APPENDIX A: INSTRUMENT OF REFUSAL

Concept Plan Refusal

Section 75O of the *Environmental Planning & Assessment Act 1979*

Under delegation of the Minister for Planning and Infrastructure dated 14 September 2011, the Planning Assessment Commission determines to refuse to give approval to the concept plan in Schedule 1, pursuant to section 75O(1) of the *Environmental Planning and Assessment Act 1979* for the reasons listed in Schedule 2.

Member of Commission **Member of Commission** **Member of Commission**

Sydney 2011

SCHEDULE 1

Application No.:	MP 06_0153
Proponent:	Walter Elliot Holdings Pty Ltd
Approval Authority:	Minister for Planning and Infrastructure
Land:	Lot 156 DP 628026, 1 Creek Street, Hastings Point, Tweed Local Government Area.
Project:	Torrens Title subdivision of the subject land into 45 lots within Lot 156 including associated road and landscape works.

SCHEDULE 2

REASONS FOR REFUSAL

1. The scale and location of the development, together with the proposed flood mitigation measures would result in an unacceptable risk to life, health and property within this flood prone community;
2. The development is inconsistent with the aims and objectives of State Environmental Planning Policy No 14 – Coastal Wetlands and State Environmental Planning Policy 71 - Coastal Protection and is contrary to the objects of the EP&A Act including the principles of Ecologically Sustainable Development particularly given that there is significant uncertainty as to whether ecological impacts can be avoided or minimised to acceptable levels;
3. The development is incompatible with both the adjoining natural and built environment; and
4. The proposal is not in the public interest.

APPENDIX B: COMPLIANCE WITH ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Major Projects) 2005

The proposal was declared a major project on 26 September 2006 under Part 3A of the EP&A Act because it is development of a kind described in Schedule 2 of the State Environmental Planning Policy (Major Projects) 2005, being subdivision of residential-zoned land into more than 25 lots in the coastal zone and tourist facilities located partly in a sensitive coastal location outside the metropolitan zone that provide accommodation for any number of persons.

State Environmental Planning Policy No. 71 – Coastal Protection

State Environmental Planning Policy 71 - Coastal Protection ("SEPP 71") applies to the site as it is located within the coastal zone of NSW. The relevant clauses of SEPP 71 are addressed below:

1) Aims of Policy (Clause 2) - The application is inconsistent with the aims as it is likely to threaten the natural and recreational attributes of this portion of the NSW coast. There is potential for native coastal vegetation to be unacceptably impacted by this development. It is uncertain whether the marine environment contained in the adjacent estuary shall be protected as a result of this development. The project does not comply with the principles of Ecologically Sustainable Development as detailed in section 5 of this report.

2) Matters for Consideration (Clause 8) - The summary, the matters for consideration include
   a) Aims of the policy
   b) public access
   c) suitability of the development given its type, location and design and its relationship with the surrounding area,
   d) potential impacts on the amenity of the coastal foreshore including overshadowing and view loss of public places,
   e) scenic qualities of the coast,
   f) measures to conserve animals and fish, wildlife corridors,
   g) measures to reduce the potential for conflict between land-based and water-based coastal activities,
   h) protection of Aboriginal cultural heritage;
   i) likely impacts on water quality of coastal water bodies,
   j) cumulative impacts of the proposed development on the environment, and
   k) energy efficiency of development.

   It is considered that the project is inconsistent with matters a), c), d), f), i) and j) as outlined within Section 5 of the report.

3) Public access (Clause 14) - A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore. The project will not impede or diminish to any extent land-based public access to the coastal foreshore.

