



## Planning Assessment Report

### Development Application DA 148-6-2004

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#### 1. SUMMARY

This report is an assessment of the proposed development the subject of Development Application number **DA 148-6-2004**. The development application was lodged with the Department on 16 June 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The application seeks consent for subdivision of the land and the construction of a Caravan Park over 1.5 hectares of the site containing 73 sites as the first stage of a two stage development of the site.

Pursuant to Kempsey Local Environmental Plan 1987 (the LEP) the land is zoned 7(d) Scenic Protection. The Minister for Planning is the consent authority under Clause 10 of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71).

Issues relating to the adverse impact on the ecological integrity of the wetland and the adverse visual impact on the locality as well as the inadequate management of the flood and bushfire risks on the site, the lack of a well founded objection to the minimum allotment size development standard for the proposed subdivision pursuant to SEPP1 and the inconsistency with several aims and objectives of the relevant planning instruments were considered to be the major concerns with the proposal.

The concerns outlined in this report were discussed with the applicant on two occasions and it was recommended that in light of these concerns, the development application be withdrawn and the proposal be reviewed in relation to the issues raised in this assessment. The applicant was asked on two occasions to withdraw the development application and for the proposal to be considered under Part 3A of the Act. The applicant declined on both occasions to withdraw the development application, outlined in correspondence dated 19 January 2006 at **Appendix B**.

It is recommended that the development application be determined by **refusing consent**.

#### 2. BACKGROUND

##### 2.1 Site Context

The site is described as Lot 4 DP 1022342 and is located on New Entrance Road, South West Rocks in the Kempsey local government area. The site is located on the eastern side of, and adjacent to, the Macleay River, opposite the confluence with the Macleay Arm, approximately 3km to the west of South West Rocks. South West Rocks is a coastal village overlooking Trial Bay approximately 40km north-east of Kempsey.

The site is located within an area of to the west of South West Rocks known as 'New Entrance', which is accessed via Gordon Young Drive.

The site is located in an area dominated by the river and wetlands systems, with the Macleay River to the west and protected coastal wetlands under State Environmental Planning Policy No 14 (SEPP 14) to the east. The Macleay River is located approximately 20 metres to the west of the site and is primarily saline in this location given the proximity to the ocean. To the north, a small parcel of freehold land (former road) exists, with a levee road separating this adjoining parcel from the subject site, while an existing tavern building is located to the south within the subject site. Low-density residential development exists further east of the site beyond the coastal wetlands while a boat ramp and associated public facilities are located further to the south, beyond the existing tavern.

## **2.2 Site Characteristics**

The site is generally low lying and irregularly shaped with a total site area of 22.58 hectares and is predominantly comprised of a large area of SEPP 14 Coastal wetland. There is a small cleared area of land located between the wetland and New Entrance Road (along the western boundary – foreshore) within which the existing Tavern is located. Stage 1 of the development is proposed to be located within this existing cleared area while stage 2 involves development within the wetland area (development consent is not sought for stage 2 in this proposal).

The site is currently undeveloped (with the exception of the Tavern) and consists of low-lying land covered in short to long grasses, shrubs and small trees. There are no permanent surface waters on the site, however, the land is low-lying and drains have been constructed to direct run-off from the site to the wetlands (east) and to the Macleay River (west). The site and surrounding area has a gentle slope of less than 1%. The soils on the site are generally silty loams underlain by sand, typical of floodplain areas.

Groundwater in the vicinity of the site is considered to be approximately 1.5m to 2.0m below ground level. Given the proximity of the site to the Macleay River and the wetland, it is considered that groundwater levels would be affected by tidal influences.

A site visit was conducted by Urban Assessments Staff on 25 February 2005. A site locality plan is illustrated in Figure 1 at **Appendix C**.

## **2.3 Site Constraints**

The site is affected by several constraints which are outlined below:

- Land contamination – whilst there were no obvious signs of soil contamination on the site, the history of the site revealed that past land uses included grazing and light agriculture. This is a potentially contaminating activity as listed in Table 1 to the '*Planning Guidelines for Contaminated Land*'. This issue is discussed in Section 6.1.1 and 6.2.11 of this report.
- Bushfire – the site is 'bushfire prone' for the purposes of Section 146 of the Act and is classified as development for a 'Special Fire Protection Purpose' pursuant

to Section 100B of the Rural Fires Act 1997. This issue is discussed in Section 6.2.2 of this report.

- Flooding – The site is subject to the 1 in 100 year flood event pursuant to the Kempsey Shire Council Flood Risk Maps. In such an event, the Macleay River would overtop the right bank upstream of the ‘Riverside Tavern’ and floodwaters would enter from the south-east. These floodwaters would drain via the SEPP 14 wetland and the existing drain at the northern end of the site<sup>1</sup>. This issue is discussed in section 6.2.1 of this report.
- Acid sulfate soils – the low-lying nature of the site, the proximity to the river and wetland and the presence of Holocene sediments, results in a high likelihood of acid sulfate soils being located on the site. This issue is discussed in section 6.2.12 of this report.

## **2.4 Relevant approvals**

A Tavern and associated car parking was approved by Kempsey Shire Council in the south-western corner of the site (T6-00-288) and was modified on 15 June 2000. This Tavern consists of a bar, dining room, gaming room and associated verandahs and beer gardens. Car parking and landscaping also forms part of this existing development on the site. The proposed development will modify the existing development consent for the tavern as a result of the changes required behind the Tavern parking area. A buffer zone between the wetland and the tavern was required in this instance.

## **3. THE PROPOSED DEVELOPMENT**

The proposed development seeks consent for:

- The subdivision of land into 3 lots;
- Construction of stage 1 of a Tourist Facility - caravan park over 1.5 hectares containing 73 dwelling sites, comprising 56 short-term sites for self-contained cabins (relocatable homes) for short stay holiday accommodation or other forms of movable dwellings (caravans, motor homes, tents etc) and 17 camp sites. The caravan park will consist of dwelling sites for moveable dwellings (tents, caravans, manufactured home (cabins), any other portable device for human habitation);
- Construction of 2 x ensuites, 2 x BBQ areas and an Amenities and Camp Kitchen building;
- Construction of a two-storey Office and Manager’s Residence containing an office, general store and double garage on the ground floor and a three bedroom residence on the first floor;
- Internal roads and open shallow grassed swale drainage systems within the site;
- Vehicular access to the proposed caravan park and visitor parking along western boundary adjoining the existing tavern; and
- Landscaping along the western (river) frontage of the site.

The subdivision proposes three allotments, with proposed Lot 1 to consist of the adjoining wetland area and proposed Caravan Park within one large lot (207,963 sqm),

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<sup>1</sup> Adapted from the Contamination Assessment prepared by Martens & Associates Pty Ltd, dated June 2004.

proposed Lot 2 to consists of the existing tavern and associated car park on a separate lot (7,202 sqm) and proposed Lot 3 to consist of a residual lot of land east of tavern (10,635 sqm). A SEPP 1 objection has been submitted with the development application as the subdivision development standard pursuant to Clause 16 of the LEP is not achieved. This is further discussed in section 6.2.5 of this report.

