



Planning Assessment Report Development Application No. 249-10-2004

1. SUMMARY

This report is an assessment of the proposed development the subject of Development Application number **DA 249-10-2004**. The development application was lodged with the Department on 13 October 2004 in accordance with the *Environmental Planning and Assessment Act 1979* (the Act).

The application seeks consent for the construction of a Tourist Facility comprising 103 detached holiday units, reception/office building, internal roads and recreational facilities including a gym, tennis courts, barbeques and swimming pools.

Pursuant to Great Lakes Local Environmental Plan 1996 (the LEP) the land is zoned Zone No 1 (c) (Future Urban Investigation Zone). The proposed development is permissible in the zone subject to formal planning approval as tourist facilities. Subdivision resulting in allotment size less than 40 hectares is, however, prohibited.

The site is subject to an amendment to the LEP, Draft Local Environmental Plan No 13 – Pacific Palms (DLEP 13), which aims to rezone the majority of the site to 7(a1) Environmental Protection Zone, with a small area of 2(a) Low Density Residential, in accordance with the findings of a *Pacific Palms Local Environmental Study 2004* (the LES). The LES was undertaken to assist in the preparation of this new planning strategy to guide development in the Pacific Palms area.

The Minister for Planning is the consent authority under clause 10 of State Environmental Planning Policy No 71 – Coastal Protection.

Issues relating to the fragmentation of the regionally significant habitat in the vicinity of the site, the likely adverse impact on high conservation value vegetation, inconsistencies with the LES and DLEP 13, adverse impact on visual amenity in the locality and the incompatibility of the proposal with the area were considered to be the major issues in relation to this proposal.

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

2. THE SITE

2.1 Site Context

The site is located on the southern side of Boomerang Drive in Pacific Palms, within the Great Lakes Council local government area. Pacific Palms is located between Wallis Lake and the Pacific Ocean in an area bordered by large areas of natural vegetation including Booti Booti National Park to the north and Myall Lakes and Wallingat National Parks to the south and southwest. Pacific Palms is considered to be an ecologically sensitive area due to the large areas of natural vegetation and its strategic importance

in relation to these National Parks in relation to habitat corridors. The LES and DLEP 13 have been prepared to protect these ecological values.

The main access road to the area is The Lakes Way (approximately 250m to the west of the subject site), while Boomerang Drive is the main road through the immediate area, joining Wallis Lake to the Pacific Ocean and local beaches including Blueys and Boomerang Beaches.

Located opposite the site on the northern side of Boomerang Drive is the 'Oasis Caravan Park', which consists of approximately 150 sites while to the east also along Boomerang Drive is the "Blueys Retreat" which consists of approximately 65 self contained units. Apart from these uses, the area is characterised by large naturally vegetated areas, with small pockets of development along Boomerang Drive, with the main residential and commercial areas confined to the coastal strip along Blueys and Boomerang Beaches.

The location of the site is illustrated in Figure 1 – Site Context Plan at **Appendix B**.

2.2 Subject Site

The site is legally described as Lot 41 and 42 in DP 1070195 and is irregular in shape, with a combined frontage to Boomerang Drive of approximately 810 metres, a rear boundary of approximately 681 metres and a depth of between 1000 metres (east) and 1177 metres (west). The site consists of an area of approximately 82.06 hectares.

The site consists of two distinctive topographic areas, with the southern portion of the site comprising steep topography with forested slopes, while the northern portion located along the Boomerang Drive frontage is gently sloping. The site contains at least two watercourses which originate from the steeper topography in the southern area of the site and flow under Boomerang Drive where they flow out to Charlotte Bay and Wallis Lake. The site is heavily vegetated with a variety of vegetation communities including grey gums, flooded gums and various other species. A wetland listed under State Environmental Planning Policy 14 – Coastal Wetlands is located within 100 metres to the west of the site.

The site currently consists of native vegetation and does not contain any improvements. A dam is located in the northeast corner on the site, originating from a previous use on the site. The site was previously known as Lot 4 DP 828932, however, development consent was issued by Great Lakes Council (DA 299/96) in November 1996 for the subdivision of the lot into 2 allotments and the construction of a dwelling on each allotment. No construction was carried out on the site.

The site is illustrated in Figure 2 – Site Plan at **Appendix B**.

2.3 Site Constraints

The site is identified as bushfire prone land and as 'highly constrained' and 'high overall conservation value' in the Pacific Palms Local Environmental Study 2005. These constraints are considered in the assessment of this proposal.

A site visit was conducted by Urban and Strategic Assessments staff (Planner and Ecologist) with the applicant and Ecologists from the Department of Environment and Conservation and Great Lakes Council.

3. THE PROPOSAL

3.1 *The Proposed Development*

The proposed development consists of the following:-

- Construction of 103 detached dwellings for tourist use, comprising a variety of building types ranging in sizes from 110m² to 202m²;
- Construction of a Reception (107m²) and Gym (106m²) building;
- Construction of 2 x tennis courts, 2 x swimming pools and 3 x Community Parks & Facilities;
- Construction of an internal road network;
- Retention of existing dams and creeks with a riparian zone and a boardwalk;
- Provision of Asset Protection Zones comprising an Inner and Outer Protection Zone along the eastern, southern and western boundaries of the development;
- On-site stormwater detention; and
- Management of the tourist facility will be via a Community Management Agreement prepared under the *Community Land Development Act 1989*.

The proposed accommodation units are to be located in the northern section of the site, in the gently sloping portion between the existing dam and the Boomerang Drive frontage. Several units are proposed towards the north-western end of the site, with the majority of the proposal located on the gentle northern slope, although, several units are proposed in the steeper topography towards the eastern side boundary. The colours and materials of the buildings are not provided in the application. The layout of the proposed development is outlined in Figure 3 - Concept Plan at **Appendix B**, and the cross sections of the buildings are illustrated in Figure 4 – Site Cross Sections at **Appendix B**.

Tennis courts are proposed in the eastern portion of the site and swimming pools are proposed in the flatter land close to the entrance of the site. Several Community parks are also proposed on either side of the water courses which flow through the north-eastern corner of the site. A 25 metre wide riparian zone is proposed adjoining the watercourse on the site and Asset Protection Zones are also provided, including adjoining this riparian zone. These zones are illustrated in Figure 5 – Zoning Plan at **Appendix B**.

Vehicular access to the site is proposed from Boomerang Drive along the northern frontage, to the east of the entrance to the 'Oasis Caravan Park'.

3.2 *Chronology of the Development Application*

The development application was lodged with the Department on 13 October 2004 in accordance with the Act (the proposal is described in section 4 of this report) and was referred to the relevant agencies including the Department of Environment and Conservation (DEC) and Great Lakes Council (the Council). Both agencies expressed

concerns with the proposal in relation to the potential impact on the regionally important wildlife corridor, the deficiencies in the flora and fauna assessment, and the general adverse ecological impacts on the proposal. The Council was also concerned with the proposal's inconsistency with the LES and associated DLEP 13 which aims to rezone the site to 7(a1) Environmental Protection.

The applicant was advised of concerns with the proposal raised by DEC, the Council and the Department of Natural Resources (then the Department of Infrastructure Planning and Natural Resources) in an email dated 22 December 2004. The Rural Fire Service (RFS) also expressed concern with the proposal and the applicant was notified of such concerns on 23 December 2004 and 14 February 2005.

The applicant in a phone conversation on 28 February 2005, with a follow-up facsimile dated 10 May 2005, stated that they were working on the issues and would provide the Department with further information. The applicant provided additional advice to the RFS, independent of the Department, in correspondence dated 24 February 2005 from Conacher Travers Environmental Consultants, which the RFS accepted and issued a Bushfire Safety Authority in correspondence dated 21 June 2005.

On 29 September 2005, the applicant provided additional information to address the concerns outlined by the agencies. This information included the following:-

- Correspondence from the RFS demonstrating that the bushfire issues had been resolved;
- Geotechnical report on the dam to address issues raised by DNR;
- Copy of the development consent for the adjoining caravan park and associated material on the original construction of the dam on the site;
- Response from Cumberland Ecology refuting comments from the Council and DEC on the ecological issues; and
- Correspondence from Lidbury, Summers & Whiteman regarding stormwater and traffic issues.

This additional information was forwarded to the Council, DEC, DNR, Hunter-Central Rivers Catchment Management Authority, Dams Safety Committee and the Department's Regional Office. The comments from these agencies are further discussed in section 5.2 of this report.

