

08404  
4 June 2010

The Director General  
NSW Department of Planning  
23-33 Bridge Street  
SYDNEY, NSW, 2000

Attention: Chris Wilson (Executive Director, Major Project Assessments)

Dear Chris,

**FIGTREES ON THE MANNING PART 3A CONCEPT PLAN APPLICATION (MP08\_0039)  
PITT STREET, TAREE**

We refer to the above Concept Plan for a mixed use residential, commercial, tourist, open space and marina development on the Manning River foreshore in Taree. We write on behalf of the Proponent (namely Chase Taree Developments Pty Ltd, Hocana Property Pty Ltd and Spychalla Property Pty Ltd acting collectively).

The 'Response to Submissions Table' that accompanies this letter addresses matters raised in submissions to and by the Department of Planning (DoP) following the exhibition of the Concept Plan. The table includes our response to several matters raised by the DoP in correspondence dated 1 February 2010 and by email on 21 May 2010. The table also includes responses to matters raised in submissions from agencies and members of the community that were included in correspondence from the DoP dated 15 January 2010.

This letter provides an overview of our response to the issues raised in submissions to and by the DoP. It considers those issues in the context of the Concept Plan assessment and approvals process under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act) and also in the context of the current rezoning process being progressed by the Greater Taree City Council (Council).

In response to the DoP's request of 21 May 2010, additional information and documentation has been provided as part of this response, as summarised in the table below.

Document / Information Requested	Where Provided
Legible Stormwater Management Plans (McGregor and Partners)	<b>Attachment A</b>
Technical note from MidCoast Water (including covering email)	<b>Attachment B</b>
Advice from Orogen Consulting confirming that it has reviewed the DoP's correspondence dated 1 February 2010 and responding to DoP issues.	<b>Attachment C</b>

Document / Information Requested	Where Provided
Subheading and paragraph numbers relating to key issues raised in the Response to Submissions Table	Response to Submissions Table
Qualification of statements regarding distribution of mangroves along the Manning River.	Response no. 1 in the Response to Submissions Table
Additional justification for the location of the proposed marina in terms of cumulative impacts of mangrove removal	<ul style="list-style-type: none"> <li>Discussion in this letter under the heading '<i>Location of the Marina</i>'; and</li> <li>Point 1 in the Response to Submissions Table.</li> </ul>
Consideration of the potential to shift the central road through the site to the north to retain more mangroves	<ul style="list-style-type: none"> <li>Discussion in this letter under the sub-heading '<i>Location of Proposed Central Road</i>';</li> <li>Response no. 4 in the Response to Submissions Table; and</li> <li>The amended Statement of Commitments at <b>Attachment D</b>, which addresses reconsideration of the location of the road at PA / DA stage.</li> </ul>
Reference in the Response to Submissions Table to the correct Section number in the EA in which Crown lands are legally identified.	Response no. 34 in the Response to Submissions Table
Address point 3 under the heading 'Stormwater/ Water Cycle Management' in the Department's letter dated February 2010. (This relates to prevention of stormwater overflows and stormwater impacts during construction).	<ul style="list-style-type: none"> <li>Point 12 in the Response to Submissions Table; and</li> <li>The amended Statement of Commitments at <b>Attachment D</b>, which includes commitments detailing these requirements.</li> </ul>

## Overview

Overall, we submit that:

- The level of detail provided in the Environmental Assessment Report (EAR) and the Local Area Plan (LAP)/Concept Plan is appropriate for a Concept Plan Assessment. We request that a number of areas of detail relating to matters such as flora and fauna, overshadowing, servicing, urban design and stormwater management are deferred for appropriate assessment at the detailed Project Application/Development Application stage.
- It is not practical to provide some of the information requested at this stage, as specific details of the project are known (e.g. potential overshadowing cannot be ascertained on the basis of the building envelopes shown in the Concept Plan). Issues that may arise from detailed parameters are addressed in the Statement of Commitments, which provides the DoP with the comfort that such matters will be capably addressed in the detailed design phase.
- In relation to Flora and Fauna, it is considered that the information provided and the Statement of Commitments regarding Flora and Fauna adequately addresses this issue. In addition, we note that neither the Department of Environment Climate Change and Water (DECCW) nor NSW Fisheries have requested additional information regarding flora and fauna for the purpose of the Concept Plan.