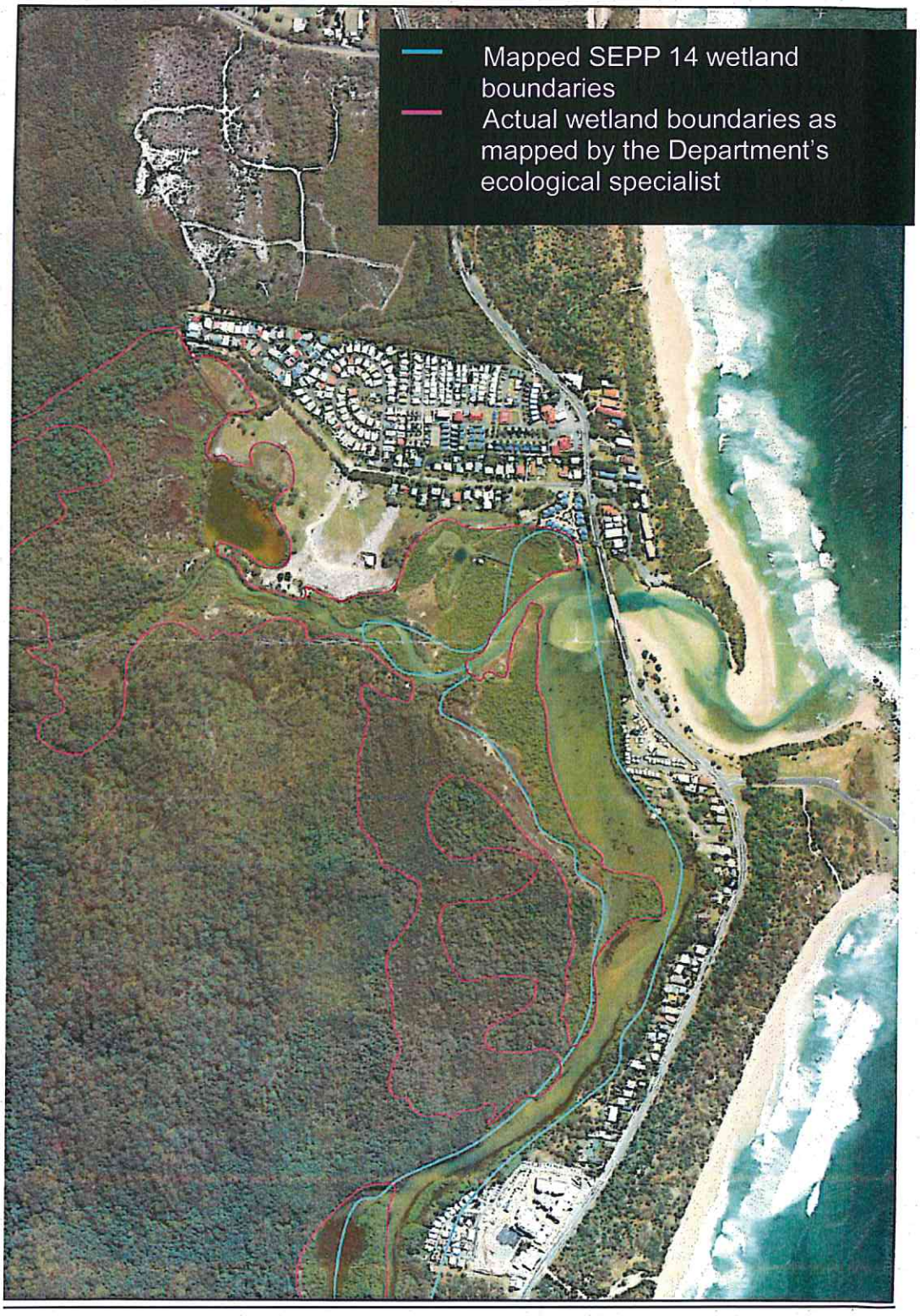
4) Effluent and Stormwater Disposal (Cl 15 & 16) – the proposal involves the provision of reticulated effluent management for the subdivision. However there is uncertainty surrounding the impact of stormwater on receiving environments as a result of this development, outlined in Section 5 of this report.

The project is considered to be inconsistent with the requirements of SEPP 71.

State Environmental Planning Policy No. 14 – Coastal Wetlands

State Environmental Planning Policy No 14 – Coastal Wetlands ("SEPP 14") aims to ensure that identified coastal wetlands are preserved and protected in the environmental and economic interests of the State. A SEPP14 Coastal wetland is mapped to be 20m from the site (**Refer to figure below**). The Department's ecological specialist surveyed the site and mapped the actual wetland present in the area. The development has an unacceptable risk of adversely impacting the SEPP 14 wetland as discussed within section 5 of this report.

Mapped SEPP 14 wetland and actual wetland boundaries



State Environmental Planning Policy No.44 – Koala Habitat Protection.