This additional information did not change the proposed development which was originally proposed in the development application submitted and did not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with Clauses 55 and 90 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations). In accordance with Clause 90 of the Regulations, no further notification of the application was undertaken.

A site inspection with the applicant and owner of the site, together with officers from DEC, Council and the Department was carried out on 28 February 2006. The applicant provided further information following this site inspection in correspondence dated 21 March 2006 and included a response from the consultant ecologist and an undertaking that the concerns relating to the dam were still being investigated. This information refuted the DEC and Council's claims that the site contains significant vegetation, that the site forms part of a habitat corridor and that the flora and fauna assessments were

inadequate. This correspondence did not provide any additional information for the Department to assess.

4. STATUTORY FRAMEWORK

4.1 *Statement of Permissibility*

The subject land is zoned Zone No 1 (c) (Future Urban Investigation Zone) under the Great Lakes Local Environmental Plan, 1996 (as amended). The proposed development is permissible in the 1(c) zone being defined as 'Tourist Facilities'.

4.2 *Instrument of consent and other relevant planning instruments*

The development application is identified as 'significant coastal development' pursuant to Part 3 of State Environmental Planning Policy No. 71 – Coastal Protection as the proposal involves a 'tourist facility', being specified development under Schedule 2. The proposed development constitutes a 'tourist facility' under SEPP 71 as accommodation for tourists in the form of holiday cabins, holiday units etc are proposed.

Accordingly, the application is 'State Significant Development' pursuant to clause 10(1) and the Minister for Planning is the consent authority for this development application pursuant to clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection.

The following Environmental Planning Instruments apply:

- State Environmental Planning Policy No. 71 – Coastal Protection;
- State Environmental Planning Policy No 44 – Koala Habitat Protection;
- State Environmental Planning Policy No 14 – Coastal Wetlands;
- Hunter Regional Environmental Plan 1989 (HREP);
- Great Lakes Local Environmental Plan 1996 (as amended); and
- Draft Great Lakes Local Environmental Plan – Amendment 13.

An assessment of the proposal against the provisions of these Environmental Planning Instruments is outlined at **Appendix C**. The LES and DLEP 13 are discussed in Sections 6.2.3 and 6.2.8 of this report.

4.3 *Draft Local Environmental Plan (Amendment No 13) and Local Environmental Study*

The Pacific Palms Local Environmental Study 2004 (the LES) has been prepared by Great Lakes Council (adopted 8 June 2004) to assist in the preparation of a new planning strategy to guide development in the Pacific Palms area. This new planning strategy is known as the Draft Local Environmental Plan Amendment No 13 (DLEP 13) and replaces the former draft planning strategies of 1995 and 1998. The LES incorporates additional information that has become available since the 1995 and 1998 LES documents and reflects current planning principles with respect to ecological sustainability and environmental best practice.

On 12 October 2005 Council resolved to exhibit DLEP 13 for the Pacific Palms study area, which followed more than 15 years of specialist studies and investigations within this area. The DLEP 13 implements the principal findings and strategic rezoning recommendations of the LES, as adopted by Council on 8 June 2004. The Department of Planning issued a Section 65 Certificate for DLEP 13 in March 2005.

The DLEP 13 proposes a new zone, the 7(a1) (Environmental Protection Zone), which reflects one of the primary recommendations of the LES and is consistent with the guiding principles (conservation and ecological) in Council's Forster/Tuncurry Conservation & Development Strategy and Wallis Lake Catchment Management Plan. This zone has subsequently been incorporated into the GLLEP 1996 via a separate amendment.

The 7(a1) (Environmental Protection Zone) has a broader range of objectives to encompass attributes such as biodiversity, critical habitat, fauna corridors and essential links within the study area. The majority of affected areas contain known or likely threatened fauna habitat, and include coastal wetlands and wildlife corridors that link habitats throughout the Pacific Palms study area and sub-region. As the high number of threatened fauna known or likely to occur on such lands is also sensitive to habitat modification, the LES stated that long-term protection of these areas is essential for the future maintenance of fauna populations.

The LES assesses the area in relation to constraints relating to geotechnical, bushfire, drainage, ecological factors, slope, wildlife corridors, wetlands, visual environment and archaeology. From this assessment, the LES defines sites in relation to their development constraints and overall conservation values. The subject site was classified as "Highly Constrained Land" due to its high ecological, bushfire hazard, visual and slope constraints. The subject site was classified as having a "High Overall Conservation value" since the site contains vegetation identified as having sub-regional significance and due to its location within an important habitat corridor (north-south).

Following these classifications, the LES outlined "Potential Development Areas", a factor of the above values, which for the subject site included an area of only approximately 0.85 hectares adjoining the Boomerang Drive frontage. The proposed development is located significantly outside this potential development area.

Prior to the current DLEP 13 and LES, an earlier draft amendment was prepared based on the Pacific Palms Local Environmental Study 1995 prepared by the Council. The Department and relevant agencies (including the then National Parks and Wildlife Service) expressed concerns with this draft amendment including the likelihood of fragmentation and isolation of habitats and the degradation of habitat for threatened species as a result of the zoning and other provisions proposed. This earlier draft LEP amendment also proposed development footprints on particular sites similar to the current DLEP 13 and LES, however, the proposed footprints in this earlier Draft LEP were significantly larger than proposed in the current Draft LEP. The development footprint of the proposed development essentially follows the same boundary shown as a potential residential precinct under this previous DLEP 13. This DLEP/LES 1995, however, was not granted a Section 65 Certificate from the Department and the proposed amendment did not proceed.

The LES/DLEP 13 are further discussed in section 6.2 of this report.

4.4 *Legislative context – Integrated Development*

The proposal is integrated development as a Bushfire Safety Authority is required pursuant to section 100B of the *Rural Fires Act 1997* in respect of bush fire safety of for a “Special Fire protection Purpose” (tourist) and a Part 3A Permit under the *Rivers and Foreshores Improvement Act 1948* is required.

4.5 *Other statutory provisions*

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

- Coastal Design Guidelines of NSW, 2003; and
- NSW Coastal Policy, 1997.

An assessment of the proposal against the provisions of these Policies is outlined at **Appendix C**.

5. CONSULTATION

5.1 *Public consultation*

The application was notified in accordance with the Regulations and Great Lakes Council’s Notification Policy for Planning Matters (adopted 23 June 1998 Minute No 605) for a period of 30 days. A summary of the notification procedure is outlined below.

Notifications – landowners/occupiers	Fifty six (56) notification letters dated 26 October 2004 were sent to adjoining and nearby landowners.
Newspaper advertisements	Advertised in the <i>Forster Great Lakes Advocate</i> on 3 November 2004.
Site notice	Placed on the site by the applicant.
Exhibition dates	Start: 4 November 2004 End: 3 December 2004.
Exhibition venues	<ul style="list-style-type: none">▪ DIPNR - Sydney Office, 20 Lee Street Sydney▪ DIPNR – Hunter Office, 464 King Street Newcastle▪ Great Lakes Council – Breese Parade Forster

A total of 31 submissions were received from the community and a summary of these submissions is at **Appendix D**. The submissions raised concerns regarding impact on the regionally significant wildlife corridor, density, vegetation removal, infrastructure, visual amenity, inconsistencies with draft LEP and LES, and parking and traffic. The concerns raised in these submissions are discussed in detail in Section 6.2 of this report, where relevant.

5.2 External Referrals

5.2.1 Great Lakes Council

The application was referred to Great Lakes Council on 26 October 2004 for comment. The Council responded in correspondence dated 2 December 2004 stating the proposal was not supported for the following reasons:-

- 1) *Inconsistent with the findings and recommendations of Council's Pacific Palms Local Environmental Study 2004;*
- 2) *Inconsistent with Council's Draft Local Environmental Plan (Amendment No 13) for Pacific Palms;*
- 3) *Inconsistent with the relevant aims of SEPP 71 – Coastal Protection, namely:-*
 - (e) to ensure the visual amenity of the coast is protected;*
 - (g) to protect and preserve native coastal vegetation;*
 - (k) to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and*
 - (l) to encourage a strategic approach to coastal management.*
- 4) *Inconsistent with many elements of the NSW Coastal Policy 1997, including the following strategic actions in the compliance checklist for council LEPs:*
 - 1.1.2;
 - 1.1.9;
 - 1.1.11;
 - 6.1.1;
 - 6.2.1.
- 5) *Jeopardises the viability of a regionally important wildlife corridor;*
- 6) *Has the potential to set a dangerous precedent for future character of the locality; and*
- 7) *Statement of Environmental Effects and supporting documentation contain a number of inaccuracies that raise questions over their objectivity.*

Overall it is considered that the proposal does not satisfy principles of ecologically sustainable development and reflects the type of development that only increases the rate of biodiversity loss in coastal NSW. Unless such developments can demonstrate to be environmentally-neutral (i.e. provide no-net-loss in biodiversity) in an area as ecologically sensitive as Pacific Palms, and can meet the community's expectations (socially acceptable), DIPNR cannot rely on assumed economic benefits to justify a proposal of this scale. Consequently this DA should be refused in accordance with the Government's commitment to the protection of coastal lands and to achieving the aims of SEPP 71.