- The LAP/Concept Plan has been the subject of detailed environmental assessments which inform the consideration of the Concept Plan Structure by a dedicated Rezoning Control Group (RCG) formed by Council to progress the rezoning in a transparent manner.

This letter helps clarify a number of issues that are raised by the DoP, such as the economic impact on the Taree Town Centre and the location of the marina.

- Responses from several agencies in relation to the exhibition of the Concept Plan under the Part 3A process cite no objections to the Concept Plan including that from DECCW, the Primary Industries Division of the Department of Industry and Investment the Rural Fire Service the Civil Aviation Authority and the Roads and Traffic Authority.
- While some agencies seek clarification on administrative matters and set out the statutory requirements for future development on the site, they do not raise issues that require additional investigations or information at this stage.

#### **Request for Additional Information on Flora and Fauna Matters**

It is considered that the Environmental Assessment (EA) and supporting specialist studies adequately identify the impacts of the proposed development so as to allow an assessment and determination of the Concept Plan.

The additional detailed flora and fauna surveys requested in the DoP letter of 1 February 2010 is now difficult to provide at Concept Plan stage as the optimum seasonal period in which such surveys can be made ended in March.

Notwithstanding this, Orogen Consulting has reviewed the Department's request regarding flora and fauna dated 1 February 2010 (refer to the advice from Orogen at **Attachment C**). Orogen, as noted in their original report, considers it appropriate for the surveys to be undertaken at a later Development Application stage and that it is unlikely that there will be any adverse impacts to threatened species, populations or endangered ecological communities (EECs). Orogen concludes that the level of detail in the EA is appropriate for a Concept Plan and appropriate to this stage of the assessment and approvals process until detailed designs are known.

Orogen has mapped vegetation communities on the site, recorded dominant floristics in each community and carried out a threatened fauna habitat assessment with a subject species table as a basis for impact assessment (which was a generic 7 part test table). The level of survey effort is commensurate with the degree of disturbance on the site (which does not warrant a full suite of fauna surveys).

The Ecological Overview at **Appendix I** to the EA concludes that it is unlikely that Assessments of Significance will find any adverse impacts to threatened species, populations or EECs and therefore the level of detail is deemed appropriate for the Concept Plan.

The DoP has asked for additional information on the conservation values of the degraded EECs on the site in terms of their value in terms of connectivity and as a food resource for local native fauna. Orogen has addressed this issue in the Ecological Overview and is satisfied that the proposed development adequately conserves EECs where appropriate. Degraded EECs around creek lines will be enhanced as part of the concept plan development. The DoP has also asked for further details on the adequacy of riparian buffers (i.e. buffers to the river and unnamed creek running through the site). Orogen Consulting's assessment of the Concept Plan concludes that appropriate buffers have been provided.

It is noted that in correspondence dated 18 December 2009 in response to the exhibition of the Concept Plan and EA, DECCW indicated it has no further matters to raise in relation to the Concept Plan.

As DECCW is the primary agency with a charter to conserve biodiversity in NSW, this suggests that it requires no further issues to be addressed at Concept Plan stage and so the level of detail and Statement of Commitments provided are suitable regarding flora and fauna issues.

#### Level of Detail Appropriate for a 'Concept Plan' Assessment

A number of matters raised by the DoP are items of detail that would normally be considered in the assessment of Project or Development Applications, when detailed project designs are available. A number of the details requested are not available at Concept Plan stage or are capably able to be addressed at Project/Development Application stage. For example:

- **Requirement for a Stormwater Management Plan** - The modelling of post development flows is normally reliant on detailed design information. The Concept Plan includes indicative building envelopes and FSRs and not final building designs.

Development of the site will be subject to detailed design that will define the areas of building footprints and roofs within approved envelopes. This in turn will determine the volume of runoff from each of the buildings. The increase in runoff predicted in the Water Balance Assessment is based on an assessment that any increase in development potential on an underutilised site will naturally increase runoff. The report does not extend to the consideration of the design of detention areas and the like to manage such flows. Such design is more practically provided in stormwater management plans that will be provided post Concept Plan approval with subsequent Development or Project Applications. Such stormwater management plans will include measures to prevent adverse impacts from stormwater overflows.

