



Environment, Climate Change & Water

Your reference: MP07_0010
Our reference: Doc10/56840, Fil06/920-06
Contact: David Bell, (02) 49086817

Mark Schofield
A/Director Regional Projects
Department of Planning
GPO Box 39
Sydney NSW 2001

Dear Mr Schofield,

Environmental Assessment Exhibition: Part 3A Major Project (07_0010) Concept Plan and Project Application Proposal for Residential, Commercial and Tourist Development and Environmental Works at Ocean Drive Lake Cathie, Port Macquarie-Hastings Local Government Area.

Reference is made to your letter dated 17 November 2010 seeking a written submission from the Department of Environment, Climate Change and Water (DECCW) on the above proposal submitted by Milland Pty Ltd. Reference is also made to a single disc containing to the document 'Environmental Assessment- Concept Plan Application and Stage One Project Application' prepared by King and Campbell dated November 2010.

DECCW notes that the Concept Plan seeks approval for residential subdivision of approximately 217 low density lots, 82 medium density lots, 160 apartments, 6000 metres squared of commercial premises, a car park, and a park along with associated infrastructure.

The Project Application seeks approval for Stage 1 works as follows:

- (1) Fencing and other works associated with securing the buffer zone for the SEPP 26 lands.
- (2) Formalisation of access in the form of a board walk to Rainbow Beach through the SEPP26 Littoral Forest and Crown reserve.
- (3) Upon completion of the Stage 1 Environmental Works it is proposed to stage the remainder of the development contained in the Concept Plan as indicatively outlined in Exhibit 05B: Indicative Staging Plan and Sections 3.4 and 6.2.3 of this application.

DECCW has reviewed the information provided and determined that it does not object to the proposal as described in the EA, subject to the proponent addressing issues raised in **Attachment A** and inclusion of recommended conditions of approval contained in **Attachment B** in the project approval.

To provide maximum certainty in the project approval, DECCW strongly recommends that the proponent be required to address outstanding issues in its response to submissions rather than deferring these matters to the post-approval conditions.

DECCW would appreciate receiving a copy of the submissions received by the Department of Planning (or a report summarising these submissions) in response to the exhibition of the EA. This

will enable DECCW to review the appropriateness of, and determine the need for any amendments to, recommended conditions of approval.

If you have any questions, or wish to discuss this matter further, please contact Mr David Bell on 4908 6817.

Yours sincerely

 20-12-10

Peter Jamieson
Head Regional Operations Unit – Hunter Region
Environment Protection and Regulation

Encl: Attachments A and B

ATTACHMENT A

OCEAN DRIVE, LAKE CATHIE, CONCEPT PLAN AND PROJECT APPLICATION (MP 07 0010)

DECCW COMMENTS ON ENVIRONMENTAL ASSESSMENT

1. GENERAL ISSUES

To provide maximum certainty in the project approval, the Department of Environment, Climate Change and Water (DECCW) strongly recommends that the proponent be required to address outstanding issues in its response to submissions rather than deferring these matters to the post-approval conditions.

2. THREATENED SPECIES AND BIODIVERSITY ISSUES

DECCW has undertaken a review of both the Concept EA and Project EA. Following this review, DECCW has the following comments in relation to impacts upon biodiversity.

Revegetation

DECCW supports the proposed revegetation strategies, including the use of locally collected seed, but recommends to DoP that the following principles be incorporated into the proponents final EA and/or Statement of Commitments:

- Any proposed revegetation must be in accordance with best practice measures, specifications and principles as outlined Nationally accepted guidelines (where appropriate) - *Flora Bank Guidelines* (1998-2000), *Germplasm conservation guidelines for Australia* (Germplasm Working Group 1997) and revegetation manuals (e.g. Corr & Whyte 2003), using suitably qualified and experienced bush regenerators. Furthermore, any replanting of native species should use stock, seeds or other material of local provenance.
- If the proponent collects seed and/or vegetative material from a threatened species or taxa that constitute an endangered ecological community that is outside the approved development footprint, then a licence under s91 of the *Threatened Species Conservation Act* 1995 will be required.