State Environmental Planning Policy No.44 – Koala Habitat Protection ("SEPP 44") aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. Although parts of the site outside the development footprint may contain connectivity between core koala habitat, the portion of the site to be developed is cleared and the remainder of the site does not include core koala habitat. It is not expected that the development will adversely impact areas of natural vegetation that provide habitat for koalas.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land ("SEPP 55") deals with the remediation of contaminated land. Investigations indicate that the site is not contaminated and therefore no remediation is required to be undertaken at this stage. However Acid Sulfate Soils have been identified at the site. Any future development should take into account the acid sulfate soil management measures proposed by the Proponent and require the preparation and implementation of a suitable Acid Sulfate Soil Management Plan.

Tweed Local Environment Plan 2000

Under the *Tweed Local Environment Plan 2000* (Tweed LEP 2000), the site is zoned part 2(e) Residential Tourist and part 7(a) environmental protection (wetlands and littoral rainforests). The project is not consistent with the objectives of these zonings in the following manner.

- 2(e) Residential Tourist: The development does not contain any specific tourist component and is therefore not strictly consistent with the zone objective, which seeks to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development. However, the *Draft Tweed Local Environment Plan 2010* proposes to zone the existing 2(e) Residential Tourist zoning of the site to that of R1 General Residential.

- 7(a) Environmental Protection: The flood evacuation emergency access road is to pass through a portion of land zoned 7(a) Environmental Protection. Permissible uses include 'road' (but only within the meaning of the Roads Act, 1993). The provisions of Clause 8(2) of Tweed LEP 2000 have been considered (see below) as the use is rendered permissible for the purposes of Clause 8OA of the Environmental Planning and Assessment Regulations, 2000 (the Regulations). This enables certain development for a prohibited use to be considered under Part 3A even though the land may be within a sensitive coastal zone (the 7(a) zone).

  As described within Section 5 of this report, the stormwater design and other elements of the emergency access road has the potential to damage wetland and is therefore considered contrary to the objectives of this zone, which seek to identify, protect and conserve significant wetlands and littoral rainforests.

In addition the proposal is considered to be inconsistent with the following clauses of Tweed LEP 2000

- Clause 8 Consent considerations: The emergency access road would be prohibited development. However, it has nevertheless been assessed against the requirements of clause 8(2) since, under Part 3A, but for the provisions of Clause 8OA of the Regulations the use within the 7(a) environmental protection zone would have been prohibited. This is because the emergency access road does not satisfy the provisions of clause 8(2) of the LEP in that the proposed private emergency

access road is not a "road" for the purposes of the Roads Act, 1993 (but, acknowledging that it could be feasible for the emergency access road to be declared or classified as a 'road' under the Roads Act, 1993, through administrative procedures specified in that Act).

"Works for drainage and landfill" and "earthworks" also may be permissible. However, these uses would not be consistent with any of the objectives of the zone as required to be consistent under Clause 8(2).

Cl.8(2) The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:
(a) the development is necessary for any one of the following reasons:
(i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,

The need for the road to be located in the 7(a) zone is generated by the scale of development proposed. A lesser scale of development might not generate the need.

a. it meets an identified urgent community need,
See (i) above.

b. it comprises a major employment generator, and

The development would not be categorised as a major employment generator.

(b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and

(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and

The filling of the land required for the access road is considered to be out of scale and character of the locality and represents an incongruous element to the scenic quality of the locality.

(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

The objectives of the 7(a) zone are:

Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests)

Zone objectives

Primary objectives

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Secondary objectives

- *to protect the scenic values of wetlands and littoral rainforests.*
- *to allow other development that is compatible with the primary function of the zone.*

By reference to the assessment undertaken in Section 5 of this report, the proposed emergency access road is considered to be inconsistent with the primary and secondary objectives of the 7(a) zone and is therefore not permissible development for the purposes of the Tweed LEP 2000.

- Clause 11 Zones: For the reasons listed above.

- Clause 20 Subdivision in a 7(a) zone: It is uncertain whether the development will protect the ecological value of adjacent land as detailed in section 5 of this report.

  Note that the applicant objects to the provisions of this clause under State Environmental Planning Policy 1 – Development Standards which otherwise requires a minimum allotment size of 40ha for lots within the 7(a) environmental protection zone. This development standard could be waived in this instance as the proposed dedicated lots could be added to an existing area of land zoned 7(a) environmental protection zone. Note that the Council objected to the proposal and did not indicate that it would accept any dedicated lots.