The proposal was referred back to the Council on 17 November 2005 following a response from the applicant in relation to the initial concerns raised by the agencies. The Council provided the following comments in correspondence dated 18 April 2006 stating that the Council does not support the application for the following reasons:-

- *The proposed development is ecologically inappropriate and no Species Impact Statement has been prepared and submitted in support of the application;*
- *The proposed development should not be decided until an independent review of the Pacific Palms Local Environmental Study and draft Local Environmental Plan has been completed and considered by Council;*
- *The applicant has not demonstrated that traffic issues or stormwater drainage issues have been satisfactorily resolved.*

The Council has significant concerns relating to flora and fauna and the corridor values on this site which are further discussed section 6.2 of this report.

5.2.2 Department of Environment and Conservation (DEC)

The application was referred to DEC on 26 October 2004 and the following comments were provided, raising objection to the proposal:-

- *The subject area is fully vegetated and included within a regional wildlife corridor identified in the DEC Key Habitats and Corridors Study as this corridor is considered essential to the long-term viability of conservation values associated with the Booti Booti National Park to the north. Whilst it is acknowledged that the corridor's function is already compromised by Boomerang Drive and ribbon development along it, it is the intention of the DEC and the Great Lakes Council to implement rehabilitation and formal protection of as much of this area as possible. In particular, protection of the contiguous vegetation either side of the caravan park opposite Lot 4 is considered to be critical. It is also considered that the current proposal is inconsistent with this aim.*
- *The flora and fauna survey methodology is considered deficient. The inadequacy in survey methodology, the overlooking of certain species, and the acknowledgment by the consultant that many species are cryptic and difficult to find casts doubt on the validity of the Section 5A Assessment (eight-point test) conclusions. The presence of potential Koala habitat and of actual records on site suggests that a Plan of Management should be prepared under SEPP No. 44.*
- *The Assessment states on several occasions that the removal of habitat "will be balanced by" retention of such in the southern portions of Lot 4. This statement is considered misleading. Threatened species habitat will be lost, not balanced, through the proposed clearing, and there is no guarantee that the southern lands will be protected in a statutory sense in the longer term.*
- *The DEC does not support the clearing of native vegetation in coastal areas and recommended that, because of the high conservation values of the site, the application should be refused, which DEC state would be in accordance with the Government's commitment to the protection of coastal lands and to the ending of broad scale vegetation clearing in this state.*

The proposal was referred back to the DEC on 17 November 2005 following a response from the applicant in relation to the initial concerns raised by the agencies. The DEC provided the following comments, stating that the additional information provided by the proponent did not alter the DEC's recommendations:-

- *DEC recommends that the applicant seek Director-General's Requirements for the conduct of a Species Impact Statement (SIS) given the DEC's assessment of the potential for significant ecological impacts and concerns with the ecological assessment;*
- *In general, the level of ecological information and assessment provided by the applicant has not allayed the DEC's concerns about the likely impacts of the proposal. Given the type, location, and scale of the proposal, the potential for significant ecological impacts is considered to be high;*
- *The proposal will result in a net loss of vegetation in a sensitive coastal area. Few or no conservation outcomes will be achieved and impacts from the development have not been adequately mitigated;*
- *The survey results of the further flora and fauna assessments undertaken by Cumberland Ecology in March 2005 have not been provided to date.*

The specific concerns included:-

- Protection of the southern portion of the site - The DEC is unable to concur with the proponents' view that over 60 hectares will be retained for conservation given the southern portion of the site is not statutorily protected, such as through restrictions on the use of land under s88B of the Conveyancing Act 1919 and/or rezoning to environmental protection;
- Adequacy of Flora and Fauna Assessment - The DEC casts doubts on the adequacy of the flora and fauna assessment, including the 8-part tests and justifications within the application where conclusions are based on the assumption that land zoned 1(c) is protected from development, the lack of evidence to enable concurrence with the proponent's contention that the conservation values of the site are extensively replicated within nearby conservation reserves and no assessment has been made under SEPP 44 – Koala Habitat Protection, to determine whether or not the site constitutes Potential Koala Habitat. Furthermore, the Paperbark Forest community on the site is likely to constitute the endangered ecological community (EEC) "Swamp sclerophyll forest on coastal floodplains", gazetted on 17 December 2004 which has not been addressed in the assessment;
- Corridor values – the DEC retains its view that the site is essential for maintaining linkages of habitat for wildlife movements of animals and plant propagules between the core areas of Myall Lakes, Booti Booti, and Wallingat National Parks; and
- High conservation value - Irrespective of the forest age structure on the site, DEC considers that regenerating forests, particularly where they form part of essential wildlife corridors, have a high recovery potential and contain habitat for threatened species, are of a significant conservation value.

The DEC, like Council, has significant concerns relating to flora and fauna and the corridor values on this site which are further discussed section 6.2 of this report.

5.2.3 Department of Natural Resources (formerly Department of Infrastructure Planning and Natural Resources)

The application is 'Integrated Development' as the proposal requires a Part 3A Permit under the *Rivers and Foreshores Improvement Act 1948* and therefore the application

was referred to the Department of Natural Resources (DNR) (was then the Department of Infrastructure Planning and Natural Resources) on 26 October 2004. The DNR deemed the proposal to be unsatisfactory and required further information to be submitted. Additional information was submitted and forwarded to the DNR on correspondence dated 17 November 2005, however, DNR required further information including clarification of the dam volume capacity.

The DNR advised the Department in correspondence dated 16 December 2005 that the proposal should be amended in the following manner:

- 1. An undisturbed riparian buffer zone of a minimum width of twenty (20) metres from the top each bank of any creek/watercourse and existing dams. The riparian buffer zone is to consist of local native plant species and is to be maintained along all creeks/watercourses and dams.*
- 2. Any Asset Protection Zone for bushfire protection must be outside the riparian buffer zone for any watercourse. Based on information provided by the applicant, correspondence (Attachment 1) from the NSW Rural Fire Service (Conditions 1 & 5) is in conflict with DNR requirements.*
- 3. Any stormwater detention, nutrient and sediment control facilities or structures for landscaping/aesthetics as indicated on Drawing No. A-010 Drainage Concept Plan for the site are to be constructed outside the riparian buffer zone and are not to be situated on any drainage lines. Discharge from these structures to a natural watercourse is not to result in any bed or bank instability.*
- 4. Any provision of services (roads, walkways, power, stormwater, sewer, and communications etc.) should be designed to minimise any impacts on any watercourse and its riparian buffer zone.*

These issues are discussed in section 6.2 of this report.

5.2.4 NSW Rural Fire Service

The application is 'Integrated Development' under the *Rural Fires Act, 1997* and therefore the application was referred to the New South Wales Rural Fire Service (RFS) on 26 October 2004. The RFS advised the Department in correspondence dated 16 December 2004 that it was not prepared to grant a Bush Fire Safety Authority for the proposed development on the following grounds:-

- Access – the proposed access did not comply with Planning for Bushfire Protection 2001 as at least one alternative access road is required and roads should be a minimum width of 8 metres;
- Riparian area - the Vegetation Management Plan identifies revegetation which may constitute a higher hazard than what is currently on the site;
- Asset Protection Zones – are inadequate to the east as slope has been incorrectly assessed.

The applicant provided additional information directly to the RFS, and in correspondence to the Department dated 21 June 2005, the RFS stated that a Bushfire Safety Authority had been granted subject to conditions. This issue is further discussed in section 6.2 of this report.

5.2.5 Dams Safety Committee

The application was referred to the Dams Safety Committee (DSC) in correspondence dated 17 November 2005 following advice from DNR given the presence of a dam on the site. The DSC is a Statutory Corporation of the NSW Government and its main function is to ensure the safety of dams within the state. The comments of the DSC are further discussed in section 6.2 of this report.