The proposed development consists of the first stage of a two stage development, with stage 2 (not part of this development application) proposed to extend the caravan park into the wetland area. The applicant proposes that development of part of the wetland is permitted in exchange for the restoration of the wetland by the removal of a levee road and reinstatement of tidal flows into the wetland area. It should be noted, however, that such works are not proposed in this development application and there have been no studies undertaken for these works.

The construction of movable dwellings, caravans and the like are subject to the Local Government Regulation and do not require development consent under the Act. The current application therefore does not seek consent for such structures.

The proposed development (Stage 1) is illustrated in Figure 2 at **Appendix C**, while the proposed subdivision plan is illustrated in Figure 3 at **Appendix C**.

### **3.1 Additional Information**

On 13 October 2004, the applicant submitted the following additional information: -

- Perspectives – the applicant provided perspectives on the likely future appearance of the site from various points in the locality;
- Staging – the applicant stated that the current application was for stage 1 only and involves works outside the SEPP 14 wetland only;
- Layout of Proposed Lot 3 – the boundary of Lot 3 may be amended to reflect the wetland boundary if required;
- Future management of wetland area – this may be achieved by conditions of development consent; and
- Height – the applicant states that the floor levels of the cabins are set at the 1:100 flood level and that if there are concerns regarding height, there is no objection to the imposition of a condition restricting height to single storey only.

On 24 April 2005, the applicant submitted a report on the ‘*Status of Swamp Oak on Lot 4 DP 1022324*’ prepared by *Darkheart* (the Darkheart report). This report states that the potential for the Swamp Oaks to establish in other areas in the wetland and potentially link with existing areas is limited due to the unfavourable conditions (low relief and high salinity levels) and the historical pattern and succession rates which have shown the Swamp Oaks to be limited in extent and colonisation.

This information did not constitute amendments to the proposal and accordingly further advertising and notification were not required.

## 4. STATUTORY FRAMEWORK

### 4.1 *Statement of Permissibility*

The site is zoned 7(d) (Scenic Protection Zone) under the Kempsey Local Environment Plan 1987 (the LEP). The LEP adopts the Environmental Planning and Assessment Model Provisions 1980 (the Model Provisions) and accordingly the relevant definition of 'tourist facility' is:

*“tourist facilities means an establishment providing for holiday accommodation or recreation and may include a boat shed, boat landing facilities, camping ground, caravan park, holiday cabins, hotel, house boat, marina, motel, playground, refreshment room, water sport facilities or a club used in conjunction with any such activities.”*

The proposed development is considered to be a 'tourist facility', which is permissible in the 7(d) zone with consent.

### 4.2 *Instrument of consent and other relevant planning instruments*

The proposed development is located within the coastal zone, as defined in CI 3 of State Environmental Planning Policy No. 71- Coastal Protection (SEPP 71) and accordingly this policy applies to the proposed development. The development application is identified as significant coastal development pursuant to Part 3 of SEPP 71 as the proposal is for development specified under Schedule 2(c) of SEPP 71, being for the development of a caravan park that falls within the definition of "tourist facility" in Schedule 2.

Accordingly, the application is State Significant Development pursuant to CI 10(1) of SEPP 71 and the Minister is the consent authority for this development application pursuant to CI 10(2) of SPEP 71<sup>2</sup>.

The following Environmental Planning Instruments apply:

- State Environmental Planning Policy No 71 – Coastal Protection;
- State Environmental Planning Policy No 55 – Remediation of Contaminated Land;
- State Environmental Planning Policy No 21 – Caravan Parks;
- State Environmental Planning Policy No 14 – Coastal Wetlands;
- State Environmental Planning Policy No 11 – Traffic Generating Developments;
- State Environmental Planning Policy No 1 – Development Standards;
- North Coast Regional Environmental Plan (NCREP);
- Kempsey Local Environmental Plan 1987;
- Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995.

An assessment of the proposal against the provisions of these Environmental Planning Instruments is outlined at **Appendix D**.

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<sup>2</sup> This DA was lodged on 16 June 2004 and accordingly is subject to the Savings and Transitional arrangements of the Part 3A reforms to the Act, resulting in Part 3A not applying to this proposal.

### 4.3 *Legislative Context - Integrated Development*

The proposal involves development for a 'Special Fire Protection Purpose' (being for tourist accommodation) on bush fire prone land and accordingly is "Integrated Development" under Section 91 of the Act. A Bushfire Safety Authority (BFSA) is required pursuant to Section 100B of the *Rural Fires Act 1997* from the New South Wales Rural Fire Service. This BFSA has been issued by the New South Wales Rural Fire Service (discussed further in Section 5.2.1 and 6.2.2 of this report).

The proposal also involves excavation within 40 metres of a watercourse and accordingly is 'Integrated Development' under Section 91 of the Act. A Part 3A Permit is required pursuant to Section 22B of the *Rivers and Foreshore Improvement Act 1948*. The Department of Infrastructure Planning and Natural Resources (now Department of Natural Resources) has issued General Terms of Approval for the proposal (discussed further in Section 5.2.2 of this report).

### 4.4 *Other Relevant Policies*

In addition to the Environmental Planning Instruments outlined in Section 4.2, the following Development Control Plans and Policies apply to the proposed development:

- Kempsey Shire Council Development Control Plan No 9 – South West Rocks;
- Kempsey Shire Council Development Control Plan No 13 – Manufactured Home Estates and Caravan Parks;
- Kempsey Shire Council Development Control Plan No 27 – Acid Sulfate Soils;
- Kempsey Shire Council Development Control Plan No 34 – South West Rocks;
- Kempsey Shire Council Development Control Plan No 36 - Engineering Guidelines for Subdivision and Development;
- Kempsey Shire Council Flood Risk Management Policy – Policy No C23.6;
- Kempsey Shire Council Advertising of Development Applications Policy C23.1;
- Planning for Bushfire Protection, 2001;
- NSW Floodplain Management Manual, 2001/2005;
- Coastal Design Guidelines of NSW, 2004;
- NSW Coastal Policy, 1997.

An assessment of the proposal against the provisions of these Environmental Planning Instruments is outlined at **Appendix D**.

## 5. CONSULTATION

### 5.1 *Public consultation*

The application was notified, in accordance with the Regulations and Kempsey Shire Council Notifications Policy including:

<b>Notifications – landowners/occupiers</b>	413 landowners and adjoining properties were notified.
<b>Newspaper advertisements</b>	Advertised in <i>Kempsey Macleay Argus</i> on 16 July 2004.

<b>Site notices</b>	Erected at the site in June 2004.
<b>Exhibition dates</b>	Start: 19 July 2004                      End: 26 August 2004
<b>Exhibition venues</b>	<ul style="list-style-type: none"> <li>▪ DIPNR Planning Information Centre; 20 Lee Street Sydney</li> <li>▪ DIPNR North Coast Office; 49 Victoria Road, Grafton;</li> <li>▪ Kempsey Shire Council; Cnr Elbow and Tozer Streets, West Kempsey;</li> <li>▪ South West Rocks Library; Landsborough Street, South West Rocks;</li> <li>▪ Kempsey Library; Elbow Street, Kempsey.</li> </ul>

A total of 310 submissions were received from the community regarding the proposal and a summary of these submissions is at **Appendix E**. The majority of the submissions raised concerns regarding the adverse impact on the wetlands, traffic and noise, the presence of existing caravan parks in the area, the impacts on flora and fauna, the flooding hazard on the site, the potential impacts on water quality, the capacity of infrastructure, the adverse impact on the scenic quality of the area and the absence of a structure plan for the site. There were several submissions in support of the proposal which stated that the development would be an asset for the town and would contribute to the tourism industry of the area.