  Note that the lots involved in the proposed dedication comprise residual areas of approximately 10.5ha which have not been clearly identified in the submission but is assumed to compromise the residual area of lot 156 DP 628026 in the Preferred Project Report.

- Clause 25 Development in 7(a) environmental protection and on adjacent land: The development does not ensure that wetlands are preserved and protected in the environmental and economic interests of the area of Tweed as described in section 5 of this report.

- Clause 31 Development adjoining water bodies: It is unlikely that the development will protect and enhance water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors for reasons described in section 5 of this report.

- Clause 34 Flooding: The application will not minimise the adverse effect of flooding on the community as described in section 5 of this report.

APPENDIX C: RESPONSE TO SUBMISSIONS

Available on www.planning.nsw.gov.au

APPENDIX D: ENVIRONMENTAL ASSESSMENT

Available on www.planning.nsw.gov.au

APPENDIX E: PLANS, PHOTOS AND INDP. REVIEW

Figure A: Development Layout Contained in Environmental Assessment

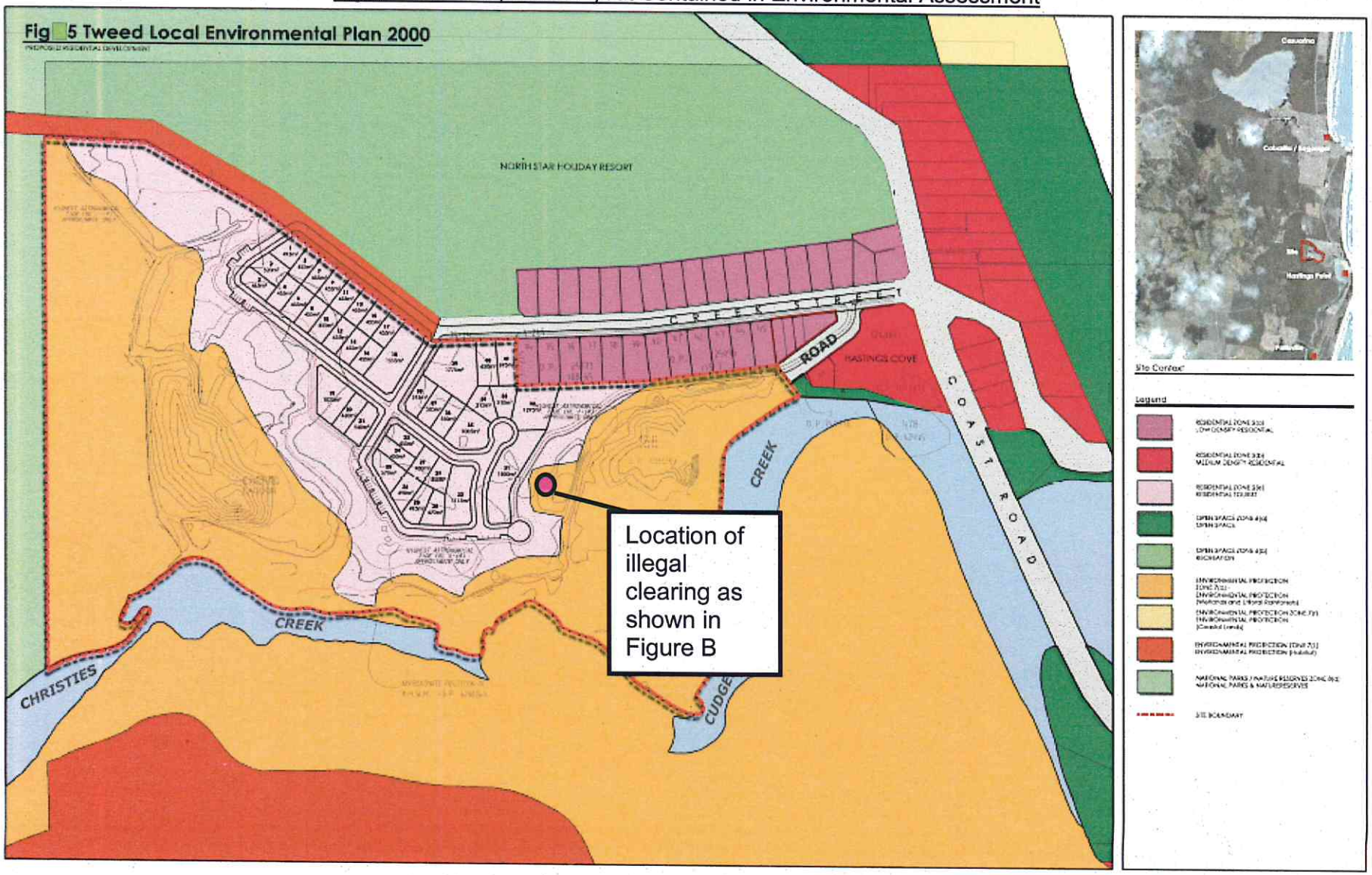