5.2.6 Hunter-Central Rivers Catchment Management Authority

The application was referred to the Hunter-Central Rivers Catchment Management Authority (the CMA) in correspondence dated 17 November 2005 as the site is zoned rural and proposes native vegetation clearance. Accordingly, the proposal is subject to the provisions of the *Native Vegetation Conservation Act 1997* (now repealed and replaced by the *Native Vegetation Act 2003*). This issue is further discussed in section 6.2 of this report.

5.3 Internal Referrals

5.3.1 Regional Office (Hunter)

The Hunter Regional Office was consulted regarding the application in a memo dated 26 October 2004, and the following comments were received:-

- *The Department issued Great Lakes Council with a Section 65 Certificate for the draft LEP Amendment No 13 in March 2005, which aims to provide a plan for the area that adequately reflects the level of environmental protection required as identified in the LES. This amendment introduces a new zone, 7(a1), to apply to environmentally significant areas such as biodiversity, critical habitats, fauna corridors and essential links;*
- *Accompanying the amendment is a draft Pacific Palms DCP No 38, which specially refers to the subject site and states both lots contain significant ecological, slope and bushfire hazard constraints. While this combination of constraints generally does not favour further development on site, the Caravan Park directly opposite acts as a significant barrier to north-south faunal movement. There is potential for carefully managed low-density development at the base of this site;*
- *Clause 16 of the Draft LEP Amendment No 13 defines the parameters that constitute a nature tourism facility, which do not apply to the proposal;*
- *The site occurs within 100m of SEPP 14 wetland No 638. Any future proposal will have to carefully manage buffer zones and the potential changes to the hydraulic regimes within the catchment;*
- *The proposal is justified by the applicant by the numerous similar developments within the locality, however, the LES illustrates (Figure 9.1) that the approved tourism facilities occur on areas of low constraints, rather than the mapped high constraint area in which this site falls;*
- *While the capability of the site still remains questionable, the suitability of another tourist facility in this specific location also needs to be determined. The large footprint of the facility in an isolated location adjacent to an existing clustered budget facility may not be a favourable planning outcome for the region.*

5.3.2 Department Ecologist

The Department's Ecologist was also consulted regarding the application in a memo dated 16 November 2004. The Ecologist supports the conclusions of the DEC and Council and also supports their recommendation to refuse the development application. The Ecologist made the following concluding comments:-

- *The survey effect by CE is not considered comprehensive enough to make valid conclusions about the habitat values of the site. For example timing of survey was considered inappropriate as was the survey techniques given harp trapping, moist netting for bat species and spotlighting were inadequate or non-existent. All of these factors are likely to have contributed to a lack of fauna species being recorded on the subject site, specifically threatened fauna species;*
- *The habitat assessment is considered inadequate as no detailed fauna habitat descriptions are provided;*
- *A total of 4 threatened fauna species were recorded on the subject site by the consultant, however, it is also state that several other species could potentially occur on the subject site from time to time. This statement indicates the author's acknowledgement that other threatened species could occur on the site and may have been detected had the surveying been undertaken between October and March.*
- *There is a major discrepancy between the vegetation communities recorded by the applicant's consultant and the Council's LES.*
- *The proposal will result in further fragmentation of the regional corridor (north-south) as identified in the DEC Key Habitats and Corridor Study.*
- *Conservation status of the vegetation communities have not been considered, which is important given the majority of vegetation on the site is listed as priority for private land consideration and are therefore of high conservation value under the Regional Forest Agreement.*

The Ecologist, like DEC and Council, has significant concerns relating to flora and fauna and the corridor values on this site which are further discussed section 6.2 of this report.

6. CONSIDERATION

6.1 *The Environmental Planning & Assessment Act, 1979*

6.1.1 *Section 79C – Matters for consideration*

In determining a development application, a consent authority is to take into consideration the following matters as they are relevant to the development the subject of the development application.

(a) *Section 79C (1) (a) – Environmental Planning Instruments, Development Control Plans etc*

The environmental planning instruments, draft environmental planning instruments, and development control plans applicable to the land to which the development application relates, as outlined in Section 4.2 & 4.5 of this report, are assessed in relation to this proposal in **Appendix C**. The proposal is

generally inconsistent with several aims, objectives and controls of the relevant planning instruments in relation to the ecological inappropriateness of the proposal;

(b) Section 79C (1) (b) – the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

These impacts are considered in detail in section 6.2 of this report. The proposal is generally considered likely to have significant impacts on the vegetation on the site which is considered to be of high conservation value and within a regionally significant habitat corridor.

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

The issues relating to the site's suitability for the development proposed in the development application are considered in section 6.2 of this report. In general, the site is considered unsuitable for the development currently proposed given the presence of regionally significant vegetation and the location of the site within a regionally significant habitat corridor.

(d) Section 79C (1) (d) – Submissions

The submissions received in response to the development application are outlined in Section 5.1 of this report and in **Appendix D**. The submissions are considered in detail in Section 6.2 of the Report, where relevant.

(e) Section 79C (1) (e) – Public Interest

The public interest has been considered in the assessment of this development application by considering the relevant planning instruments, and the submissions in section 5.2 of this report. The proposal is generally considered to be contrary to the public interest since the site is classified as “highly constrained land” given the bushfire, slope, visual and ecological constraints of the site. The removal of regionally significant vegetation and fragmentation of the habitat corridor highlights the unsuitability of the site for the development. The integrity of the LES/DLEP 13 would be undermined by the proposal, given its inconsistency with the conclusions and recommendations of the LES and the zoning provisions of the DLEP 13. These issues are further discussed in section 6.2 of this report.

6.2 Issues

6.2.1	Impact on Corridor
<i>Issue:</i>	The Pacific Palms study area forms a significant area for fauna movements in the subregion as it is located between Booti Booti National Park in the north and Myall Lakes and Wallingat National Parks to the south and south-west. The DEC’s <i>Key Habitats and Corridors Study</i> (Scotts, NPWS, 2003) has mapped the entire Pacific Palms area as a regional corridor and the LES outlined the

	extensive corridor values of Pacific Palms (Chapter 4).
<i>Raised by:</i>	Council, DEC, Community submissions.
<i>Consideration:</i>	<p>The subject site plays an important role in the future viability of this regional corridor, as it is located within the vicinity of four relatively intact corridor links (see Figure 4.7 of the LES) which cross Boomerang Drive in the south of the study area. There are two corridors in particular which are in close proximity to the subject site and include links to the east and west of the site. The western corridor link encompasses the area to the west of the subject site, between The Lakes Way and the existing Oasis Caravan Park, reducing its integrity, while the eastern link exists between the existing Oasis Caravan Park and the quarry site along Boomerang Drive to the north of the site. While many of these links are narrow and in a degraded state, they would still provide important wildlife movement corridors for a range of fauna species and are proposed to be restored in the future.</p> <p>Past development on the north side of Boomerang Drive has already created significant barriers to fauna movement, and it is essential that both existing corridor links are protected (and enhanced) in perpetuity (refer to Map 1 of LES). Any further barriers to fauna movement between Booti Booti National Park and habitats to the south and south-west will place threatened fauna populations at greater risk of becoming isolated and ultimately extinct over time. The LES recognised the importance of these corridors and accordingly DLEP 13 proposes to rezone this land 7(a1) (discussed below).</p> <p>The eastern part of the proposed development will effectively cut off one of these two primary north-south corridor links in the southern part of the LES study area, while the western portion of the proposed development will encroach 150m into the major north-south wildlife corridor located to the west of Oasis Caravan Park. These impacts are likely to result in fauna populations becoming genetically isolated and subject to extreme fluctuations and extinctions as a result of fire, drought, etc over the long term.</p> <p>The Flora and Fauna Assessment prepared by Cumberland Ecology dated August 2004 made minor reference to the eastern or western corridor links in its assessment and has underestimated the extent to which the proposal will impact on approximately 150 metres of the western corridor link, while the amended information dated May and June 2005 also did not address this issue satisfactorily.</p> <p>The proposal will result in a significantly reduced width of vegetation (when including asset protection zone) along the western boundary south of Boomerang Drive and at the same time the proposal places the onus of maintaining corridor linkages onto adjoining landowners (including within 8-part test assessments). The</p>

