

AJT/WJ 13922/13974
13922.050

10 January 2007

Mr Don Geering
Acting Manager Integrated Policy
Department of Planning
GPO Box 39
SYDNEY NSW 2000

Dear Don

**RE: PORT MACQUARIE HASTINGS COUNCIL (PMHC) –
AREA 14 STAGE 1B
LOT 4 DP 615261 AND LOT 1 DP 374315
OCEAN DRIVE, LAKE CATHIE**

We refer to our meeting on 14 November 2006, our correspondence to the Department dated 21 November 2006 and the Stakeholders' meeting held at the Department of Planning's Bridge Street Office on 13 December 2006.

We confirm the following outcomes from the Stakeholders' meeting:

- The design-based approach to the SEPP 26 buffer was presented to the meeting by the writer. The buffer design has been based on the particular circumstances applicable to the subject properties and the outcomes of ecological investigations undertaken by Peter Parker Environmental Consultants Pty Ltd and Dr Peter Brennan and incorporates:
 - ▶ 40-60 metres of rainforest revegetation on the western side of the SEPP 26 rainforest;
 - ▶ Fencing of the revegetation area and hedging with a spiky hedge;
 - ▶ A grassed area with scattered rainforest trees, cycleway/pathway and perimeter road incorporating on-street car spaces;
 - ▶ Stormwater quality measures to ensure consistency with Council's draft Integrated Water Cycle Management Plan;
 - ▶ Low impact boardwalk or similar pedestrian access along the existing track to the beaches (subject to Department of Lands agreement as landowner);
 - ▶ Weed removal/rehabilitation works along eastern edge of SEPP 26 rainforest (subject to Department of Lands agreement as landowner);
 - ▶ Planning Agreement to provide for the revegetation and associated works to be undertaken at the rezoning stage.

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- The particular circumstances applicable to the properties are as shown on the enclosed Attachment 3 (including the historical photograph). The measures proposed in the design-based approach to the SEPP 26 buffer are as outlined on the enclosed Attachments 4, 5 and 6.
- Dr Daniel Martens of Martens & Associates presented preliminary findings of groundwater investigations undertaken. At that time no modelling had been undertaken. Dr Martens indicated that conservative estimates suggested that revegetation areas 20-60 metres wide (depending on the catchment size) were required to provide evapotranspiration as a balance for the greater volume of water to be draining from future impervious areas created by future development.
- Dr Martens indicated that the best practice approach is to ensure the stormwater is absorbed into the ground as soon as possible and so up-stream infiltration via a "stormwater treatment train" is recommended.
- Dr Martens indicated that the 20-60 metre width of revegetation was considered to be a conservative maximum and could be reduced by a factor in the order of 50% depending on the outcomes of the detailed modelling and the extent of impervious areas and "stormwater treatment trains" that were incorporated into the ultimate development upstream.
- Ecologist, Dr Stephen Phillips, presented the outcomes of his preliminary review of the ecological investigations undertaken by Parker and Brennan. Dr Phillips indicated that the proposed SEPP 26 buffer design was meritorious as it widened the area of rainforest and provided an innovative planning response to long-standing problems. Dr Phillips indicated that the proposal provided an opportunity to re-work historical planted areas and reduce the existing fire hazard.
- Council's Area 14 Co-ordinator, Peter Cameron, summarised that all parties were comfortable with the buffer design proposed in the King & Campbell Rezoning Application subject to the more detailed groundwater modelling being completed by Martens and Associates and the subsequent completion of Dr Phillips' ecological review. The further work undertaken will include:
 - ▶ Assessment of the catchment size and groundwater level;
 - ▶ Assessment of the ability to infiltrate drainage within the catchment; and
 - ▶ Design of ecological works to suit above outcomes.
- The Department of Planning's Don Geering advised that the Department was generally comfortable with the above approach which was considered ecologically sensible and addressed concerns with groundwater issues. The outcomes should ensure that:
 - ▶ Excess stormwater levels are as low as possible adjoining the SEPP 26 rainforest;
 - ▶ Access through the SEPP 26 rainforest is restricted; and
 - ▶ The overall condition of the SEPP 26 rainforest is improved.
- The process for undertaking the buffer works pursuant to a Planning Agreement was discussed. After advice from the landowners' lawyer, Dr Lindsay Taylor, the following was agreed in principle:
 - ▶ A Local Environmental Study (LES) to be completed by Council;
 - ▶ Subject to confirmation of the applicability of Part 3A, King & Campbell are to prepare a Concept Application providing appropriate details of future development;
 - ▶ A Planning Agreement is to be prepared by Lindsay Taylor Lawyers in relation to works to be undertaken at the rezoning stage; and
 - ▶ The LES, Concept DA and Planning Agreement are to be publicly exhibited concurrently and subsequently adopted simultaneously.