Pre-clearing Surveys and Displaced Fauna

The EA does not provide any details on pre-clearing surveys for fauna species (including threatened taxa) which would typically be conducted prior to any removal of vegetation for such a proposal. In particular the EA lacks any specific details regarding (but not limited to): - what will happen to any captured fauna and/or displaced fauna, where they will be released (e.g. utilisation of adjacent or on-site retained habitats), and by whom. Although DECCW generally does not support translocation/relocation due to impacts on resources, potential disease implications, and social disruption of other animals already utilising available habitat, we acknowledge the 'good intentions' of such a measure and the importance in these instances to utilise it. As such the EA needs to specify what will happen to displaced fauna, and if it proposes translocation then DECCW recommends that the EA should provide an appraisal of what the potential impacts of such translocations may be and what measures (e.g. monitoring) will be employed to minimise any detrimental effects on existing faunal populations.

Any translocation of wildlife must be done in accordance with DECCW policy - *Policy for the Translocation of Threatened Fauna in NSW* (NPWS 2001), and translocation of threatened species will likely require a license (eg. section 132 under the *NP&W Act 1974* and/or section 91 under the *Threatened Species Conservation Act 1995* if species are being relocated to areas outside the approved development consent area). The EA needs to include these details.

DECCW recommends to DoP that an appropriately qualified and experienced ecologist (in accordance with DEC (2004) guidelines (*Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*, available at:

http://www3.environment.nsw.gov.au/pdfs/tbsa_guidelines_draft.pdf.) must be engaged to provide advice and assist with the pre-clearing surveys and be present during the felling of habitat trees.

DECCW recommends to DoP that the above issues be addressed into the proponents final EA and/or Statement of Commitments:

References

Corr, K. and Whyte, S (ed.), (2003) *Revegetation Techniques – A guide for establishing native vegetation in Victoria*, Greening Australia Victoria.

Germplasm Working Group (1997) *Germplasm conservation guidelines for Australia*. Australian Network for Plant Conservation, Canberra.

NPWS (2001) *Policy for the Translocation of Threatened Fauna in NSW*. Policy and Procedure Statement No. 9, Threatened Species Management, NSW NPWS, Hurstville, NSW.

FloraBank Guidelines

Australian Tree Seed Centre (1999) *FloraBank Guidelines 2. Basic Methods for Drying, Extraction and Cleaning of Native Plant Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Australian Tree Seed Centre and W. Mortlock (1999) *FloraBank Guidelines 6. Native Seed Collection Methods*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Australian Tree Seed Centre and W. Mortlock (1999) *FloraBank Guidelines 8. Basic Germination and Viability Tests for Native Plant Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Cole, I., Dawson, I., Mortlock, W. and Winder, S. (1998) *FloraBank Guidelines 9. Using Native Grass Seed in Revegetation*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. (1998) *FloraBank: Model Code Of Practice for Community-based Collectors and Suppliers of Native Plant Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. (1998) *FloraBank Guidelines 1. Native Seed Storage for Revegetation*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. (1999) *FloraBank Guidelines 3. Improving on Basic Native Seed Storage*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. and the Australian Tree Seed Centre (1999) *FloraBank Guidelines 4. Keeping Records on Native Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. and the Australian Tree Seed Centre (1999) *FloraBank Guidelines 5. Seed Collection from Woody Plants for Local Revegetation*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. and the Australian Tree Seed Centre (1999) *FloraBank Guidelines 7. Seed Production Areas for Woody Native Plants*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.

Mortlock, W. and the Hawkesbury - Nepean Catchment Management Trust (1999) *FloraBank Guidelines 10. Seed Collection Ranges for Revegetation*. FloraBank, Greening Australia ACT and Hawkesbury - Nepean Catchment Management Trust, web address <http://www.florabank.org.au>.