	<p>proposed development is therefore unacceptable given the proposal will result in further fragmentation of the regional corridor (north-south) as identified in the DEC Key Habitats and Corridor Study. The proposal is therefore inconsistent with Clause 8(i) of SEPP 71 which requires the maintenance of existing wildlife corridors and the minimising of impacts of development on such corridors.</p>
<i>Resolution:</i>	<p>This issue is unresolved and remains outstanding.</p>
6.2.2	<p><i>Vegetation Removal and Impact on Threatened Species</i></p>
<i>Issue:</i>	<p>The subject site contains vegetation of high conservation status, having been assigned “High Overall Conservation Value” by the LES. The proposal involves the removal of approximately 16 hectares of this vegetation (including APZ).</p>
<i>Raised by:</i>	<p>Council, DEC, Community Submissions.</p>
<i>Consideration:</i>	<p>The Flora and Fauna Report prepared by Cumberland Ecology dated August 2004 (the Report) stated that several threatened species had been positively identified as occurring on the subject site including the Glossy Black Cockatoo, Grey-headed Flying Fox, the Eastern Freetail Bat and Little Bent Wing Bat. Furthermore, the Report stated that due to the habitats present on the site, it was expected that several other species could potentially also occur on the subject site from time to time, with the Brown Treecreeper, Eastern Cave Bat, Squirrel Glider, Koala, Powerful Owl, Masked Owl and Grey-Headed Flying Fox recorded in fauna assessments on adjacent sites.</p> <p>As a result of the habitats on the site and the recording of species in the vicinity, the report concluded that approximately 50 threatened species could occur on the subject site (Table 3.3 of report). The Section 5A assessments of those species concluded that the proposed development is not likely to have a significant impact on any threatened fauna species, however, there are several concerns with the validity of this report (discussed in section 6.2.7 of this report).</p> <p>It is considered that the site is likely to contain several threatened species and is likely to include others, and the proposed development will remove approximately 16 hectares of vegetation which is habitat for such species. Accordingly, the proposed development has the potential to significantly disrupt threatened species and biodiversity generally within the Pacific Palms landscape through an unacceptable large loss of habitat and fragmentation of significant wildlife movement avenues. The proposal is therefore ecologically inappropriate and likely to be associated with significant impacts that are contrary to the aims of SEPP 71.</p>

	<p>The proposal involves the removal of portions of communities which are identified in the Regional Forest Agreement (RFA) between the Commonwealth and State Governments (March 2000) as priorities for private land voluntary conservation. These communities include the Paperbark Forest, Dry Grassy Blackbutt Forest and the Coastal Flooded Gum Forest. The proposal involves the removal of 2.6 hectares of coastal flooded Gum Forest, 3.4 hectares removed of Dry Grassy Blackbutt Forest and 1.6 hectares of the Paperbark Forest. This vegetation removal of considered to be inconsistent with the RFA.</p> <p>Whilst the proposed development involves the clearing of approximately 16 hectares of vegetation, the remainder of the 80 hectares site is to be “preserved”. The proposal contends that this loss of habitat will be counterbalanced by areas of vegetation to be retained, however this is a scientifically flawed approach to environmental planning and decision-making. Vegetation and habitat significance needs to be considered inherently across the landscape and not by focusing on each site in isolation. The proposal would yield a net loss of significant habitat (10 hectares) and a depletion of native vegetation of significant regional conservation value which cannot be adequately compensated for.</p> <p>The contention that a percentage of the wider landholding would not be developed does not provide an adequate safeguard or compensation for the proposed removal of significant habitat and the irreversible destruction of the regional corridor functions of the subject lands, particularly given there is currently no mechanism by which such lands would be effectively conserved and managed and there is no suggestion of dedication or formal conservation. Further development remains permissible under the current zoning and there are no proposed restrictions on the use of the remaining land under s88B of the <i>Conveyancing Act 1919</i>.</p> <p>Accordingly, the applicant’s view that the remaining area of the site outside the proposed development footprint will be conserved is not supported and the conclusions of the 8-part tests based on the assumption that land zoned 1(c) is protected from development are also not supported. Threatened species habitat will be lost, not balanced, through the proposed clearing and there is no guarantee that the southern lands will be protected in a statutory sense in the longer term.</p> <p>The proposal inconsistent with the aim of the policy pursuant to Clause 2(g) of SEPP 71 which includes protecting and preserving native coastal vegetation and the matters for consideration pursuant to Clause 8(g), including measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats.</p>
<p><i>Resolution:</i></p>	<p>This issue is unresolved and remains outstanding.</p>

6.2.3	<i>The Pacific Palms Local Environmental Study 2004 (LES)</i>
<i>Issue:</i>	The proposal is considered to be inconsistent with the LES and the application did not consider the findings of the LES, stating that the analysis of the ecological data is flawed and greatly overstates the conservation significance of the native vegetation within the study area and should not be adopted in its current form.
<i>Raised by:</i>	Council, Regional Office, Community submissions.
<i>Consideration:</i>	<p>The LES is an important study to consider for the subject site since it was adopted prior to the application being lodged (the LES was adopted by Council in June 2004 and the DA was lodged in October 2004), it provides a thorough analysis of the site and its environs and is the basis for DLEP 13 which, if gazetted, will become the principal planning instrument for the site given the absence of savings and transitional provisions in the GLLEP 1996 and DLEP 13. Furthermore, the LES provides for ‘future investigation’ which is the intent of the current zoning.</p> <p>The current 1(c) zoning of the site is for “investigation purposes”, with future land use(s) to be resolved by more detailed local environmental studies, with one of the objectives of the zone being to restrict development to that which is unlikely to compromise existing significant environmental attributes of land within the zone. Accordingly, the LES is an important consideration since it provides for such future investigation. Furthermore, one of the aims of SEPP 71, pursuant to Clause 2(l), includes encouraging a strategic approach to coastal management.</p> <p>The DA makes no reference to the findings or recommendations of the LES, which is inconsistent with the intent of the zoning of the site, contrary with SEPP 71 (the aim relating to strategic coastal management) and contrary to the public interest.</p> <p>The proposed development is inconsistent with several aspects of this LES, including:-</p> <p>(a) <u>Development outside proposed development footprint</u> (Chapter 11) - The LES identified an area of 0.85Ha along the Boomerang Drive frontage of the subject site for potential future development given the existing caravan park located opposite the site acts as a significant barrier to north-south faunal movement in the locality (illustrated in Figure 11.2a/b). The LES identified the remainder of the site as unsuitable for development due to significant bushfire and ecological constraints.</p> <p>The proposal involves development of approximately 10Ha of the site, which represents a significantly greater portion of the site than recommended for development in the LES (12% of the site area instead of 1.03%). This area was considered</p>

	<p>to form the realistic extent of development in the study area for the foreseeable future if significant vegetation and threatened fauna populations were to be conserved in the locality and sub-region. Corresponding traffic and parking consequences for the LES study area of increasing the proposed development footprint are also likely since the capacity of the existing road network was assessed on the basis of the proposed yields under the LES;</p> <p>(b) <u>Wildlife corridor</u> (Chapter 4) - The LES identifies the study area as forming a significant area for fauna movements as it is located on the eastern side of Wallis Lake and forms the only link between Booti Booti National Park and Myall Lakes and Wallingat National Parks to the south and south-west. The subject site forms an important link in the north-south corridor crossing Boomerang Drive to the west and east of the subject site. The proposed development involves fragmenting this corridor and is therefore inconsistent with the ecological objectives of the LES.</p> <p>(c) <u>High conservation value land</u> (Chapter 4) - The LES assigns land an overall ecological conservation value, ranging from low, medium and high. These values are derived from a combination of factors including habitat components, conservation value, disturbance and corridor potential among others. The subject site has been identified as having an overall high conservation value, indicating the high ecological values of the vegetation on the site and its location within the regional corridor. The removal and/or modification of approximately 16 hectares of vegetation from this site is inconsistent with this high conservation value classification.</p> <p>(d) <u>Highly constrained land</u> (Chapter 9) - Combining the ecological, bushfire, slope and visual constraints within the study area produces a map of highly constrained, moderately constrained and easily developable land. The subject site has been identified as "Highly Constrained Land" which means the area generally should not be developed. In this instance, the subject site has been identified as 'highly constrained land' as the site has high ecological, bushfire hazard, and slope constraints. Notwithstanding these constraints, development could occur in the area adjoining the existing caravan park, however, the proposal extends beyond this footprint and accordingly is inconsistent with the LES given land that is highly constrained is proposed for development.</p> <p>The proposed development is considered to be inconsistent with the findings of the LES, which is unacceptable given the 'Future investigation' zoning of the site, the adoption of the LES by the Council prior to DA lodgement and the disregard for the ecological and other investigations carried out by this study with respect to the</p>
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	proposed development.
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.4	<i>Visual Amenity</i>
<i>Issue:</i>	The subject site is located within a heavily vegetated area and accordingly any proposed development is likely to have an impact on the visual amenity of the area.
<i>Raised by:</i>	Council, Community submissions.
<i>Consideration:</i>	<p>The subject site is located within an area predominantly natural in character except at the location of the quarry and caravan park where the character is more rural. To the south of Boomerang Drive, the steep vegetated northern flank and ridge define the southern extent of the view shed. The subject site consists of forested footslopes, forested slopes and ridges landscape units, with a visual quality ranging from moderate for the footslopes and moderate to high for the forested slopes and ridges.</p> <p>The LES assigned Visual Management Zones to each area of the study area, which was a measure of the landscape units and the area's visual sensitivity (the number of people likely to view the site and the distance to the area from the main viewing points). This analysis concluded that the forested slope and ridges on the site were Zone 2, which is sensitive to visual modification and should be retained in a predominantly natural state, where activities or modifications should only be permitted if they repeat the form, line, colour and texture of the landscape unit.</p> <p>The flatter area adjoining Boomerang Drive was Zone 4, which is less sensitive to development, but where modifications and development may visually dominate surrounding visual characteristics. Activities and modifications suitable in this zone include urban development, but development should be sympathetic with surrounding visual characteristics and native vegetation should be retained where practical.</p> <p>Whilst development is proposed in Zone 4 only, the forested footslopes, the position of the proposal on a prominent hillside and along Boomerang Drive, the main collector road in the area, will dramatically alter the largely natural view shed that currently dominates the approach from the Lakes Way to Blueys Beach, along Boomerang Drive. The proposal also extends into the portion of the site which slopes upwards, in particular proposed unit types 3a, 7a, 8, 9a, 9, 11 and 12 located along the northeast slope, adjoining the proposed tennis courts.</p> <p>It is considered that given the proposal is out of character with surrounding development, being of significantly larger scale than other development, and the extensive removal of vegetation within</p>