- **Potable Water and Sewerage Servicing Strategy** - As part of its submission, Mid Coast Water requested the preparation of a Water Supply and Sewerage Servicing Strategy to be prepared prior to determination of the Concept Plan. The possibility of preparing the Strategy has been discussed with Mid Coast Water. During these discussions, MidCoast Water provided a technical note, which is included at **Attachment E**. The technical note identifies capacity constraints of existing water and sewer infrastructure and therefore outlines the identified needs for the system to be upgraded. One of the key concerns for Mid Coast Water is the fact the site is within multiple ownership and therefore they consider their opportunity to resolve a site wide strategy should be at the overall Concept Plan stage.

Whilst the proponent appreciates this concern, the preparation of this site wide plan is quite extensive in terms of timing and would delay determination of the Concept Plan and would require significant input prior to the proponent receiving a 'bankable' Concept Plan Approval. The level of detail required to go into the strategy would be more appropriate at the detailed design stage prior to the first stage Project / Development Application stage, yet after certainty of Concept Plan approval has been granted.

To address Mid Coast Water's concerns, it is therefore requested that the Water Supply and Sewerage Servicing Strategy addressing servicing augmentations be prepared following Concept Plan Approval, but prior to lodgement of any Project / Development Applications for the site. DoP and Mid Coast Water will then still have the comfort that the strategy will be prepared prior to any development proceeding on the site, by requiring the resolution of the strategy to the satisfaction of Mid Coast Water prior to the submission of an initial application for any works. This has been included in the amended Statement of Commitments at **Attachment D**.

- **Contamination** – the provisions of SEPP 55 have been assessed and considered in Council's decision to rezone the land and in the Statement of Commitment requirement for Site Audit Statements to be prepared for localised areas of contamination. The Site Audit Statements may only be granted by a DECCW accredited Contaminated Lands Auditor on the basis of consideration of detailed investigations into potential contamination and remediation measures on the site. Future development on the site may not, therefore, proceed until appropriate investigation and remediation works are undertaken.

We therefore consider that this, in conjunction with Council's acceptance of the rezoning under SEPP 55 to more sensitive land uses, provides the necessary assurance that the provisions of the SEPP will be adequately addressed for the site.

- **Detailed Urban Design Issues** – It is considered that details surrounding building placement, siting of open space, pedestrian accessibility and the like are provided in an appropriate level of detail for a Concept Plan application. Details regarding the precise location of recreational facilities, landscaping, exterior lighting, buildings (including fenestration and entrances) and other design elements such as site levels created by bulk earthworks cannot be determined at Concept Plan stage. Suters Architects, in the design of the LAP/Concept Plan, have considered the general placement of building envelopes to ensure optimum compliance and amenity for the development. However, some of the detailed assessment required by the DoP will be more practical when undertaken at the Project or Development Application Stage.
- **Location of the Proposed Central Road** - In its correspondence dated 21 May 2010, the DoP requested that consideration be given to the relocation of the proposed road through the centre of the proposed development to the north in order to reduce mangrove removal. It is noted that the Concept Plan may alter as detailed designs evolve. Due consideration will be given to relocating the road to the north during design processes and the preparation of Project / Development Applications for the site. This may be subject to a condition of Concept Plan Approval that Project / Development Applications consider the relocation of the road in order to reduce impacts to mangroves.

#### **Detailed Consideration of Environmental Issues in the Rezoning Process to Date**

As stated in the EAR the site has been subject to a rezoning process overseen by Council and the landowners. The rezoning process is based on Council's consideration of the LAP.

The LAP has been developed in response to the findings of specialist site investigations which identified the opportunities and constraints for the site and consultation with key agencies and the community.

The preparation of the LAP has also been subject to the review of the RCG, which was formed by Council to progress the rezoning in a transparent manner.

The RCG includes Brian Murphy of the DoP Hunter Region, Council's Director of Planning and Senior Strategic Planner, representatives of SKM and major landowners associated with the rezoning application. The LAP is proposed as the Concept Plan, and therefore represents the RCG's planning objectives that have been derived through consultation and consideration of the balancing of alternative development outcomes.

A number of items in the DoP's request for additional information raise concern with issues that were previously considered during the RCG assessment phase. The following information clarifies the background and outcome of the RCG's assessment of these issues.