The issues raised in these submissions are considered in Section 6.2 of this report. The applicant was provided with a list of the issues raised and provided responses to these issues, however, the Department does not concur with the assessment of the issues relating to impacts on wetlands, visual amenity, flooding, water quality and issues relating to compliance with planning instruments.

## **5.2 External Referrals**

### **5.2.1 NSW Rural Fire Service - Integrated Development**

The application was referred to the NSW Rural Fire Service (RFS) on 12 July 2004 as a BFSA is required under Section 100B of the *Rural Fires Act 1997*. The RFS responded in correspondence dated 27 August 2004, stating that they were not prepared to issue a BFSA on the following grounds:

- Inadequate Asset Protection Zones (APZs) have been provided as the Casuarina swamp within the SEPP 14 wetland has been incorrectly identified as Group 3 vegetation when it is considered to be Group 2 vegetation (unless it can be demonstrated that the small remnant areas are less than 1 hectare);
- The location of the alternative access/egress is inappropriate given that it is a car park where this is potential for a parked car to block the access/egress;
- The roads have been incorrectly classed as property access roads, instead of public roads in accordance with 'Planning for Bushfire Protection, 2001' (PfBP);
- The level of construction is non-complying with Table A3.3 of 'Planning for Bushfire Protection, 2001'.

Subsequently, the applicant provided further advice in respect of this vegetation classification issue. This information stated that the potential for the Swamp Oaks to establish in other areas in the wetland and potentially link with existing areas is limited due to the unfavourable conditions (low relief and high salinity levels). This report was reviewed by RFS and in correspondence dated 8 April 2005 to the Department, the RFS

supported the applicant's position and provided a revised submission, including a BFSA.

This revised assessment and BFSA, however, was based on the revegetation proposed for the site as a result of removing the levee bank and allowing unrestricted tidal flows to the site which is purported to result in the area revegetating to a mangrove environment and not a wetland.

The BFSA was issued on the following further conditions:

- Hydrants to be installed pas per AS2419 where any part of a structure is greater than 70 metres from a hydrant;
- The roads within the development shall be no less than 5.5 metres wide, parking to be within parking bays only and services are to be located outside of parking bays to ensure accessibility to reticulated water for fire suppression;
- Roads which interface with vegetation must have roll top kerbs on hazard side;
- All requirements for public road access detailed in Section 4.3.1 for PFBP shall be complied with except where amended by above;
- Alternate access/egress shall be relocated to ensure access is not potentially blocked by parked cars;
- A Bushfire Evacuation Plan to be submitted;
- A 20 metre APZ is required along the eastern side of the development (to be around development, not hazard).

The applicant requested a further review of the 20 metre APZ by the RFS. Consequently, the RFS in correspondence dated 2 May 2005 further amended their APZ requirements to allow for a 20m APZ around the campsite area behind the tavern only and the waiving of the requirement for an APZ at the remainder of the site. This correspondence also noted that the APZ required may encroach onto the SEPP 14 Wetlands.

The BFSA has been issued on the basis of works which do not form part of the current proposal and which will be subject to further environmental assessment and approval by either the Council or the Department. The BFSA issued by the RFS is therefore invalid.

This issue is further discussed in section 6.2.2 of this report.

### **5.2.2 Department of Natural Resources and the Department of Planning (formerly DIPNR) – Integrated Development**

The application was referred to the then DIPNR Regional Office (Hunter) on 12 July 2004 as a Part 3A permit under the *Rivers and Foreshores Improvement Act 1948* is required given the site is within 40m of the Macleay River. DIPNR Regional is also the concurrence authority with regard to the SEPP 1 objection lodged with this development application.

DIPNR Regional responded in emails dated 23 July 2004 and 26 November 2004, providing the following comments:

- High level of potentially detrimental visual impact of the proposed development, with exceptionally limited buffer widths precluding effective screening by

- vegetation;
- Impact on the SEPP 14 wetland areas, particularly given the absence of a buffer and the uncertainty of works to rehabilitate the wetland in the future;
  - Filling of the floodplain is likely to occur to counter flooding hazard and accordingly only clean fill can be used;
  - Potential overflow from sewerage and drainage systems in flood events;
  - Potential safety hazard of the riverbank area that is in proximity to deep water that can be moving at high velocities in the river.; and
  - The arguments presented in the SEPP 1 objection are circular and do not satisfactorily address a particular need for dissection as the zoning already permits tourist facilities and there appears to be no apparent useful purpose served in subdivision of the original parcel.

DIPNR Regional has provided General Terms of Approval and additional Special conditions should consent be granted and states that the applicant must apply for a Part 3A permit in the event that development consent is granted.

Subsequently, however, DIPNR Regional was requested to provide further comments on the SEPP 1 objection for the proposed subdivision, the flooding hazard on the site any other outstanding issues in relation to the proposed development. Further comments were received in advice dated 20 May 2005 which outlined the following:

1. Subdivision – the grounds for subdivision are based on obsolescence's of the areas as an agricultural block. The SEPP 1 variation is not supported;
2. Flooding – there are several concerns in relation to the flooding hazard affecting the site, which are summarised below.
  - a) Insufficient flooding information - Insufficient information has been provided to adequately assess the flooding issues on the site for the proposed development. A comprehensive flood assessment is required to examine the flood behaviour for the full range of flood events (including influence of Back Creek), which would be used to identify flood hazards, impact upon adjoining properties, evacuation issues and cumulative impacts of similar development in the area on flood behaviour. The current and proposed surface levels to assess flood hazard (or if floodway conditions exist on the site) particularly during large events such as a 1% AEP flood have not been provided. It is envisaged that in excess of 0.7m depth of water will cross New Entrance Road and flow towards Back Creek in the 1% AEP event and most of the site would be inundated by in excess of 1m, however, this cannot be determined without ground levels and a flood assessment.
  - b) Inaccurate flooding information - The application states that the 1% AEP flood level for the site is 2.54m AHD, which is inconsistent with the findings of the "Lower Macleay Floodplain Management Study, February 1997" prepared by Webb McKeown & Associates. This Study indicates that the 1% AEP flood level to be in the order of 2.9m AHD (approximately 3km upstream from end of breakwater). This matter should be addressed in a flood assessment. The flood assessment should also investigate flooding due to elevated ocean conditions. The assessment should adopt a 1% AEP ocean level peak of 2.6m AHD combined with a small river flood event (i.e. 20% AEP flood).