Figure B: Previous clearing within the 7(a) Environmental Protection Zone

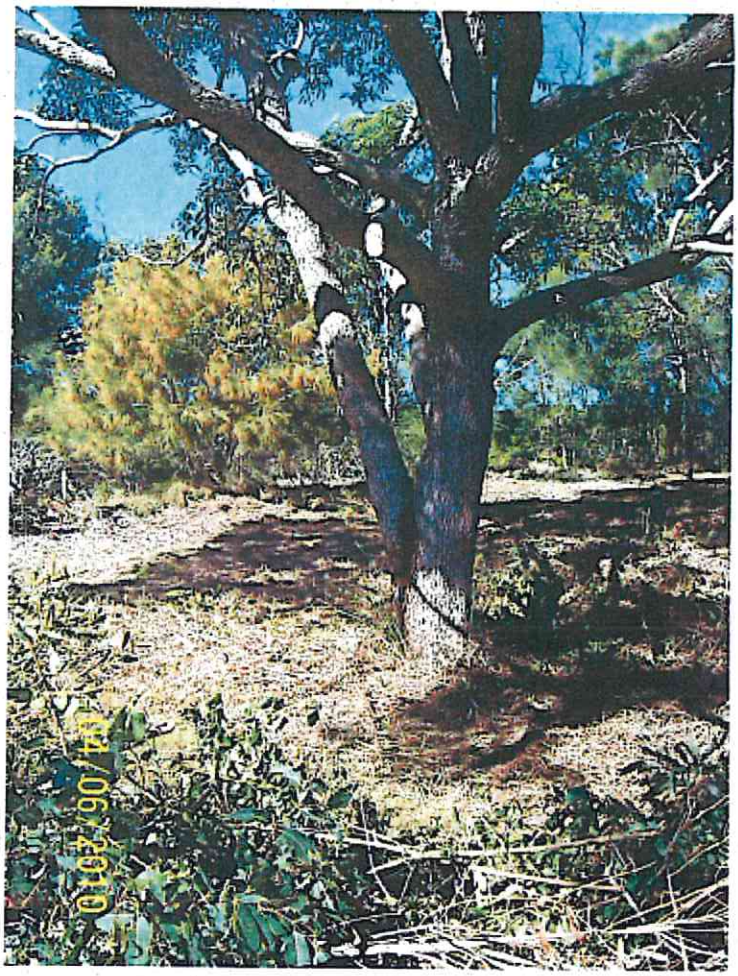


Figure D: Flooding during the 2005 event

Overlooking the western portion of the site from North Star Caravan park

Residents of North Star Caravan Park during flooding

Looking south east over the site from the western portion of the development during the rain event

Figure E: Endangered Curlew eggs adjacent to the proposed emergency access road area

Review of Environmental Assessment for Lot 156 Creek Street, Hastings Point

2114742A

September 2010

NSW Department of Planning

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Contents

1. Introduction

The NSW Department of Planning has requested PB's assistance in assessing the Environmental Assessment (EA) for the proposed residential and tourist subdivision development at Lot 156 Creek Street, Hastings Point. The scope of works is set out in *DoP2010/154 – Invitation to Tender: Hydrological and Geo-technical Assessment of the Environmental Assessment for Major Project 06_153 – Residential and Tourist Development Subdivision, Lot 156 Creek Street, Hastings Point* received by PB on 12th July 2010.