- **Socio-economic Impact on Taree Town Centre** - The Preliminary Economic and Social Impact Assessment conducted by SGS Economics and Planning at **Appendix U** of the EA was commissioned with the aim of determining the level of economic development that the Precinct can support without detracting from the economic sustainability of the Greater Taree area. The LAP and proposed uses are consistent with the tourist, retail and accommodation uses recommended by the SGS Assessment.

Council's strategic decision to rezone the site, and the RCG's progression of the rezoning, as well as the background studies commissioned, provides a clear indication that there is unlikely to be any adverse impacts on the town centre from the rezoning. The LAP and proposed permissible uses under the Concept Plan will also ensure the appropriate development of the site and will maintain the function of the Taree Town Centre.

- **Location of the Marina** - The DoP's letter of 1 February 2010 raises several issues in relation to the marina that is proposed as part of the Concept Plan.

In particular, the letter requests further discussion of how recommendations regarding the location of the marina included in the Mangrove and Bank Stability Assessment have been taken into consideration, as well as consideration of a reduction in the size of the marina.

The Mangrove and Bank Stability Assessment was one of several studies prepared in order to inform Council's consideration of the proposed rezoning of the site and the preparation of the LAP, which forms the Concept Plan documentation. The Assessment found mangroves occurring along the entire section of the riverbank adjacent to the site, as well as along the site's unnamed tributary. The mangroves were found to be in generally good ecological condition.

As outlined in the EAR, it was found that the proposed location of the marina has the potential to impact on an area of high mangrove ecological value. However, the Mangrove and Bank Stability Assessment concluded that the small amount of mangrove vegetation likely to be removed for the development is not significant in the context of the extent of mangroves associated with the entire Manning River. On this basis, the RCG continued to support the location of the marina. The balance of a range of other environmental assessment issues concluded that the proposed location was optimal, including:

- *urban design* - the location of the marina was moved from the middle part of the site to the north eastern end to address concerns regarding the placement of such a use in the middle of the site, breaking up the careful placement of the residential and commercial uses;
- *riverbed depth* - naturally deep water exists at the north eastern edge of the site adjacent to the marina, minimising any need for dredging;
- *the natural indentation of the riverbank at this point* - which provides for accessibility of the marina; and
- *geology and soils* - the marina is adjacent to an underlying bedrock ridge which could accommodate an artificial marina basin, with minimal excavation.

In the context of this balance of all the relevant issues and considerations, the proposed marina location was considered appropriate by both the RCG and Council's endorsement of the LAP.

It is requested that further detail, as well as measures to manage or mitigate the impact of the marina, be provided at the Project Application stage in accordance with the Statement of Commitments included in the Environmental Assessment (EA).

It is noted that the submission by DECCW (the issuer of licenses for the marina) raised no issue with the Concept Plan details relating to the marina and states that *"this is only a concept application DECCW's involvement will be better placed at the Project Application for the marina"*.

In correspondence dated 21 May 2010, the DoP requested additional justification to that summarised above be given for the location of the proposed marina in terms of the cumulative impacts of the removal of mangroves. Orogen Consulting considers the cumulative impact of proposed clearing vegetation across the site overall and notes that proposed clearing will contribute towards cumulative habitat loss in the locality, however:

*"In the context of the existing development occurring throughout the locality, and due to the relatively small area of potential habitat for Threatened species and Protected species that will be removed as a result of the proposal, the cumulative impact could not be regarded as considerable or significant".*

With respect to Mangroves in particular, Orogen finds that the small amount of mangrove vegetation likely to be removed is not significant in the context to the extent of mangroves and seagrasses associated with the Manning River.

Also in response to the DoP's correspondence of 21 May 2010, we refer to the assessment processes through which the LAP and Concept Plan have passed so far, which include:

- Consideration by Council of the rezoning of the site for a mix of uses and subsequent resolution to commence the rezoning process;



- Consideration by the RCG of the proposed rezoning and the suitability of the site for the marina and other uses;
- Preparation of the LAP and supporting studies and of the draft LEP;
- Exhibition of the LAP and draft LEP including the proposed marina location;
- Consideration of the draft LEP and LAP by Council and its resolution to adopt the draft LAP and possible inclusion of the LAP (with the location of the marina as proposed) in Council's DCP;
- Undertaking of site investigations in support of the EAR; and
- Exhibition of the EAR. As noted above, in response to the exhibition, DECCW indicated it has no further matters to raise in relation to the Concept Plan.