- c) Development on high hazard land undesirable - Development on high hazard land, areas where flood depths in excess of 1m occur in a 1% AEP flood constitute high hazard conditions, is undesirable. Caravan parks in particular are undesirable as such development is often difficult to evacuate due to occupants unfamiliar with local flooding issues and caravans are easily damaged in floods and can float away and cause obstructions or create other hazards. The inadequate evacuation strategy (discussed below) and the likely strain on emergency management resources during floods further emphasises the undesirable nature of the proposed development on this site.
  - d) Inadequate Evacuation Strategy - The proposed evacuation strategy is inadequate and does not present a fail-safe solution. The evacuation route has not been documented, surface levels along an evacuation route have not been provided, the involvement of the SES has been exaggerated and the potential influence of ocean conditions has not been considered. The Strategy also assumes that all occupants of the park are contactable at all times which is not the case which presents risks to people and property being damaged or lost during a flood event.
3. Wetland Management - concerns regarding the future management of the wetland area and the impacts of a trade-off for development when flooding issues have not been adequately addressed. DIPNR Regional proposes that the development should be refused and no further studies requested of the applicant as the site has many issues and submitting a flood study may not make the development more suitable for the site.

These issues are further discussed in section 6.2.1, 6.2.3, 6.2.4 and 6.2.5 of this report.

### **5.2.3 Kempsey Shire Council**

The application was referred to Kempsey Shire Council on 12 July 2004. Council responded in correspondence dated 26 August 2004 providing draft conditions should the Department consider approving the proposed development following assessment. The Council did not raise any issues or concerns with the proposal.

The Department confirmed that the Council did not wish to comment on issues such as flooding on the site. The Council did, however, provide additional comments in relation to the proposed subdivision by stating that they request that an 88B or 88E instrument be imposed stating that no dwelling is to be erected on proposed Lot 3 and that the Council is willing to be the party to vary, modify or extinguish the restriction.

The subdivision issue is further discussed in section 6.2.5 of this report.

### **5.2.4 Department of Environment and Conservation (DEC)**

The application was referred to DEC on 12 July 2004. DEC responded in correspondence dated 31 August 2004, raising several issues with the application, including:

- Endangered Ecological Community - Coastal Saltmarsh in the North Coast has been listed as an Endangered Ecological Community (ECC) under the Threatened Species Conservation Act and DEC considers that a large portion of

the subject land displays characteristics of this community. The potential impact of the proposed development on this ECC has not been addressed by the applicant;

- Impact on SEPP 14 wetlands – the required 50 metre buffer zone has not been provided and details outlining the works to restore the wetland have not been provided. DEC therefore state that it is difficult to support the proposal without this buffer zone. Furthermore, the proposed stage 2 works (which do not form part of the current application) rather than improving the wetland are more likely to introduce additional threatening processes. Accordingly, DEC states that the applicant must prepare a strategy to rehabilitate and restore the ecological and conservation values of the wetland on the site;
- Aboriginal cultural heritage – the issue of Aboriginal Cultural Heritage was not adequately addressed by the applicant and a preliminary assessment to identify any values should be undertaken through consultation with the Local Aboriginal Community. This must be considered prior to determination of the application;
- Water management – the proposal must minimise the volume of waste water requiring treatment, ensure stormwater flows from the site are consistent with pre-development flows in relation to quality and quantity and the development minimises the demand for potable water.

DEC was further consulted by the Department on 21 April 2005 for consideration of the additional information provided by the applicant. DEC responded in correspondence dated 26 April 2005 raising the following concerns:

- The RFS appear to have based their response with respect to APZs and other fire prevention measures on the supposition that the wetland adjacent to the proposed development will revert to a tidally inundated mangrove ecosystem, which may not be the case;
- The soil level behind the levee (to the south) may have built up due to sedimentation from the nearby housing estate, or perhaps even floods. Without a survey of the surface levels of the wetland, compared to those of the tidal area to the north, it cannot be assumed that all of the area would be tidally inundated. As such, all the wetland/saltmarsh area may not be replaced with mangroves;
- Any APZ should be situated outside the SEPP 14 wetland boundary, as it may need to be mowed or be subjected to other management regimes. The proposal to securely fence the subject site to remove the potential for access into the SEPP 14 wetland is supported.
- It is noted that there has been no provision in the plan for stormwater retention or water quality structures on the subject site outside the SEPP 14 wetland boundary. It appears that the wetland is being degraded partly because of uncontrolled stormwater drainage into it. Any stormwater /water quality structures should be placed outside the SEPP 14 boundary.
- The rehabilitation of wetlands can be quite complex. Accordingly, DEC correspondence dated 31 August 2004 recommended that a detailed strategy be developed prior to any works commencing. It is acknowledged that the wetland is degraded but careful planning by restoration experts and sound implementation/on going management is necessary for the rehabilitation to be

successful. This is especially in view of the potential of this development proposal to further adversely impact on the wetlands.

- Since the proposal was last examined in August 2004, Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregions has been listed as an ECC under the *Threatened Species Conservation Act* 1995. This is in addition to the Coastal Saltmarsh ECC discussed in DEC' earlier submission. Assessments pursuant to Section 5A of the Act may be one way of quantifying whether a significant impact is likely. The need for a considered rehabilitation and ongoing management plan prior to any works being undertaken on the subject site, should the development proposal be approved, is reiterated.

These issues are further discussed in section 6.2.2, 6.2.3, 6.2.4, 6.2.10 and 6.2.13 of this report.

### **5.2.5 Department of Lands**

The application was referred to the Department of Lands on 26 July 2004 as the applicant proposes to remove the levee road (notwithstanding that these works do not form part of the current application) and as an adjoining land owner. The Department of Lands responded in correspondence dated 19 August 2004, advising there were no objections raised in principle to the proposed development relative to its impact on the nearby Crown lands. The Department of Lands submitted further correspondence dated 17 February 2005 regarding the proposed opening of culverts to re-establish tidal flows into the SEPP 14 wetlands.

### **5.2.6 Roads and Traffic Authority of NSW**

The application was referred to Roads and Traffic Authority (RTA) on 7 July 2005 as the proposal is a tourist facility which would accommodate 50 or more vehicles (Clause (h)) and accordingly State Environmental Planning Policy No 11 – Traffic Generating Developments applies. The RTA responded on 15 July 2005 stating that a traffic assessment is required, which would assess, among other things, the close proximity of the accesses to the tavern and proposed development. In addition, the RTA stated that consideration should be given to mitigating the impact of road traffic noise.

These issues are further discussed in section 6.2.7 and 6.2.8 of this report.

## **6. CONSIDERATION**

### **6.1 Section 79C of the Environmental Planning & Assessment Act**

Section 79C (1) of the Act requires a consent authority to consider prescribed matters as are of relevance to the development the subject of the development application. These matters are outlined below.

#### **6.1.1 Section 79C(1)(a) – Environmental Planning Instruments**

The prescribed matters, pursuant to Section 79C (1)(a) of the Act, include the provisions of the following that apply to the land to which the development application relates:

- (i) any environmental planning instrument, and

- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and
- (iii) any development control plan, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph).

Significant issues are discussed below in Section 6.2, and, where relevant, a detailed assessment is provided at **Appendix D**.

#### **6.1.2 Section 79C(1)(b) – Likely impacts of that development**

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. The following matters are the major considerations in relation to the likely impacts of the development:-

- Impact of Coastal hazards, flooding and bushfire on the development – this is further discussed in sections 6.2.1 and 6.2.2 of this report;
- Impact on wetland - this is further discussed in section 6.2.3, 6.2.4 and 6.2.10 of this report; and
- Impact on visual amenity – this is further discussed in section 6.2.6 of this report.