	<p>the development footprint, the proposal is likely to have an adverse visual impact on the locality. The proposal will not be sympathetic with surrounding visual characteristics, which consist largely of undisturbed bushland and native vegetation is largely not retained in this location.</p> <p>The aims of SEPP 71, pursuant to Clause 2, include to ensure that the visual amenity of the coast is protected, and to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area. The matters for consideration pursuant to Clause 8(f) of SEPP 71 include considering the scenic qualities of the New South Wales coast, and means to protect and improve these qualities. The proposed development, involving development on the prominent hill side and along Boomerang Drive, is inconsistent with these aims and matters for consideration of SEPP 71. The removal of extensive areas of vegetation exacerbate this adverse visual impact.</p>
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.5	<i>Scale and Compatibility</i>
<i>Issue:</i>	The proposal is out of character with the area given its size and location.
<i>Raised by:</i>	Regional Office, Council, Community submissions
<i>Consideration:</i>	<p>The proposal involves the construction of 103 detached buildings up to three storeys in height and a total of 3304 square metres of floor space. The proposal is significantly larger than any of the existing tourist developments in the Pacific Palms study area, particularly in relation to the Oasis Caravan Park and “Blueys Retreat” which are located in close proximity to the subject site. The proposal involves buildings with gross floor areas greater than 140m², with several buildings up to 202m², which are substantial buildings of up to 3 storeys. The scale of the proposal is not compatible with surrounding development, the large development footprint and the height and the size of the buildings proposed when compared to similar facilities.</p> <p>In addition, the highly constrained status of the site, being subjected to slope, bushfire, and ecological constraints results in the site being less capable of sustaining a large-scale proposal of this nature. This is reflected in the LES, which proposes a 0.85 hectare development footprint for the site. The proposal is inconsistent with this proposed development footprint, consisting of more than 10 hectares, which equates to a 1200% increase over the developable area of identified in the Pacific Palms LES 2004 (reflected in the proposed rezoning) and mirrors the layout proposed in the 1995 LES which was deemed inadequate and rejected on numerous</p>

	<p>occasions by the Department and agencies.</p> <p>The scale of the proposal is further exacerbated by the extensive asset protection zones required by the proposal. The size of these asset protection zones are directly proportional to the scale of the development and further emphasises the significant change in scale from surrounding development.</p>
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.6	Traffic and Access
<i>Issue:</i>	The proposal will generate additional traffic and the access points to Boomerang Drive are unacceptable.
<i>Raised by:</i>	Council, Community submissions.
<i>Consideration:</i>	<p>The application was accompanied by a letter from Lidbury, Summer and Whiteman Consulting Surveyors, Planner and Engineers dated 20 December 2004 and was titled '<i>Proposed Intersection – Lot 4 DP 828932 Boomerang Drive Pacific Palms</i>' (the 'traffic information'). This traffic information is inadequate to address the likely traffic generation and impacts of the proposal (including access points) on the site and the locality since it only recommends the type of intersection treatment, with minimal assessment of other road and traffic impacts of the proposal.</p> <p>Notwithstanding this, the traffic information was reviewed and found to be inaccurate. A review of this information and the likely traffic and access issues are discussed below.</p> <p>The proposed development is likely to generate approximately 60 peak hour vehicle trips pursuant to the provisions for medium density development under the RTA's 'Guide to Traffic Generating Developments' (based on 0.5 to 0.65 peak hour trips per unit/dwelling). The traffic information concludes that an 'Intersection Treatment Type B' (as defined in the relevant AUSROADS Guide) on Boomerang Drive will be suitable for the access driveway to this site.</p> <p>There are several concerns with the underlying assumptions used in this assessment, which resulted in the proposed access intersection treatment. These concerns include:-</p> <p>(a) <u>Existing Traffic Volumes on Boomerang Drive</u> - the traffic volumes on Boomerang Drive used in the analysis are based on an automatic classifier count which was taken in May 2004. The traffic counter was placed to the west of the driveway entry to the existing Caravan Park. Given that this caravan park generates substantial traffic movements and that the majority of these movements are heading to and from the east, the traffic volumes past the proposed</p>

	<p>development entry will be expected to be greater than those given by the automatic vehicle classifier survey;</p> <p>(b) <u>Design Speed Adopted for Access Driveway Junction</u> – the traffic information and the associated drawing attached to the Intersection Report illustrates the proposed intersection treatment with Boomerang Drive having a design speed of 60Km/Hr, however, Boomerang Drive, in this location, has a posted speed limit of 80Km/Hr. Similarly, the classifier count conducted to the west of the caravan park driveway gives an 85th percentile speed of 82.1 km/h. The Consultant states that the speed limit is likely to be reduced to 60Km/Hr based on this occurring for the nearby “Blueys Retreat”. Clearly a minimum design speed of 80 km/h should be used in any access intersection design as this is current speed limit and it is unsatisfactory to rely on this posted speed limit being modified for the proposed development. Furthermore, the Council have provided evidence to suggest that the RTA is unlikely to reduce the speed limit given their resistance to such a reduction in another location;</p> <p>(c) <u>Sight Distance Restrictions</u> - The AUSROADS Guide to Traffic Engineering Practice Part 5 ‘Intersections at Grade’ states that at intersections of minor roads with major roads, where vehicles on the minor road or within a median are required to stop or give way before entering the intersection, Entering Sight Distance (ESD) should be provided. For a design speed of 80 km/h, the ESD is defined as 305 metres. ESD is defined as the sight distance required for minor road drivers to enter a major road via a left or right turn, such that traffic on the major road is unimpeded. ESD is larger than the sight distance required for the simple crossing of a major road. It is also stated that where the provision of full ESD is impractical, Safe Intersection Sight Distance (SISD) should be provided and an effort should be made to achieve as much sight distance above this as practicable. For a rural environment, the SISD is defined to be 175 metres for a design speed of 80 km/h.</p> <p>The location of the proposed access driveway for the development does not comply with either the ESD or SISD as sight distance is restricted both to the left and right, for a vehicle waiting to turn onto Boomerang Drive. Around 50 metres to the west of the existing caravan park driveway there is a dip in Boomerang Drive, which allows for an approaching eastbound vehicle to be totally obscured within it for a few seconds when viewed from the proposed access driveway. That is, an approaching car around 140 metres to the west of the proposed development driveway is totally obscured by this dip. Thus for vehicles turning right out of the proposed driveway neither ESD nor SISD is achieved.</p>
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	<p>Sight distance to the right is restricted to approximately 110 metres as a result of a curve and crest in the road to the right around 100 metres to the east of the proposed access driveway, Clearly this is less than the required ESD and SISD sight distances specified in the AUROADS guidelines. The proposed intersection layout where the development driveway intersects with Boomerang Drive is therefore unsatisfactory.</p> <p>(d) <u>Road works</u> - It is considered that a protected right turn lane should be provided into the development and due to the adverse vertical geometry for eastbound vehicles on Boomerang Drive it would be preferable for vehicles turning right out of the access driveway to be able to turn into an exclusive acceleration/merge lane on Boomerang Drive. The issue of the existing curve and crest to the east of the proposed new driveway location also needs to be resolved and it is possible that major road modification may be required to ensure adequate sight distance to the east for vehicles turning from the driveway. The location of the existing caravan entry 90 metres to the west of the proposed entry intersection also creates complications, as any right turn in and left turn out lanes may adversely interact with the existing and future layout of the caravan park access driveway.</p> <p>The applicant was informed of these concerns, however, the revised comments from Lidbury, Summer & Whiteman Consulting Engineers dated 24 March 2005 only reiterated that the proposed intersection design was valid for a 60Km/Hr design speed, which is still unsatisfactory.</p> <p>The traffic information is considered to be inadequate and inaccurate and the proposed intersection (access point) does not comply with the appropriate sight distance requirements.</p>
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.7	<i>Inadequate Flora and Fauna Assessment</i>
<i>Issue:</i>	The <i>Flora and Fauna Assessment</i> prepared by Cumberland Ecology (CE) dated August 2004 (the 'flora and fauna assessment') provided with the development application is inadequate and cannot be relied upon to assess the potential impacts of the proposal on flora and fauna on the site.
<i>Raised by:</i>	DEC, Council, Community submissions
<i>Consideration:</i>	There are several concerns with the applicant's flora and fauna assessment and subsequent reports/comments. It is considered that the credibility of the study is questionable and should not be relied upon to objectively assess the true magnitude of the