The Department requires assistance in assessing the following aspects of the EA:

- Flooding: Review of the Flood Management Assessment and impacts on flood risk, including assessment of climate change impacts.
- Stormwater and water cycle management: Review the Stormwater and Water Cycle Management Plans to assess the proposed management of stormwater on the developed site and impacts of the development on local drainage processes and the quantity and quality of storm runoff to adjacent waterways.
- Acid sulfate soils: Review proposed measures to manage and mitigate the risks and environmental impacts associated with acid sulfate soils during the construction phase of the development.
- Groundwater: Review of the impacts of the development on groundwater quality.

This report sets out the findings of PB's review of the adequacy of the EA in these technical areas.

a minimum fill level of 400mm higher than proposed and a minimum floor level of 200mm higher than proposed.

2.3 Specific comments

Proposed fill levels

The minimum proposed fill and floor levels are 2.4 mAHD and 3.1 mAHD respectively, which are 400mm and 200mm lower respectively than those required by Council's current DCP. The levels given in the current DCP have been revised upwards to reflect recent predictions of sea level rise.

Flooding impacts of the development

The proposed filling slightly increases flood levels upstream but impacts are considered to be insignificant. Up to 60mm increase is noted and deemed 'mathematically insignificant', when related to flood depths of up to 1m, presumably for the 100 year Average Recurrence Interval (ARI) event. It is recommended that this be further justified by assessment of impacts for more frequent flood events, e.g. 2 to 10 year ARI events, to confirm that the development will not exacerbate more frequent flooding processes. If flood depths and extents are not significantly impacted for more frequent events then this would provide further justification for classifying impacts as insignificant.

Impacts of Climate Change

The main EA document does not mention climate change. It refers to Chapter 6 of the Engineering Impact Assessment by Opus, which deals with flooding implications. Chapter 6, in turn, refers to *Flood Risk Management Guideline: Practical Consideration of Climate Change,* which was issued by the Department of Environment and Climate Change (DECC) in October 2007. The guideline recommends that, to consider possible impacts of climate change on flood levels in coastal areas, a sensitivity analysis should be undertaken with plausible increases in rainfall intensity of +10%, 20% and 30%, and sea level rises of 0.18, 0.55 and 0.91 metres (m).

Table 1 of the guideline indicates (from 2007 CSIRO reports) a 5% to 10% indicative increase in the 40 year - 1 day extreme rainfall intensity for the Northern Rivers region by 2070. This is broadly consistent with projections from a more recent CSIRO report (*Calculation of Australian extreme rainfall within GCM simulations using Extreme Value Analysis*, T Rafter and D Abbs, report to the Department of Climate Change (DCC), 2009). This paper presents % changes in the 50 year - 1 day rainfall intensity for the adjoining South East Queensland region obtained from eleven climate models. For 2055 the average median change is +14% and for 2090 the average median change is +30.6%. These latest projections support the use of 10%, 20% and 30% increases in rainfall intensities in sensitivity analysis.

Chapter 6 states that the sensitivity of the flood modelling to the sea level on the downstream side of the bridge was assessed by running the hydraulic flood model with the sea level rises outlined in the DECC guideline. However there is no description of what was done, the results obtained or any conclusions drawn. Furthermore, there is no mention of undertaking a sensitivity analysis with a range of rainfall intensity increases and sea level rises, as recommended in DECC, 2007.

criticality of the minimum fill level to the development, it is recommended that the adopted level of 2.40 m AHD be adequately justified in the EA.

It is also recommended that further investigations be carried out to identify (a) the impacts that frequent or permanent sea inundation of the filled site would have on the proposed development; (b) the most feasible adaptation measures that could be undertaken then to protect the development, and (c) adaptation features that could cost-effectively be incorporated into development now to facilitate protecting it from sea level rise next century.

Sea level rise will also greatly increase the frequency of extreme sea level events. NSW will be affected to a greater extent than elsewhere along the Australian coastline. Figure 2.17 in DCC, 2009, from Church et al, 2008, (Church et al, 2008, *Position Analysis: Climate change, sea-level rise and extreme events: Impacts and adaptation issues.* ACE CRC) shows that in the vicinity of Hastings Point a sea level rise of 0.5 m will increase frequency of extreme sea level events by one hundred fold – meaning that the current 100 year extreme sea level event would occur almost every year on average. The increase in frequency for a sea level rise of 0.9 m would be even greater. It is recommended that implications of such a significant change on the proposed development be addressed in the EA.