- It was agreed that the above process would satisfy the Department's desire to resolve strategically the issues relating to the SEPP 26 at the rezoning stage, while providing certainty to the landowners and the consent authority regarding future development.
- It was agreed that Lindsay Taylor Lawyers/King & Campbell would document the legal process associated with the preparation of the above documentation.

We enclose a copy of the advice from Lindsay Taylor Lawyers regarding the legal processes from hereon, which is summarised as follows:

1 Determine Whether Part 3A of the Environmental Planning and Assessment Act applies.

Comment:

- The attached excerpt from the Department's website shows the extent of the Coastal Zone (pursuant to the Coastal Protection Act 1979). The subject properties are within the coastal zone.
- The attached letter to the Director General seeks the Minister's opinion that pursuant to Clause 6 the proposed development is of a kind described in Schedule 1 of the SEPP (Major Projects) 2005 and is therefore a major project to be determined under Part 3A. The proposed development is considered to be a Major Project for the following reasons:

The proposed development satisfies the provisions of Schedule 1 Group 5 Clause 13(1) – Construction projects having a capital investment value in excess of \$50 million. The proposed development is also important in achieving State and regional planning objectives with respect to:

- ▶ The preservation, protection and enhancement of the adjoining SEPP 26 Littoral Rainforest
- ▶ The management of future urban growth within the coastal zone in the Port Macquarie Hastings LGA.

2 Pursuant to Clause 6 of the Major Project SEPP, make written submission to the Director-General of the Department asking that the Minister form the opinion that the residential development is a project to which Part 3A applies.

Comment:

A copy of the submission to the Director-General seeking the Minister's opinion is enclosed for your information.

3 Assuming the Minister forms the opinion that Part 3A applies:

- Prepare an application to the Director-General under Section 75E of the Act for a Concept Plan Approval;
- Undertake environmental assessments in accordance with requirements issued by the Director-General.

Comment:

There have been significant environmental assessments undertaken in the preparation of the Rezoning Application on the subject properties. These have been recently peer reviewed and are currently being augmented as part of the LES process. Further assessments may be required pursuant to the issue of the Director-General's requirements.

4 Prepare a Voluntary Planning Agreement (VPA) to accompany the application for Concept Plan Approval.

- 5 Council progress the LES and LEP with the intent of having the LEP, Concept Plan Application (incorporating project approval for the SEPP 26 buffer works) and the agreed VPA approved by the Minister simultaneously.


Comment:

As outlined above we enclose herewith a copy of our letter to the Director-General asking the Minister to form the opinion that the residential/commercial/tourist development of the land is a project to which Part 3A applies. We have attached a copy of this letter to that request. We confirm your advice that you will brief the relevant staff responsible for processing Part 3A applications with respect to the outcomes of the Stakeholders meeting held on 13 December 2006.

Should you have any queries regarding this matter please do not hesitate to contact the writer.

Yours faithfully

King & Campbell Pty Ltd

Per 

Anthony J Thorne

- cc Mr Sam Haddad, Director-General, Department of Planning
Mr Peter Cameron, Port Macquarie-Hastings Council
Dr Lindsay Taylor, Lindsay Taylor Lawyers
Seawide Pty Ltd, Milland Pty Ltd
- encl Copy of letter to Director General including Attachments 1-8 and Sheets 1-5
Copy advice from Lindsay Taylor Lawyers
Request to Minister pursuant to Clause 6 that Part 3A applies