	<p>proposal's impacts. The discussion of potential impacts associated with the proposal reflects a lack of ecological understanding and awareness.</p> <p>In summary, the survey effort by CE is not considered comprehensive enough to make valid conclusions about habitat values of the site, the habitat assessment is considered inadequate as no detailed fauna habitat descriptions are provided and there are major discrepancies between the vegetation communities recorded by CE and the LES (this issue was largely addressed in the site meeting on 28 February 2006). Furthermore, if surveys were undertaken between October and March with a greater survey effort, additional threatened species may have been recorded on the site. The CE report also does not adequately consider the potential impact of the proposed development on the corridor value of the site and did not consider SEPP 44. The concerns with the CE report are detailed in Appendix E.</p> <p>The conclusions of the CE report stated there will not be a significant impact upon threatened species, populations or communities provided the areas not subject to the development proposal are set aside and managed for conservation in the long term, that the vegetation communities on the site are well represented in conservation reserves, that fauna habitat corridors will be retained on the site and that the majority of the remaining areas of the site will be retained for conservation. It is considered that the conclusions of the CE report cannot be supported given the inadequate flora and fauna assessment provided by the applicant.</p>
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.8	<i>Inconsistent with DLEP 13</i>
<i>Issue:</i>	The proposal is considered to be inconsistent with Draft ELP 13.
<i>Raised by:</i>	Council, Community submissions, Regional Office.
<i>Consideration:</i>	<p>On 12 October 2004, Council resolved to exhibit the new Draft Local Environmental Plan No 13 – Pacific Palms (DLEP 13) for the Pacific Palms study area, which followed more than 15 years of specialist studies and investigations within this area. This new planning strategy replaces the draft planning strategies of 1995 and 1998 and aims to produce a plan for the area that adequately reflects the level of environmental protection required as identified in the LES. The DLEP 13 is outlined in Section 4.3 of this report.</p> <p>The proposal is inconsistent with DLEP 13 in the following ways:</p> <p>(a) <u>Inconsistent with the aims and objectives of the plan</u> - The proposal is inconsistent with the aims and objectives of the DLEP 13 as the plan aims to provide for development which will ensure the quality of the natural environment through</p>

	<p>conservation of biological diversity and ecological integrity. The proposal involves development which is located on land which is of a high conservation value and which forms an important link in the regional corridor in the area;</p> <p>(b) <u>Permissibility of development</u> - Pursuant to DLEP 13, the subject site will be zoned 2(a) Low Density Residential and 7(a1) Environmental Protection. The proposal involves development within both of these zones, however, the development control tables indicate that whilst the proposed development is permissible in the 2(a) zone (corresponding to the proposed developable area under the LES), the proposal is prohibited in the 7(a1) zone. Accordingly, the proposal is inconsistent with the development control regime of the DLEP 13;</p> <p>(c) <u>Inconsistent with Aims and Objectives of the 7(a1) Zone</u> - It is considered that the proposal does not satisfy the 7(a1) zone objectives, since the proposal will result in the removal of approximately 16 hectares of vegetation which has special ecological values, will not protect areas of significant vegetation, will not protect biodiversity and will not preserve habitat corridors. In these ways, the proposal is considered to be inconsistent with the 7(a1) zone objectives;</p> <p>(d) <u>Inconsistent with Clause 7 of DLEP 13</u> – Clause 7 of DLEP 13 proposes an additional Clause to the Great Lakes LEP 1996, Clause 37 (Special Provisions). This Clause provides for ecological and bushfire management provisions and includes a requirement that all APZs are located outside the land zoned 7(a1). The proposal involves APZs within the 7(a1) zone and therefore is likely to adversely affect the ecological integrity of the vegetation on the site and its role in the regional corridor.</p> <p>The proposed development is considered to be inconsistent with the DLEP 13, which is unacceptable given its aim is to protect environmentally sensitive areas and is a draft EPI for the purposes of section 79C(a)(ii) of the Act.</p>
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.9	<i>Subdivision</i>
<i>Issue:</i>	The application states that the proposed tourist facility will be managed through a Community Management Agreement under the <i>Community Land Development Act 1989</i> and accordingly proposes subdivision.
<i>Raised by:</i>	Council, Community submissions.

<p><i>Consideration:</i></p>	<p>The subdivision of land, pursuant to Section 4B of the Act, includes (among other things) the registration of a plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i>. A plan of subdivision in Section 195 of the <i>Conveyancing Act 1919</i> includes a community plan, a community plan of consolidation or a community plan of subdivision within the meaning of the <i>Community Land Development Act 1989</i>.</p> <p>Accordingly, the proposal constitutes <i>Subdivision</i> under the Act and subdivision of land is permissible in the 1(c) only where the minimum 40 hectare site area is achieved pursuant to Clause 17(3) of the Great Lakes LEP 1996 (GLLEP 1996). The proposal is inconsistent with this development standard under the GLLEP 1996.</p>
<p><i>Resolution:</i></p>	<p>This issue is unresolved and remains outstanding.</p>
<p>6.2.10</p>	<p><i>Riparian Zone</i></p>
<p><i>Issue:</i></p>	<p>The subject site contains two unnamed water courses and proposes excavation within 40 metres of these watercourses.</p>
<p><i>Raised by:</i></p>	<p>DNR, Community submissions</p>
<p><i>Consideration:</i></p>	<p>The proposed development is 'Integrated Development' pursuant to section 91 of the Act as a Permit under Part 3A of the <i>Rivers and Foreshores Improvement Act 1948</i> is required. The Department of Natural Resources (DNR) is unwilling to provide General Terms of Approval for this Part 3A Permit as the riparian protection requirements of DNR conflict with conditions imposed by the RFS in their Bushfire Safety Authority (BFSA) dated 21 June 2005.</p> <p>Accordingly, DNR required the following issues to be reviewed prior to the granting of General Terms of Approval:-</p> <ul style="list-style-type: none"> (a) Riparian Buffer Zone - An undisturbed riparian buffer zone of a minimum width of twenty (20) metres from the top each bank of any creek/watercourse and existing dams. The riparian buffer zone is to consist of local native plant species and is to be maintained along all creeks/watercourses and dams; (b) Asset Protection Zone - Any Asset Protection Zone for bushfire protection must be located outside the riparian buffer zone for any watercourse. Conditions No 1 and 5 of the Bushfire Safety Authority (BFSA) issued by the RFS dated 21 June 2005, and Schedule 1 (Bushfire Protection Measures) of the Bushfire Protection Assessment prepared by Conacher Travers dated October 2004, conflict with DNR requirements as an APZ is currently proposed within the required Riparian Corridor (the riparian corridor is not wide enough upstream of the confluence of the two creek/watercourses on the site);