3. ABORIGINAL CULTURAL HERITAGE

Local Aboriginal community consultation:

DECCW acknowledges that the proponent has undertaken consultation with the local Aboriginal community. DECCW also encourages the proponent to continue to engage with the registered local Aboriginal stakeholders in developing appropriate cultural heritage outcomes for the duration of the proposed development. We have included a recommended condition of approval in Attachment B to target this matter.

DECCW has no additional concerns with the Aboriginal cultural heritage values assessment for the project application and recommends that the following proposed conditions of approval for Aboriginal cultural heritage as shown in Attachment B are reflected in any approval conditions for the project.

4. EFFLUENT MANAGEMENT

DECCW recommends that the proponent ensure that there is sufficient capacity within the municipal sewage treatment system to accept, treat and then dispose of all sewage waste from the proposal or detail alternative disposal methods proposed.

5. COASTAL HAZARDS

The DGRs required the environmental assessment address coastal hazards and in particular the impacts associated with wave and wind action, coastal erosion, climate change, sea level rise and more frequent and intense storms.

Rainbow Beach adjacent to the proposed development site is subject to the coastal hazards of:

- Short-term beach erosion
- Long-term shoreline recession;
- Oceanic inundation; and
- Climate change impacts, in particular from rising sea levels.

These coastal hazards are substantially covered by SMEC Coastal Hazard Study (March 2010) undertaken as Appendix G of the Environmental Assessment Report. The report undertakes an assessment of the prevailing coastal hazards and provides hazard zones for the immediate, 2050 and 2100 planning periods. The 2050 and 2100 hazard zones incorporate the NSW Sea Level Rise Policy Statement (2009) sea level rise planning benchmarks of 40 cm by 2050 and 90 cm by 2100 above 1990 mean sea level.

The coastal hazard zones produced by the SMEC Coastal Hazard Study show that proposed dwellings and infrastructure as part of the development would be located landward of the assessed 2100 coastal hazard zone (Figure 4.3 of SMEC Coastal Hazard Study – Appendix G refers).

6. FLOODING

The proposal includes a very small area to be filled which is currently below the Flood Planning Level – in the SW corner of the subject site. This fill is to raise a perimeter road above the 1% AEP flood level and raise some dwelling lots above the Flood Planning Level. The depth of fill is minimal and would have no influence on the flood storage capacity of the creek. The area would be categorised as flood fringe and modelling has shown the fill would have insignificant impact on flood behaviour. In view of the limited magnitude of the proposed fill and the insignificant impact on flood behaviour, no concerns are raised regarding this aspect of the proposal.

End
20 December 2010

ATTACHMENT B

RECOMMENDED CONDITIONS OF APPROVAL

OCEAN DRIVE LAKE CATHIE CONCEPT PLAN AND PROJECT APPLICATION (MP 07 0010)

The recommended conditions of approval provided below relate to the development as proposed in the documents and information currently provided to DECCW. In providing this advice, DECCW notes that the Department of Planning will address generic construction and operation management requirements. Consequently, recommended conditions focus on key environmental matters specific to this proposal.

DECCW would appreciate receiving a copy of the submissions received by the Department of Planning (or a report summarising these submissions) in response to the exhibition of the EA. This will enable DECCW to review the appropriateness of, and determine the need for any amendments to, recommended conditions of approval.

In this attachment the term 'Director-General' refers to the Director-General of the Department of Planning (or delegate).

DECCW recommends that the Department of Planning insert the following conditions in any approval granted under Part 3A.

ADMINISTRATIVE CONDITIONS

Works to be undertaken in accordance with information supplied

1. Except as provided by these general terms of approval, the works and activities shall be undertaken in accordance with the proposal contained in:
 - (a) the major project application no. 07_0010 submitted to the Department of Planning; and the documents '*Environmental Assessment- Concept Plan Application and Stage One Project Application*' prepared by King and Campbell dated November 2010.
 - (b) unless otherwise specified in these conditions of approval.