#### **6.1.3 Section 79C(1)(c) – Suitability of the Site**

The suitability of the site for the development must be considered and in this instance, the following matters are the major considerations:-

- Impact of flooding - this is further discussed in section 6.2.1 of this report;
- Impact on wetland - this is further discussed in section 6.2.3, 6.2.4 and 6.2.10 of this report;
- Impact from bushfire hazard this is further discussed in section 6.2.2 of this report; and
- Potential impact on cultural heritage - this is further discussed in section 6.2.13 of this report.

#### **6.1.4 Section 79C(1)(d) – Submissions**

Any submissions made in accordance with this Act or the regulations must be considered, which are discussed in section 5.1 and 5.2 of this report and a summary is at **Appendix E**.

#### **6.1.5 Section 79C(1)(e) – Public Interest**

The public interest must be considered in the assessment and it is considered that the proposed development is not in the public interest. The flooding hazard affecting the site has not been adequately addressed and the flood evacuation procedures are unsatisfactory, resulting in an unacceptable risk to people and property. The adverse visual impact of the proposal when viewed from the Macleay River and the adverse impacts on the SEPP 14 wetlands and the lack of a long-term management strategy of the wetland are contrary to the public interest.

## 6.2 Issues

### 6.2.1 Flooding Impacts

*Issue:* Flood Hazard

*Raised by:* DIPNR Regional, Community Submissions.

*Consideration:* DIPNR Regional raised concerns regarding the level of information submitted with the application in relation to the flood hazard on the site, stating that insufficient flooding information and assessment of flood risk has resulted in the inability to thoroughly assess this aspect of the development. The application does not assess flood behaviour for the full range of flood events, does not illustrate the potential impacts on adjoining properties as a result of the proposed development, in particular the proposed localised filling of the site, and does not take into consideration coastal processes such as wave run-up and tidal inundation. Flooding in this area is very dependant on the tides and potential elevated ocean conditions.

In addition to the inadequate flooding assessment with the proposal, DIPNR Regional also considers that the application contains inaccurate flooding information. The application states that the 1% AEP flood level for the site is 2.54m AHD, which is inconsistent with the findings of the '*Lower Macleay Floodplain Management Study, February 1997*' prepared by Webb McKeown & Associates. This Study indicated that the 1% AEP flood level to be in the order of 2.9m AHD. The applicant has used the '*Lower Clarence Floodplain Management Plan*' to propose mitigation of flooding impacts, which is the incorrect Plan.

DIPNR Regional also states that the development of high hazard land is undesirable, which characterises the subject site since the flood depths could exceed 1 metre in the 1 in 100 year flood event. Caravan parks in particular are undesirable as such development is often difficult to evacuate due to occupants unfamiliar with local flooding issues and caravans are easily damaged in floods and can float away and cause obstructions or create other hazards.

It is also considered that the proposed evacuation strategy is inadequate and does not present a fail-safe solution. The evacuation route has not been documented, surface levels along an evacuation route have not been provided, the involvement of the SES has been exaggerated and the potential influence of ocean conditions has not been considered. The Strategy also assumes that all occupants of the park are contactable at all times which is not the case which presents risks to people and property being damaged or lost during a flood event.

Kempsey Shire Council (the Council) did not assess the proposal in relation to flooding impacts, however, the Council has adopted a '*Flood Risk Management Policy*' (March 2003, Policy C 23:6) (Flood Policy) which clearly states the following, in relation to flood prone lands (other than floodways) which applies to the subject site in Clause 6.3.3 – Other Development:

*'Each application will be treated on merit, and Council will consider the development providing such development incorporates mainly open space and adequate flood-proofing measures.*

*No new caravan parks will be permitted'*

Accordingly, the Council's Flood Policy does not permit the proposed development. The proposal would also fail on merit, given there is minimal open space on the site and it is considered that the flood-proofing measures have not been adequately established by the applicant nor are acceptable to the Department.

The NSW Floodplain Development Manual (the Manual) states that where development is proposed that is considered outside those identified as acceptable in an EPI or management plan then a detailed flood study should be undertaken. The Manual also states that if there are potentially significant adverse impacts, the development proposal must specify mitigation measures that will reduce the adverse impacts to acceptable levels. It is considered that the flooding information provided to support the development application is not sufficient to provide a level of certainty that flood mitigation measures proposed are sufficient and robust enough for the full range of flood events that affect the site. In this way, the proposed development fails to satisfy the requirements of the NSW Floodplain Development Manual

SEPP 71 requires consideration of the impact of coastal processes and coastal hazards on the development (and visa versa) to be assessed. The applicant has indicated that the development will not have an impact on flooding however has not examined what impacts flooding will have on the development. It is considered that there is insufficient information in relation to flooding and that the flood mitigation measures proposed by the applicant are inadequate.

*Resolution:* This matter is unresolved and remains an outstanding issue.

### **6.2.2 Bushfire**

*Issue:* The site is bushfire prone and the proposed development is for a 'Special Fire Protection Purpose', being for tourist accommodation.

*Raised by:* RFS, DEC.

*Consideration:* There are two major concerns in relation to the bushfire hazard for the site, which include the provision of an APZ within the SEPP 14 wetland area and the circumstances under which the BFSA has been issued by the RFS.

#### The APZ

The RFS (see section 5.2.1), stated that an APZ is required along the eastern boundary of the site adjoining the proposed camping area which is located behind the Tavern car park. This APZ is required to protect the development from a potential bushfire which may result from the vegetation in the adjoining wetland in this location. This APZ, however, is located within the SEPP 14 wetland. The APZ will require the removal of vegetation from this area and also on-going clearing and

other maintenance/management regimes which will adversely affect the wetland environment. This is an unacceptable outcome and one which was also highlighted by DEC in their later submission (refer to Section 5.2.4). This issue is also discussed in section 1.4 of **Appendix D** in the assessment under SEPP 14 – Coastal Wetlands.

#### The Bushfire Safety Authority

The second concern relates to the BFSA which has been issued by the RFS on 8 April 2005 which states:

*“...the assessment is based on the revegetation proposed for the site as a result of removing the levee bank and allowing unrestricted tidal flows to the site will result in the area revegetating to a mangrove environment and not a wetland.”*

The basis for the BFSA being issued on the removal of levee bank fails on several accounts, including:-

- The removal of the levee bank is not proposed in this application;
- The applicant is under no obligation to lodge an application or undertake the works regarding removal of the levee bank since it does not form part of this application, which would result in the bushfire hazard for the current proposal being underestimated and unmitigated;
- There have been no studies submitted on the likely effects on the flooding of the wetland and whether this will in fact result in a mangrove environment, as outlined by DEC. The RFS are not qualified to make the assumption that the removal of the levee bank *will result* in the area revegetating to a mangrove environment;
- There is no information on the likely timeframe for the wetland to revert to a mangrove environment, for example this could take several years and accordingly, the bushfire hazard to the site would be unmitigated in the interim since the bushfire assessment is based on this area being a mangrove which supports differing vegetation types; and
- The removal of the levee bank may not be supported in a future application if it is considered to result in an adverse impact on the wetland and/or there are valid concerns from the community.