The above processes have been of sufficient rigor to enable the RCG to reach a considered and adequately informed conclusion that the proposed marina appropriately balances the range of environmental assessment issues relating to the site.

In its letter of 21 May 2010, the DoP also requested confirmation that Orogen has reviewed its previous correspondence dated 1 February 2010. This confirmation is provided in the advice from Orogen at **Attachment C**.

### **Voluntary Planning Agreement**

It is proposed that all development contributions for development under the Concept Plan will be subject to a Voluntary Planning Agreement (VPA) in accordance with Section 93F of the Act. This will be at the exclusion of contributions under Section 94 and Section 94A of the Act.

As noted in the EAR, the proponent will enter into a VPA with Council and the VPA is linked to a change in an environmental planning instrument (i.e. the rezoning of the land). As such, the VPA is not directly associated with the separate statutory process of this Part 3A Concept Plan.

The VPA document has been finalised and it is anticipated that the agreement will be made between landowners and Council within approximately eight weeks. The VPA will be entered into prior to the gazettal of the Draft Greater Taree Local Environmental Plan 2008. The applicant will provide details of the VPA to the DoP for the DoP's information. However, as the VPA is tied to the rezoning process it is not required to be formally considered as part of the Concept Plan assessment.

### **Confirmation of Land to Which the Concept Plan Applies (including Crown Lands)**

The Environmental Assessment (EA) of the Figtrees on the Manning Concept Plan **Section 2.1** identifies land to which the Concept Plan applies. **Section 6.15** of the Concept Plan includes reference to Crown Lands within the site. This correspondence clarifies the land to which the Concept Plan applies by consolidating **Sections 2.1** and **6.15**. The land to which the Concept Plan applies comprises:

- 33 allotments with the following legal descriptions:

Lot2 DP804829	Lot30 DP20200	Lot15 DP703272
Lot1 DP804829	Lot31 DP20200	Lot14 DP703272
Lot 1 DP243828	Lot32 DP20200	Lot12 DP703272
Lot A DP343913	Lot33 DP24505	Lot16 DP703272
Lot1 DP343913	Lot35 DP24505	SP 22701
Lot2 DP555702	Lot36 DP24505	Lot1 SP22701
Lot27 DP20200	Lot37 DP24505	Lot2 SP22701
Lot28 DP20200	Lot38 DP24505	Lot3 SP22701

Lot29 DP20200

Lot39 DP24505

Lot4 SP22701

Lot 1 DP215485

Lot 1 DP555702

Lot 1 DP243828

Lot 2 DP215485

- Two foreshore Crown Reserves on the northwest bank of the Manning River as follows:

- Reserve in Crown plan 037-3070; and
- Reserve in Crown plan 1011448.

The two crown reserves form a 30.48m wide foreshore reserve that is split into two parcels. The smaller parcel is adjacent to the site's north-eastern boundary and is contiguous with the "Ochiltree Place Reserve". The larger parcel extends northeast from the unformed road known as Queens Place, which provides public access to the foreshore.

- The bed of the Manning River: The site includes an area of the Manning River immediately adjacent to the site. As part of the Concept plan, the indicative location of jetties is shown extending into the river. Works associated with the establishment of the marina will also partially be carried out in the river. The part of the Manning River which is within the site is the area that lies within 25m from the mean high watermark (MHWM) on the river's north-western side. The 25m distance is measured perpendicular to the MHWM in the horizontal plane.
- Crown Roads maintained by Council as Crown Roads as follows:
  - Nelson Street;
  - Lyndhurst Street;
  - Pitt Street;
  - Bligh Street; and
  - Queens Place (unformed).

In relation to the above roads, the Department of Lands has indicated that a description of the road is sufficient to describe that it is included within the 'site' of the Concept Plan.

Detailed responses to all issues above, as well as the detail of other issues raised, are addressed in the accompanying table, Response to Submissions.

We trust the enclosed provides the necessary information to further the Concept Plan Assessment. We would be pleased to meet to discuss the content herein and suggest that it may be prudent to invite the Department's Regional Office, which oversaw the rezoning process in this meeting.

Should you have any queries about this matter, please do not hesitate to contact Nick Roberts or Clare Swan on 9956 6962.

Yours faithfully



Clare Swan  
Associate