Obligation to Minimise Harm to the Environment

2. The proponent shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the construction, operation, maintenance, decommissioning or rehabilitation of the project.

Maintenance of plant and equipment

3. All plant and equipment installed at the premises or used in connection with the proposal:
 1. shall be maintained in a proper and efficient condition; and
 2. shall be operated in a proper and efficient manner.

Air

4. All dust generating activities on the premises must be managed in a proper and efficient manner to minimise dust emissions from the premises.

Water

5. Except as may be expressly provided by a licence under the *Protection of the Environment Operations Act 1997* in relation of the development, section 120 of the *Protection of the Environment Operations Act 1997* prohibiting the pollution of waters must be complied with in connection with the carrying out of the development.
6. Soil and water management controls shall be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands during construction activities in accordance

with the requirements outlined in *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004).

Waste

7. All waste and fill materials, whether imported or generated on site, shall be assessed, classified, managed and disposed of in accordance with the *Waste Classification Guidelines* (DECC 2008).
8. All waste and fill material removed from the site shall only be directed to a waste management facility lawfully permitted to accept the materials.

THREATENED SPECIES & ECOLOGICAL COMMUNITIES

- 9 A 100 metre buffer must be retained between any proposed development on the subject site (i.e. development footprint) and any areas of mapped littoral rainforests under 'State Environmental Planning Policy (SEPP) No 26—Littoral Rainforests'. SEPP 26 littoral rainforest is mapped on the subject site (i.e. Lot 1 DP 374315 and Lot 4 DP 615261) and the adjacent Crown Reserve (i.e. R 754444 and R 82555 as schematically shown 'Exhibit03_AerialPhotograph.pdf' document), which are located to the east of the proposal.

Reason:

The exhibited EA recommends a 40-60 m buffer, however, DECCW believe these to be inadequate and not in accordance with SEPP 26 – Littoral Rainforests, which recommends a 100 m from the outer edge of land mapped as littoral rainforests. DECCW recommends that this minimum buffer of 100 metres be retained to protect 'environmentally sensitive areas' and vegetation which is considered to represent 'Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions' endangered ecological community (EEC) under Schedule 1 of the *NSW Threatened Species Conservation Act 1995*; as well as remaining consistent with the objectives of the SEPP.

- 10 Development, erection and all works associated with the construction of the proposed pedestrian boardwalk through the mapped 'SEPP 26 – Littoral Rainforest' and 'Littoral Rainforest' EEC must only occur within the existing track footprint (i.e. 2.2 m wide track), as schematically shown 'ExhibitPA06_RainforestBoardwalkSheet1.pdf' document.

Reason:

To protect the 'SEPP 26 – Littoral Rainforest' and 'Littoral Rainforest' EEC, and prevent further edge clearing / damage of this environmentally sensitive community.

ABORIGINAL CULTURAL HERITAGE

11. The applicant must continue to consult with and involve all the registered local Aboriginal representatives for the project, in the ongoing management of the Aboriginal Cultural Heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
12. In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and representatives of the local Aboriginal community must be contacted to determine the significance (cultural and scientific) of the object(s). The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives the archaeologist and DECCW to develop and implement management strategies for all objects/sites.

13. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW's Enviroline on 131555. No works are to continue until DECCW provide written notification to the proponent.
14. All reasonable efforts must be made to avoid impacts to Aboriginal cultural heritage at all stages of the development works. If impacts are unavoidable, mitigation measures are to be negotiated with the local Aboriginal community and DECCW. All sites impacted must have a DECCW Aboriginal Site Impact Recording (ASIR) form completed and submitted to DECCW AHIMS unit within 3 months of completion of these works.
15. An Aboriginal Cultural Education Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project. The program should be developed and implemented in collaboration with the local Aboriginal community.

End
20 December 2010