Given these concerns, it is considered that the bushfire hazard has not been adequately addressed by the RFS or the applicant and that the BFSA is invalid. The bushfire hazard cannot be adequately assessed until a rehabilitation and restoration strategy has been provided and assessed for the wetland upon the removal of the levee bank. The applicant has made it clear that such works do not form part of this application and accordingly, the bushfire hazard has not been adequately assessed or mitigated for the proposed development.

*Resolution:* This matter is unresolved and remains an outstanding issue.

#### **6.2.3 Impact on SEPP 14 Wetland**

*Issue:* The adjoining SEPP 14 wetland is likely to be adversely affected by the

proposed development.

*Raised by:* DEC, DIPNR Regional, Community submissions.

*Consideration:* The site contains wetland No 436 which is listed under SEPP 14 – Coastal Wetlands and there are several issues with respect to potential impacts on the adjoining wetland, which are outlined below:-

- a) Inconsistent with zone objectives - the proposed development is zoned 7(d) Scenic Protection under Kempsey LEP 1987. The objective of this 7(d) zone is to conserve the environmental and scenic quality of visually significant land by controlling development so that it will accord with the appearance of the landscape. The removal of vegetation from the wetland and discharging stormwater into the wetland (see below) will not result in conservation of the environmental quality of the land and will not accord with the appearance of the landscape. In these ways, the proposal is inconsistent with the zone objectives;
- b) Inconsistent with SEPP 14 – as outlined in the assessment in section 1.4 of **Appendix D**, the proposed development is inconsistent with the aims and controls of SEPP 14 in that the proposal does not protect the wetland, its vegetation or its ecological integrity as a result of the issues outlined above and below;
- c) Lack of buffer zone - The proposed development involves the construction of a caravan park and camping ground immediately adjoining this wetland with no buffer zone. The applicant asserts that a buffer zone to the wetland is not required as the true location of the wetland edge is beyond the paper boundary line and that a trade-off is proposed involving the restoration of wetland area that is not developed. DEC states that a 50 metre setback is required from a SEPP 14 wetland boundary (and an inter-agency agreement also exists for SEPP 14 wetlands for the North Coast), however, refusal of the proposed development may diminish the prospect of implementing rehabilitation works to improve the wetland and the coastal salt marsh. Furthermore, implementation of this policy would prevent any tourist development on the subject land. DEC would only consider supporting the current development application with no buffer to the wetland if the applicant could demonstrate that an improved environmental and conservation outcome could be achieved for the remainder of the wetland. This has not been demonstrated since the applicant purports that such works may be undertaken in the future as part of Stage 2 works for the site. Clearly, however, the applicant is not compelled to do any works beyond the current application and accordingly such wetland improvements cannot be considered in this assessment. This lack of a buffer zone exacerbates the impacts of edge effects (discussed below) including increased stormwater run-off impacts, rubbish dumping, weeds, erosion of the wetland's area and other issues discussed below;

- d) No rehabilitation works – the applicant states that works will be undertaken to return the wetland to its former character by the removal of the levee bank which will return tidal flows to the wetland. These works are perceived by the applicant to be a ‘trade-off’ to allow development adjoining the wetland with no buffer zone (see above). Notwithstanding that such works may have ecological merit, they do not form part of the current proposal and therefore have no effect on the assessment of this proposal. Furthermore, it is considered that the restoration of the wetland is a complex process and requires further analysis of the impact of altering the current wetland environments. The removal of vegetation and other impacts on the wetland are of concern which are proposed in this application and are discussed below;
- e) No Wetland Assessment and Management Strategy – notwithstanding that works are proposed within the wetland (contrary to the applicant’s statement that all works are outside the wetland boundary), including the APZ and stormwater runoff (see below), the applicant has not provided an adequate assessment of the potential impacts on the wetland. The ‘Wetlands Assessment’ contained at Appendix D of the application is titled ‘*Preliminary Notes on Land at New Entrance Road, South West Rocks*’ and was prepared by Sainty and Associates dated 20 February 2004 (the Sainty notes). The Sainty notes outline the existing site, a background of wetlands in NSW and the issues to be discussed. The Sainty report, on page 6 states ‘Reports on a number of issues raised above will be required...’. Furthermore, the Sainty notes state “Prepare a Restoration plan...”. The Sainty notes do not profess to be a ‘Wetlands Assessment’ as they are titled ‘Preliminary Notes’ and state that further work is required. Accordingly, the application fails to adequately address the potential impacts on the wetland and does not provide a thorough restoration plan for the supposed future works within the wetland which is the applicant’s basis for not complying with the required buffer zone and to substantiate that there will be no adverse impact on the wetland. Such a strategy is required to assess potential impact on inundating the existing wetland’s impact on existing species (particularly given there are two endangered ecological communities within the wetland (discussed in section 6.2.4 of this report)), and potential impact on flooding levels etc.

DEC states that the applicant must prepare a strategy to rehabilitate and restore the ecological and conservation values of the wetland on the site and that the rehabilitation of wetlands can be quite complex. DEC also states in correspondence dated 31 August 2004 that a detailed strategy be developed prior to any works commencing and acknowledges that the wetland is degraded but careful planning by restoration experts and sound implementation/on going management is necessary for the rehabilitation to be successful. This is especially in view of the potential of this development proposal to further adversely

impact on the wetlands. Without a survey of the surface levels of the wetland, compared to those of the tidal area to the north, it cannot be assumed that all of the area would be tidally inundated. As such, all the wetland/saltmarsh area may not be replaced with mangroves;

- f) Asset Protection Zone (APZ) in wetland – the proposed development involves a 20 metre APZ within the SEPP 14 Wetland area of the site. This will require the removal of vegetation and other clearing techniques aimed at reducing the fuel load (and therefore vegetation) within the wetland. This is contrary to the aims and objectives of SEPP 14 and will result in an adverse impact on the ecological integrity of the wetland. Such an impact is unacceptable in this location;
- g) Stormwater run-off/hydrological effects - the wetland is currently being degraded partly due to uncontrolled stormwater drainage into it. In light of this, it is important to consider that there has been no provision in the application for stormwater retention or water quality structures outside the SEPP 14 wetland boundary. Any stormwater /water quality structures should be placed outside the SEPP 14 boundary, however, there appears to be insufficient area on the site outside the wetland area to locate such measures and there are insufficient details outlining the stormwater treatment system. It is likely that stormwater will enter the wetland system, which will adversely affect the ecological integrity of the wetland as a result of the pollution in this run-off from vehicles, litter and the like. The lack of a buffer zone (discussed above) exacerbates this problem since stormwater will runoff into the wetland unabated which will adversely affect the ecological integrity of the wetland;
- h) Edge Effects – the lack of a buffer zone between the wetland and the proposal results in an exacerbated impact on the wetland from edge effects such as litter, erosion of the boundary of the wetland, the removal of vegetation and the likely increase in the number of weeds resulting from the proximity of campers to the wetland and the likely increases in pedestrian traffic within the wetland;
- i) Adverse Precedent - the absence of a buffer zone and a fence-only barrier to the SEPP 14 Wetland could set an undesirable precedent for similar development in the area, considering the large area of wetland in the vicinity.

