater and other services are currently not available on the site and as such a major component of the project will be infrastructure provision.

An infrastructure report and servicing strategy will be prepared to address the infrastructure requirements and the design and location of critical infrastructure services on and adjacent to the site.

8.5 Transport and Access

A transport and access study will be undertaken to assess:

- traffic implications including traffic capacity at key intersections;
- the site's connectivity with the regional road network and nearby townships;
- transport and traffic planning within the site; and
- pedestrian and cycling connections to the local area and key transport nodes (i.e. routes and facilities).

8.6 Contamination and Geotechnical Stability

The EAR will investigate the suitability of the site with respect to any contamination and geotechnical constraints, and if necessary identify appropriate remediation processes to be undertaken prior to project proceeding.

8.7 Flood Management and Climate Change (Sea Level Rise)

A flood study will be commissioned for the site to identify appropriate planning levels along the foreshore in particular. Depth and widths of flows within any local drainage corridors during and following rainfall events will also be considered.

Investigations will also be undertaken with respect to the NSW Draft Policy on Sea Level Rise (DECC, February 2009) and local coastal management policies to establish appropriate development and buffer zones having regard to climate change impacts and sea level rise predictions.

8.8 Water Management

A stormwater concept plan will be prepared, in accordance with WSUD principles, on-site detention requirements (if any), and location of water treatment devices for water quantity (peak flows) and quality. The key aim of the proposed stormwater regime will be to ameliorate the impact of stormwater from the development on the flow and water quality of North Arm Cove, and Fame Cove.

The EAR will also:

- Identify and map any local existing drainage lines, and determine whether any such drainage line has a formal bed and is intermittently or permanently flowing;
- Assess the stream order in accordance with the Strahler system; and
- Assess whether the drainage system forms a wetland system and/or is influenced by tides.

8.9 Bushfire Risk

Presently the Fame Cove site is a bushfire hazard due to the extensive vegetation cover. The Concept Plan and EAR will be required to take into consideration bushfire planning principles to minimise the overall risk, consistent with the relevant guidelines. These principles will be reflected in the design of the overall development with specific measures such as the location and extent of asset protection zones being determined in the EAR.

8.10 Heritage

No local or State heritage items listed under the Great Lakes LEP 1996 or State Heritage register are on or within the site.

An archaeological study will be prepared for the site to determine the European and indigenous archaeological attributes of the sites (if any), particularly along the foreshore areas. The study will undertake an appropriate level of Aboriginal community consultation, and propose recommended strategies for managing any significant heritage items and areas of potential specific to their determined significance.

8.11 Social and Recreation Infrastructure and Community Services

A social and community infrastructure assessment will be undertaken to assess:

- provision of existing community and cultural facilities to meet the needs of residents and workers;
- the recreation needs of the community;
- demand for and provision of health, education and emergency services facilities; and
- preliminary costing.

It is proposed that this study will inform the concept plan process and ensure that adequate provision for community infrastructure is planned for in line with development staging.

8.12 Zoning and Development Controls

It is proposed that the Schedule 3 amendment introduce a new statutory planning framework for the site that includes:

- vision and aims for the Scheme;
- zoning and permissible uses;
- density targets; and
- key development controls

The proposed development controls will, where appropriate, be based on the Standard LEP Template. It is anticipated that more detailed controls, such as landscape, street and urban design guidelines be included as part of the Concept Plan or supporting DCP.

9.0 CONCLUSION

The Fame Cove scheme provides the opportunity to create a sensitive eco tourist and residential development that will concurrently result in the protection of more sensitive areas of the site.

Tea Gardens Farm Pty Ltd is seeking approval for a Concept Plan and rezoning for the site to provide certainty, and to allow for co-ordinated development to occur by way of a staged planning and development process. The proposed assessment strategy therefore, is for the Concept Plan to be a structure plan that sets in place an overall planning framework for the site and identifies the developable portions of the site and addresses site-wide issues and relationships up front, consistent with the land use and development control provisions proposed in the rezoning proposal. Detailed planning for the zones of development and range of uses across the site will occur as part of future applications.

The information contained in this preliminary environmental assessment is to assist the Director General in determining the level and scope of any requirements for an environmental assessment to accompany:

- the lodgement of a Concept Plan under Part 3A of the EP&A Act; and
- a rezoning by way of either an amendment of Schedule 3 of the Major Projects SEPP or Great Lakes LEP 2006, to introduce new zoning and planning controls for the whole of the site.

We trust that the above information is sufficient to enable the Minister to authorise the preparation of a Concept Plan for the proposed development under Part 3A and to allow the Director General to issue requirements for the preparation of the necessary Environmental Assessment and rezoning studies.

Yours faithfully



Gordon Kirkby
Partner