Furthermore, in light of recent observations and research projecting larger sea level rises by 2100, along with increases in rainfall intensity of up to 30%, it is recommended that the implications of a sea level rise of 0.9 m by 2100 be assessed, in conjunction with 10%, 20% and 30% increases in rainfall intensity. This may prompt reconsideration of the minimum fill level on the development site.

2.4 Statement of commitments

The statement of commitments relevant to flooding is as follows:

- Site levels shall achieve a minimum of 2.4 mAHD across the developable area of the site, inclusive of proposed allotments, road reserves and emergency access fire trails.

As stated previously, this minimum fill level is 400mm lower than the current DCP requirement of 2.8 mAHD.

2.5 Comments on other stakeholder responses

Responses from Tweed Shire Council (dated 28 July 2010), DECCW (dated 1 July 2010) and NSW Planning were reviewed. These responses were consistent with PB's review of the EA and confirmed that the key concerns with the EA relating to flooding were lack of detail provided for the modelling analysis of flooding impacts and results, lack of information on the consideration of climate change impacts and lack of consistency with current Council policy on minimum fill and floor levels.

2.6 Conclusions and recommendations

The following clarifications/additions should be sought:

3. Stormwater and Water Cycle Management

3.1 Documents available for review

The following documents were reviewed for information on stormwater and water cycle management:

- *Environmental Assessment Part 3A – EP&A Act 1979, No.156 Creek Street, Hasting Point – Walter Elliot Holdings P/L*, Planit Consulting, March 2010.
- *Palm Lake Works Pty Ltd, Engineering Impact Assessment,* Revision 4, Opus International Consultants (Australia) Pty Ltd., 24 February 2010.

3.2 General comments

The assessment of the pre- and post development stormwater processes only considers the local drainage sub-catchments within the site and 1 external sub-catchment that is part of a larger sub-catchment extending into the site. It does not consider impacts of the development, in particular the impact of infilling land, on the drainage processes for local drainage catchments adjacent to, and upstream of, the site.

Water Sensitive Urban Design (WSUD) measures to treat site runoff have not been considered. Instead, proprietary stormwater treatment systems, such as Gross Pollutant Traps (GPTs), have been proposed.

3.3 Specific comments

Impacts on local drainage processes

The caravan park drainage catchment E3 and the northern drainage catchments E4 and E5 are shown to drain towards the north western side of the site. The flows from these catchments have been calculated but there is no consideration on the impact of the development on the discharge of these catchment flows to Christies Creek. It is possible that the filling of land could reduce the capacity of overland flow paths discharging these catchment flows, particularly during large storm events.

Similarly, no assessment is presented of the impacts on other local drainage catchments north of Creek Street and east of the Caravan Park, including the portion of Creek Street itself which borders the northern edge of the site.

It is recommended that hydraulic modelling of the local drainage catchments be undertaken, to include the sub-catchments within the site itself and adjacent catchments that drain directly to the site, or overflow into it during large storm events. The objective of this modelling would be to determine the impacts of the development on local drainage processes during major and minor storm events. These local drainage processes would also be affected by flooding in Christies Creek; however, the impacts of the development on faster responding drainage and flooding processes in the local catchments that occur in advance of peak flooding in the main creek should be determined. It is possible that the

4. Acid Sulfate Soils

4.1 Documents available for review

The following documents were reviewed for information on Acid Sulfate Soils (ASS):

- *Environmental Assessment Part 3A – EP&A Act 1979, No.156 Creek Street, Hasting Point – Walter Elliot Holdings P/L*, Planit Consulting, March 2010, incorporating:
  - Acid Sulfate Soil & Contamination Investigation, Proposed Filling, Lot 156 Creek Street, Hastings Point, Soil Surveys Engineering Pty Ltd, July 2004, and
  - Preliminary Acid Sulfate Soil Management Plan, Proposed Filling, Lot 156 DP 628026 Creek Street, Hastings Point NSW, March 2008

4.2 General comments

The information provided in the ASS and contamination report indicates the presence of Actual Acid Sulfate Soils (AASS) and Potential Acid Sulfate Soils (PASS) at the site.