The location of the proposed development within the wetland, which results in this adverse impact on the wetland, is illustrated at **Figure 4 in Appendix C**.

*Resolution:* This matter is unresolved and remains an outstanding issue.

#### **6.2.4 Impact on Flora and Fauna**

*Issue:* The site contains two Endangered Ecological Communities (EECs), consisting of the Coastal Salt Marsh and the Swamp Oak Communities.

*Raised by:* DEC, Community Submissions.

*Consideration:* The Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregions and the Coastal Saltmarsh in the NSW North Coast, Sydney Basin and South East Corner Bioregions are both listed as EECs under the *Threatened Species Conservation Act 1995* and DEC state that both communities are found in the wetlands on this site. Assessments pursuant to Section 5A of the Act are required to assess whether a significant impact is likely to occur as a result of development. The need for a considered rehabilitation and ongoing management plan prior to any works being undertaken on the subject site, should the development proposal be approved, is also required to assess the impact of changing either of the wetland environments.

Community submissions raised concerns that the proposed development would encroach on the wetland which is of high biodiversity significance and that marsupials not mentioned in flora & fauna report.

The removal of vegetation for the APZ within the wetland area will adversely affect the flora and fauna within the wetland on the site.

*Resolution:* This matter is unresolved and remains an outstanding issue

### **6.2.5 Subdivision of land**

*Issue:* The proposed subdivision of the site into 3 allotments fails to satisfy the minimum allotment size under CI 16 of the LEP.

*Raised by:* Kempsey Shire Council, DIPNR Regional, Community submissions.

*Consideration:* The applicant proposes to subdivide the land as follows (refer to Figure 3 in **Appendix C**):

- Lot 1 – caravan park and wetland area (2.07963 ha)
- Lot 2 – Tavern and associated car park and grounds (0.7202 ha)
- Lot 3 – Residual land (1.0635 ha)

A SEPP 1 objection has been lodged as the minimum allotment size development standard for subdivision in the 7(d) zone is 40 hectares. The applicant states that the proposed subdivision could separate the wetland area from the caravan park to make it more amenable to management by a single entity and the Tavern subdivision would provide an opportunity to sell the tavern.

DIPNR Regional, the concurrence authority, does not support the proposed subdivision as the SEPP 1 objection is not well-founded as discussed in section 5.2.2 of this report. In addition, Kempsey Shire Council would only support the subdivision subject to an 88B or 88E instrument, preventing a dwelling entitlement on the lot.

The SEPP 1 objection is further discussed in section 1.6 of **Appendix D**. This objection is not considered to be well founded as it does not establish grounds as to why the development standard is unreasonable or unnecessary in the circumstances of this case. The arguments are circular and there is no planning purpose served for the subdivision

given tourist facilities are permissible on the site and the SEPP 1 objection fails to address the objects of the Act.

*Resolution:* This matter is unresolved and remains an outstanding issue.

### **6.2.6 Visual Impacts**

*Issue:* The proposed development will have an adverse impact on visual amenity in the locality.

*Raised by:* DIPNR Regional, Community submissions.

*Consideration:* The proposed development will be visible from the Macleay River and the elevated residential areas west of the site and accordingly the visual impacts of the proposal must be considered. The issues of concern regarding visual impacts are discussed below:

- a) Lack of screen planting – the proposed ‘landscaped buffer zone’, located along the western frontage of the proposed development, is very narrow and will prevent adequate screen planting from being established in this area. This will result in the proposal being visually dominant when viewed from the River, thereby leading to an adverse impact on the visual amenity in the locality. The visual impacts from the Macleay river and surrounding areas could be mitigated with more effective vegetation screening;
- b) Loss of visual connection with wetland – the construction of the proposed development will result in the loss of the visual connection between the wetland and river which currently exists. The site is located within a large area of wetland, which forms part of the river system, and the location of the proposed development within this system detracts from the appearance of the landscape, which is contrary to the zone objectives (see below);
- c) Inconsistent with zone objectives – the proposed development is located within the 7(d) Scenic Protection Zone under Kempsey LEP 1987. The objective of the 7(d) zone is to conserve the environmental and scenic quality of visually significant land by controlling development so that it will accord with the appearance of the landscape. It is considered that the visual impacts of the development when viewed from the Macleay River as well as from elevated areas to the east are significant and mitigation has not been achieved to preserve the scenic quality of the site, and accordingly the proposal is inconsistent with the zone objectives;
- d) Inconsistent with SEPP 71 - the proposed development is inconsistent with the aims of SEPP 71 in that the visual amenity of the coast is not protected. The density of the proposal, combined with the narrow landscape buffer zone, result in an adverse impact on the visual amenity of the locality resulting from the proposed development;
- e) Density of development – the proposed development involves a

high density of dwelling and camp sites within the site such that there is minimal area remaining for landscaping within the site which would allow a softening of the appearance of the development from surrounding sites and the Macleay River. As a result, the proposal will appear as a continuous mass of caravans and movable dwellings upon completion and will not provide any vegetation or other open space areas which may provide relief in relation to visual amenity. This is particularly the case when viewed from the Macleay River as the western elevation of the proposal consists of one long line of development with only a small area of open space at the northern end of the site;

- f) Subdivision will lead to further development – the proposed subdivision, if approved, will exacerbate the adverse impact on visual amenity in the area as further buildings would be proposed on the site, which is drastically undersized. The minimum allotment size, pursuant to Clause 16 of the LEP, assist in satisfying the zone objectives of preserving the scenic quality of the site by requiring large land areas which would retain significant areas of natural vegetation and other measures, such as setbacks, to preserve the visual amenity of the area. The proposed subdivision would not provide sufficient area for such measures and is likely to adversely affect the visual amenity of the area;
- g) Filling of land – the proposed development involves localised filling of land to mitigate the flood hazard on the site. Whilst this has not been outlined in detail, it is likely that such elevation in ground level would serve to exacerbate the adverse impact of the proposal on the visual amenity of the area by rendering the development more visually prominent in the locality.

This adverse visual impact is illustrated at Figure 5 of **Appendix C**.

*Resolution:* This matter is unresolved and remains an outstanding issue.

### **6.2.7 Traffic Impacts**

*Issue:* Increased traffic volume on an unsuitable road network, and a lack of parking facilities.

*Raised by:* RTA, Community submissions.

*Consideration:* The proposed development provides adequate space within the site for the required number of car parking spaces and will be subject to further consideration upon lodgement of a Section 68 Application seeking approval for the installation of movable dwellings etc.

In relation to the road network, it is considered that the existing local roads are capable of absorbing the additional traffic generated by the proposed development. The RTA stated that a traffic assessment is required, however, it is considered that this assessment is not required given the number of vehicles entering and leaving the site is not excessive, the traffic is likely to be highly seasonal, the existing road network is established and capable of sustaining the likely increases in

the number and nature of additional traffic generated by the proposal.

*Resolution:* This issue has been considered in this assessment.

### **6.2.8 Noise Impacts**

*Issue:* The caravan park will increase the patronage of the tavern which will result in greater noise impacts for neighbouring residents and potential increase in road traffic noise resulting from the proposed development.

*Raised by:* RTA, Community submissions.