	<p>(c) Stormwater & Landscaping Structures - All stormwater detention, nutrient and sediment control facilities or structures for landscaping/aesthetics as indicated on Drawing No. A-010 Drainage Concept Plan for the site is to be constructed outside the riparian buffer zone and is not to be situated on any drainage lines. Discharge from these structures to a natural watercourse is not to result in any bed or bank instability; and</p> <p>(d) Services - Any provision of services (roads, walkways, power, stormwater, sewer, and communications etc.) should be designed to minimise any impacts on any watercourse and its riparian buffer zone.</p> <p>These issues were not pursued formally with the applicant given the magnitude of other issues on the site but would need to be resolved for any future proposal.</p>
<i>Resolution:</i>	This issue is unresolved.
6.2.11	<i>Bushfire</i>
<i>Issue:</i>	The site is classified as bushfire prone.
<i>Raised by:</i>	RFS, Community submissions
<i>Consideration:</i>	<p>The proposed development is 'Integrated Development' pursuant to section 91 of the Act as a Bushfire Safety Authority (BFSA) under Section 100B of the <i>Rural Fires Act 1997</i> is required. The RFS in their letter to the Department dated 21 June 2005 issued the Bushfire Safety Authority subject to various conditions.</p> <p>The conditions which require further consideration prior to the determination of this Development Application include:</p> <ol style="list-style-type: none"> 1. The riparian corridors identified in drawing number A-010 Issue A – Drainage Concept Plan shall be maintained as an 'Inner Protection Area' as outlined within Section 4.2.2 of Planning for Bushfire Protection 2001'. <p>This issue is discussed in 6.2.10 Riparian Zone. This issue was not pursued formally with the applicant given the magnitude of other issues on the site but would need to be resolved for any future proposal.</p> <ol style="list-style-type: none"> 2. The cul-de-sac located in the furthest north western portion of the development shall be converted from an emergency access only to a through road with access available at all times complying with Section 4.3.2 of Planning for Bushfire protection 2001. <p>This issue was not pursued formally with the applicant given the magnitude of other issues on the site but would need to be resolved</p>

	for any future proposal.
<i>Resolution:</i>	This issue is unresolved.
6.2.12	<i>Conservation of southern portion</i>
<i>Issue:</i>	The applicant justifies the removal of vegetation for the proposal by stating that the remaining southern portion of the site will be "conserved".
<i>Raised by:</i>	DEC, Council, Community submissions
<i>Consideration:</i>	The applicants assertion that the remaining area of the site outside the proposed development footprint will be conserved is not supported given there are no measures outlined to conserve this land in the long-term such as through private conservation agreements, dedication or covenants under the <i>Conveyancing Act 1919</i> . The conclusions of the 8-part tests based on the assumption that land zoned 1(c) is protected from development are also not supported.
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.13	<i>Infrastructure</i>
<i>Issue:</i>	The proposed development does not demonstrate that adequate infrastructure has been provided on the site.
<i>Raised by:</i>	Council (stormwater), Community submissions.
<i>Consideration:</i>	<p>In relation to infrastructure provision for the proposed development, the SEE includes correspondence from Midcoast Water which states that the subject site can be serviced from the existing sewerage mains and there is sufficient capacity within the existing sewerage systems for the proposal. These comments are insufficient in demonstrating that there will be adequate infrastructure provided for the proposed development.</p> <p>Specific concerns with respect to infrastructure provision on the site include:-</p> <ul style="list-style-type: none"> (a) <u>Sewer</u> – minimal details were provided on the location of the proposed sewer system on the site; (b) <u>Water Supply</u> – details on the capacity of the water supply system to service the development and the location of this system within the site were not provided; (c) <u>Stormwater</u> - the Stormwater Strategy, prepared by Lidbury, Summers & Whiteman dated 20 September 2004, is inadequate as the following issues remain outstanding:- <ul style="list-style-type: none"> (i) Culverts - The 3xØ900 RCP is undersized by 2.6m³/s

	<p>and the report claims to use detention for the excess. However no detention plans/layout is provided. The report does not address the issue of the undersized Ø450. The Culvert Hydraulics program shows a headwater level of 1.5m but gives no actual depth over pavement. The tail water level is also mentioned at a height of 0.86m. If they are restricting the flows then why hasn't the weir/overtopping been taken into account; and</p> <p>(ii) On-Site Detention (OSD) – the management of OSD overflows and the likely implications this will have on the downstream stormwater network have not been provided.</p>
<i>Resolution:</i>	This issue is unresolved and remains outstanding.
6.2.14	Dam
<i>Issue:</i>	There is an existing dam on the site.
<i>Raised by:</i>	DSC, DNR.
<i>Consideration:</i>	<p>The presence of the dam on the site raises the following issues relating to licensing and safety of the dam which must be considered:-</p> <p>(a) Licensing - The dam appears to exceed the Maximum Harvestable Dam Right Capacity for the property under the NSW Farm Dams Policy and if this is the case, the dam will be required to be licensed under Part 2 of the <i>Water Act 1912</i>. The capacity of the dam on the site is unclear since the information submitted states the capacity to be in the range of approximately 8 to 32 megalitres. Clarification of dam capacity is required and a license under the <i>Water Act 1912</i> may be required.</p> <p>(b) Dam Safety - The DSC has advised that it will prescribe the dam if there is the potential for loss of life or significant property damage downstream of the dam in the event of dam failure. If the DSC prescribes the dam, the dam and spillway may be required to be upgraded to a sufficient standard commensurate with the Consequences Categories. Upgrading documentation will need to be submitted to the DSC prior to construction commencing and regular inspections of the dam would be required to be carried out; and</p> <p>(c) Dam lowering – The Stormwater Strategy outlines lowering of dam for detention by 1 metre – the dams higher up the slope will be used for detention and not the dam close to the</p>

	<p>development as this is for visual amenity purposes only.</p> <p>These issues were not pursued formally with the applicant given the magnitude of other issues on the site but would need to be resolved for any future proposal.</p>
<i>Resolution:</i>	This issue is unresolved.
6.2.15	<i>Provision of parking and pedestrian facilities in the area</i>
<i>Issue:</i>	There were concerns in relation to parking and pedestrian facilities in the area being inadequate to cater for the proposed development.
<i>Raised by:</i>	Community submissions.
<i>Consideration:</i>	It is considered there are adequate parking facilities and pedestrian facilities may be required to be installed by the proposal in appropriate locations.
<i>Resolution:</i>	This issue has been considered in this assessment.
6.2.16	<i>Impacts on Wetland</i>
<i>Issue:</i>	The site occurs within 100m of wetland No. 638 listed on State Environmental Planning Policy No 14 – Coastal Wetlands (SEPP 14) and any future proposal will have to carefully manage buffer zones and the potential changes to the hydraulic regimes within the catchment.
<i>Raised by:</i>	Regional Office, Community submissions.
<i>Consideration:</i>	The SEE has not considered this issue, which must be addressed in relation to the potential impacts of the proposal. This issue was not pursued formally with the applicant given the magnitude of other issues on the site but would need to be resolved for any future proposal.
<i>Resolution:</i>	This issue is unresolved.
6.2.17	<i>Precedent</i>
<i>Issue:</i>	The proposal is likely to result in an adverse precedent for the area.
<i>Raised by:</i>	Community submissions.
<i>Consideration:</i>	The proposed development is unacceptable for the reasons outlined in this section of the report. It is considered that the proposal has the potential to result in an adverse precedent in relation to its inconsistency with the LES/DLEP 13 and its incompatibility in relation to surrounding development.

<i>Resolution:</i>	This issue has been considered in this assessment.
6.2.18	<i>Vegetation Clearance</i>
<i>Issue:</i>	The proposal involves vegetation clearance in a rural zone and accordingly is subject to the provisions of the <i>Native Vegetation Conservation Act 1997</i> (NVC Act).
<i>Raised by:</i>	CMA.
<i>Consideration:</i>	The proposed development will require approval under the NVC Act.
<i>Resolution:</i>	This issue has been considered in this 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 issues raised by the community, the Department of Environment Conservation, Great Lakes Council, and the NSW Rural Fire Service, who were consulted (among other agencies) and provided comments and General Terms of Approval where required.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

The proposal is considered to be ecologically inappropriate given the fragmentation of the regionally significant habitat in the vicinity of the site, the likely adverse impact on threatened species and other general inconsistencies with the Local Environmental Study and draft LEP for Pacific Palms. The proposal is also likely to have an adverse impact on visual amenity of the locality, is incompatible with the area and is contrary to the public interest given the inconsistencies with the LES and DLEP 13.

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

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 Approval

Prepared by

Endorsed:

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