In regard to the mitigation of identified ASS, additional detail should be included in the ASS management plan.

4.3 Specific comments

The presence of ASS at the site has been identified based on a soil investigation undertaken by Soil Surveys Engineering Pty Ltd (Soil Surveys). The ASS at the site has been identified using the results of field and laboratory soil testing. The extent of the ASS was not delineated.

A management plan for ASS was prepared by Opus Qantec McWilliam. Although this plan does provide some treatment and management procedures, it does not meet the requirements for an ASS management plan as detailed in the Acid Sulfate Soil Manual (ASSMAC, 1998).

The elements identified in the ASS Manual as the minimum requirements of an ASS management plan are:

- An overview of the site and surrounding area.
- An overview of the work to be undertaken.
- A description of the ASS mitigation strategies with regard to each phase of construction and operation, addressing:
  - Ground disturbance.
  - Excavated soils.

4.4 Statement of commitments

The Statement of Commitments relating to ASS (EA Section 7.1.5, p.121) partially addresses the relevant DGRs, although it needs additional detail relating to the procedures that will be used to mitigate the ASS identified at the site.

4.5 Comments on other stakeholder responses

Stakeholder responses submitted by the NSW Planning, DECCW and Tweed Shire Council were reviewed. None of these submissions contained comments relating to ASS.

4.6 Conclusions and recommendations

The information provided does satisfactorily identify the presence of ASS at the site. Additionally, there is a discussion of mitigation measures, although the preliminary ASS management plan does not meet the requirements of a detailed ASS management plan. Clarification on these issues should be sought.

Section 4.3.2 of the Environmental Assessment indicates that the project site contains a SEPP14 wetland and in accordance with the SEPP14 legislation an understanding of the environmental effects should be collated including surface water and groundwater quality and salinity. The Environmental Assessment further states that these elements have been satisfactorily addressed. However review of the documents presented has not revealed any description of groundwater quality.

Onsite retention of water is likely to locally increase groundwater levels due to a groundwater mound developing beneath the detention basin due to leakage. Elsewhere groundwater recharge is likely to be reduced as rainfall is captured as roof and pavement runoff and discharged to stormwater, off-site.

5.3 Specific comments

The assessment of groundwater provided in the Environmental Assessment is considered inadequate. It is assessed the following conditions should be investigated:

- Assessment of local hydrogeological conditions.
- Assessment of groundwater flow direction.
- Assessment of groundwater quality.
- Assessment of dewatering requirements (size of excavations required, estimate of volume of groundwater to be pumped, duration of pumping, disposal options, potential impact on surrounding environment).
- Assessment of the proposal on the existing hydrogeological environment for the short term and long term.

5.4 Statement of commitments

The EA indicates the following statements relating to groundwater:

Executive summary – ESD and cumulative impacts

The proposal demonstrates adherence to these principals via the retention of existing riparian vegetation and regeneration of previously disturbed areas, the assurance of negligible impacts upon adjacent sensitive areas, the maintenance of existing groundwater quality and the adoption of management measures relating to energy efficient residential design and traffic efficiency.

It is assessed that the maintenance of groundwater quality cannot be proven until baseline investigations have been undertaken.

Section 4.3.2 State Environmental Planning Policy No 14 – Coastal Wetlands (SEPP14)

(with reference to surface and groundwater characteristics)

It is considered that all of the above elements have been satisfactorily addressed within this Environmental Assessment and supporting documentation.

insufficient groundwater chemistry data, and insufficient aquifer parameters to accurately assess the dewatering requirements.

Stage 2 – Detailed Design and Planning

- A field based investigation is recommended to more clearly define the hydrogeology of the site and to address knowledge gaps from the Stage 1 assessment. The likely assessment should be specific to the site and should include; groundwater levels fluctuations, groundwater chemistry groundwater flow paths, and aquifer parameters.
- Baseline monitoring of groundwater levels and the hydrogeochemistry is required to establish baseline conditions prior to any development. During and after construction monitoring should continue to identify any adverse impacts to groundwater quality and set in place groundwater remediation as required. Groundwater and surface water quality monitoring is required in accordance with the SEPP14 legislative requirements.
- The additional field based information can then be used to refine and more accurately assess the dewatering requirements for the site.