*Consideration:* The public submissions raised concerns regarding the potential increase in noise from the likely increased patronage of the Tavern from caravan park guests. The likely increase in patronage of the tavern is unlikely to substantially increase noise for surrounding residents and there is adequate separation between the tavern and residential development. The current development application does not propose any extension to the trading hours of the Tavern. In relation to traffic noise, the roads in the vicinity of the site are unlikely to result in adverse acoustic impacts for guests of the proposed development or existing residents.

*Resolution:* This issue has been considered in this assessment.

### **6.2.9 Infrastructure Provision**

*Issue:* The ability of the current reticulated water and sewerage systems to provide services to the proposal has not been assessed, particularly in peak seasons.

*Raised by:* Community submissions, DEC, DIPNR Regional.

*Consideration:* There were raised concerns regarding the potential for pollution to occur as a result of the existing water and sewerage systems overflowing in peak season, since the applicant has not provided information to ascertain whether the current systems are capable of the proposed additional load. The applicant was requested to provide confirmation that the site could be serviced in regards to sewer and water needs; however, this information was not forthcoming.

DIPNR Regional requires that the sewerage/drainage system between the amenities block and the tavern be adequately constructed to prevent surface discharges as a result of flooding and tidal overflows.

*Resolution:* This matter is unresolved and remains an outstanding issue.

### **6.2.10 Water Quality Impacts**

*Issue:* Impacts of run-off, risk to wetlands, burden on water quality and pressure systems

*Raised by:* Community submissions, DEC, DIPNR Regional.

*Consideration:* The lack of an adequate buffer zone and the proposed density of the development results in minimal area on the site left for the control and treatment of stormwater runoff from the site. There has been no provision in the plan for stormwater retention or water quality structures on the site outside the SEPP 14 wetland boundary. Also, it appears that

the wetland is currently being degraded partly because of uncontrolled stormwater drainage into it.

It therefore appears that stormwater will runoff into the wetland, which will adversely affect the ecological integrity of the wetland environment given the untreated nature of the stormwater.

DEC stated that a buffer to the wetland is required unless it can be shown that the run-off impacts can be kept out of the wetland area (further discussed in 6.2.3 and 5.2.4 of this report) and that any stormwater/water quality structures must be placed outside the SEPP 14 boundary. Furthermore, run-off would require sufficient treatment on-site before being discharge to wetland or to river. None of these features have been demonstrated in the application.

The impacts of the development on the water quality of the river and the wetlands have not been sufficiently addressed to support the development and it is likely, having regard to the proximity of the development to the wetland and the density of development that stormwater quality measures and stormwater discharge points will be located on and directed to the wetland, which is unacceptable. This will further adversely affect the ecological integrity of the wetland.

*Resolution:* This matter is unresolved and remains an outstanding issue.

#### **6.2.11 Land Contamination**

*Issue:* Previous land uses of the site included grazing and light agriculture, which are included in Table 1 to the 'Planning Guidelines for Contaminated Land' as potentially contaminating activities.

*Raised by:* Applicant.

*Consideration:* The applicant submitted a 'Contamination Assessment' prepared by Martens Associates Pty Ltd dated June 2004 which comprised a preliminary (stage 1) contamination assessment of the site. The analytical results of the assessment revealed that the detected levels of heavy metals and organic chemicals were generally low or below the laboratory practical quantitation limit in all samples. All results were within the NSW EPA health-based investigation levels for residential sites and also below the provisional phototoxicity-based investigation levels. Martens Associates concluded that the site is suitable for the proposed tourist park development and that no further analyses or investigations were considered necessary and no site remediation was required, based on site conditions at the time of investigation.

*Resolution:* This issue has been considered in this assessment and there is no further analysis required.

#### **6.2.12 Acid sulfate soils**

*Issue:* The low-lying nature of the site, the proximity to the river and wetland and the presence of Holocene sediments, resulting in a high likelihood of acid sulfate soils being located on the site. The DLWC Acid Sulfate Soils Maps class the site as being an 'Alluvial Levee with High Probability of acid sulfate soils material within 1m of ground surface and

indicates a severe environmental risk of acid sulfate soils material if disturbed.

*Raised by:* Applicant.

*Consideration:* The applicant submitted an 'Acid sulfate soils Management Plan' prepared by Martens Associates Pty Ltd dated June 2004 which comprised an analysis of the soil and a Management Plan. The soil analysis revealed that acid sulfate soils material was present on the site and that soils down to 1 metre below the ground surface have a significantly lower potential for acid generation than deeper soils. The Plan proposes a Management Plan based on minor works (construction of office building, amenities block and BBQ facilities) and major works (excavation of trenches, rainwater tanks and swimming pool (not proposed in this application)).

*Resolution:* This issue has been considered in this assessment and the Management Plan has adequately addressed this issue. It is recommended that a condition of development consent (if granted) be imposed requiring compliance with the acid sulfate soils Management Plan. There is no further analysis required of this issue.

### **6.2.13 Cultural Heritage**

*Issue:* The applicant has not provided an assessment of Aboriginal Cultural Heritage.

*Raised by:* DEC.

*Consideration:* Aboriginal Cultural Heritage was not adequately addressed by the applicant and a preliminary assessment to identify any values should be undertaken through consultation with the Local Aboriginal Community. This must be considered prior to determination of the application.

*Resolution:* This matter is unresolved and remains an outstanding issue.

### **6.2.14 Existing caravan parks in the area**

*Issue:* There are 4 caravan parks located in the area already.

*Raised by:* Community submissions.

*Consideration:* The market will determine the viability of the development, while the consent authority does not consider this issue.

*Resolution:* This issue has been noted in the assessment.

### **6.2.15 Absence of structure plan for the area**

*Issue:* The development proposal has not got a proper structure plan of the area.

*Raised by:* Community submissions.

*Consideration:* The community submissions raised concerns with the information submitted with the application concerning the site context. This was determined to be adequate to allow a thorough assessment of the proposal.

*Resolution:* This issue has been noted in the assessment.

## **7. CONCLUSION**

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and the then DIPNR (now Department of Planning and Department of Natural Resources) and the RFS, who were consulted and provided general terms of approval under the Integrated Development Provisions of the Act. The application has been notified in accordance with the Regulations and all submissions received have been considered.

The proposal is considered to have an adverse impact on the ecological integrity of the wetland, will result in an adverse visual impact in the locality and the application fails to adequately manage the flood risk on the site. The proposed subdivision aspect of the proposal fails to comply with the minimum allotment development standard pursuant to Clause 16 of Kempsey LEP 1987 and the State Environmental Planning Policy No 1 objection lodged is not well founded.

Generally, the proposal is considered to be inconsistent with the aims and objectives of State Environmental Planning Policy No 14 and State Environmental Planning Policy No 71 as well as the zone objectives pursuant to the Kempsey LEP 1987.

On balance, it is considered that the proposed development is **not** acceptable and should be determined by **refusing** consent.

## 8. RECOMMENDATION

It is recommended that the Minister for Planning pursuant to section 80 (1) (b) of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy No. 71 – Coastal Protection:

- (A) **refuse** consent to the application (**Appendix “A”**), and
- (B) authorise the Department to carry out post-determination notification.

For Ministerial Endorsement

Prepared by:

Endorsed by:

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