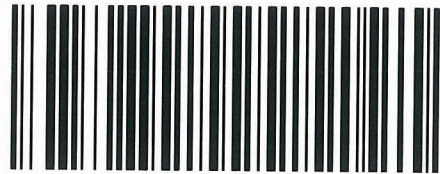




Office of  
Environment  
& Heritage



PCU040042

Our reference: DOC12/47545; FIL07/2233-08  
Contact: Kelly Roche: (02) 6640 2511

Karen Jones  
Director  
Metropolitan & Regional Projects South  
NSW Planning and Infrastructure  
GPO Box 39  
Sydney NSW 2001

14 DEC 2012

Dear Ms Jones

**RE: Preferred Project Report for Major Project 05\_0129 – Lakes Estate Residential Subdivision, North Boambee Road, North Boambee Valley**

I refer to the Preferred Project Report (PPR) and accompanying information provided for the Lakes Estate Residential Subdivision at North Boambee Valley, received by Office of Environment and Heritage (OEH) on 14 November 2012. OEH has reviewed the information provided in relation to biodiversity conservation, flooding and sea level rise and Aboriginal cultural heritage.

OEH notes that it has previously raised a range of concerns in a letter to the Department of Planning and Infrastructure (DoPI) in September 2008, which have been responded to in the current PPR to varying degrees. OEH maintains that there is a need for appropriate management planning to provide for and protect biodiversity values within the identified conservation areas on the site, and to ensure appropriate investigation, consultation and management is undertaken for Aboriginal Cultural Heritage values at the site. There are also several areas of investigation required in relation to flood risk assessment.

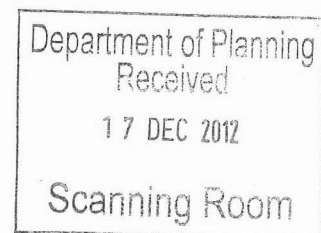
OEH's recommendations are contained in Attachment 1 and Attachment 2 contains OEH's assessment of the PPR and justification for its recommendations.

OEH has considered the nature of the outstanding issues and has determined that it is able to support the proposal subject to the Department of Planning and Infrastructure seeking the amendments to the Statement of Commitments, as identified in Attachment 1.

If you have any questions, or wish to discuss this matter further please contact Kelly Roche on 66402511.

Yours sincerely

**Jon Keats**  
Manager, Biodiversity Management Unit North East  
Regional Operations Group  
Office of Environment and Heritage  
NSW Department of Premier and Cabinet



PO Box 498 Grafton NSW 2460  
NSW Government Offices  
49 Victoria Street Grafton NSW  
Tel: (02) 6640 2500 Fax: (02) 6642 7743  
ABN 30 841 387 271  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

## ATTACHMENT 1 – OEH'S RECOMMENDATIONS

Should development be approved for this site, the following recommendations should be incorporated as Additional Statements of Commitment or Conditions of Consent, as appropriate:

### Biodiversity

1. The applicant must develop an appropriate management plan for protection of biodiversity values on identified conservation lands that will be applied during all stages of the development, in consultation with Coffs Harbour Council as the ultimate land manager.

### Floodplain Risk Management

1. The applicant must address the outstanding specific matters raised in Attachment 2 in relation to flood risk management in order for the proposal to comply with the NSW Government Flood Prone Land Policy.

### Aboriginal Cultural Heritage Issues

1. The proponent must continue to consult with and involve all the registered local Aboriginal representatives for the project, in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
2. The proponent is to provide fair and reasonable opportunities for the registered Aboriginal parties to monitor any initial ground disturbance activities associated within the 50m buffer surrounding the extent of Aboriginal sites #22-1-0350 (LE-AI & PAD 1) and #22-1-0351 (LE-PAD 2). This process should be managed by a suitably qualified cultural heritage specialist. In the event that additional Aboriginal objects are uncovered during the monitoring program, the objects are to be recorded and managed in compliance with the requirements of the *National Parks and Wildlife Act 1974* and relocated to the Heritage Park.
3. The proponent is to develop a long-term management strategy for the Heritage Park. This strategy must be developed and implemented in consultation with the registered Aboriginal parties and must specify the long-term actions required to mitigate and manage the potential impacts on any Aboriginal cultural heritage values associated with the Park in perpetuity.
4. All Aboriginal sites impacted by the project must have an Aboriginal Site Impact Recording (ASIR) form completed and be submitted to OEH's AHIMS Registrar within 3 months of being impacted.
5. In the event that ground disturbance identifies a new Aboriginal object/s within the project area, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified cultural heritage specialist and representatives of the local Aboriginal community must be contacted to determine the nature, extent and significance of the finds. The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by the OEH) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with representatives of the local Aboriginal community, and the cultural specialist to develop and implement and appropriate

management strategies for all objects/sites. If impacts are unavoidable, objects are to be salvaged and relocated to the Heritage Park.

6. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until the NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact the OEH's Enviroline on 131 555 and representatives of the local Aboriginal community. No works are to continue until the OEH provides written notification to the proponent.
7. An Aboriginal Cultural Education Induction Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project. The program should be developed and implemented in collaboration with the registered Aboriginal parties.

## **ATTACHMENT 2 - ASSESSMENT OF PREFERRED PROJECT REPORT**

### **1. BIODIVERSITY ISSUES**

Conservation areas identified in the PPR should be managed for the purpose of maintaining and improving the biodiversity values present on the site, in particular threatened species and endangered ecological communities throughout all stages of the development. Management should specifically address known threats to these biodiversity assets and be formalised within an adopted plan of management to be administered by the landowner. It is noted that the PPR commits Coffs Harbour Council to preparation of a management plan for the conservation lands once these lands are transferred to Council. It would be appropriate for the applicant to prepare an interim management plan to protect these lands during the period of construction and prior to the transfer of the lands.

### **2. FLOODING AND SEA LEVEL RISE ISSUES**

It is recommended any development within flood prone land be in accordance with the NSW Government Flood Prone Land Policy. The Policy aims to reduce the impact of flooding and flood liability on individual owners and occupiers, and reduce private and public losses resulting from flooding. These objectives are set out in the NSW Government Floodplain Development Manual. The Policy advises that the primary responsibility for floodplain risk management rests with Coffs Harbour City Council while OEH responsibility is to provide specialist floodplain risk management advice to Council and other Government agencies. This advice is provided on that basis.

In the absence of a site specific floodplain risk management plan and associated flood related development controls, it would appropriate to adopt Council's flood policy and planning controls adopted for Coffs Creek when considering development in the North Boambee valley.

OEH provided comments on 24 September 2009 regarding several flood risk management issues for this site and the applicant (Umwelt) provided responses on 27 August 2012 for flood risk management issues raised by OEH.

It appears that the following flood risk management issues that were raised in the previous comments have not been adequately addressed by the consultant:

1. The flood assessment has not reported the behaviour of the probable maximum flood. This is required to identify all flood prone land and whether any emergency management planning needs to be addressed.
2. It is noted that the proposal includes placement of fill within the 100 year flood extent. The assessment did not consider the cumulative impact of similar development across the complete Newports and Boambee Creeks catchments. It has been found that such fill has had an adverse impact on flood behaviour in the adjacent Coffs Creek. It is recommended that the planning controls adopted for Coffs Creek be adopted for this catchment *viz*, no net filling within the 100 year flood extent except where compensatory cut / fill within the flood storage is permitted.
3. The flood assessment has identified a small, yet measurable downstream impact associated with the fill on the floodplain and channelisation of the stream. Freeboard is not provided to accommodate this. Further, the cumulative impacts can be significant. It is recommended that the proposal be designed to avoid any detrimental impacts on other properties.

4. The potential impacts of climate change are noted. It is agreed that an increase in ocean levels would have an insignificant impact on flood levels at the subject site. The assessment considered the sensitivity to a 30% increase in rainfall intensity and volume. The 30% increase may be too conservative – CSIRO reports indicate that an upper bound of 10% may be more appropriate for the North Coast. This will result in a reduced impact compared to that provided in the flood assessment. It is generally inappropriate to use freeboard to accommodate the impacts of climate change, particularly for new developments. In this case, an appropriate response to giving consideration to climate change may be to include the climate change impacts in the design flood estimates.

### **3. ABORIGINAL AND CULTURAL HERITAGE ISSUES**

#### **Aboriginal cultural heritage assessment**

OEH notes that the development proposal is likely to impact or harm Aboriginal cultural heritage values associated with the project area. These sites include 'LE-A1', a portion of 'LE-PAD 1', 'LE-PAD 2' and two traditional Aboriginal campsites identified as: 'LE-PAD 3' and 'LE-PAD 4'. It is therefore expected that the proponent develop culturally appropriate management strategies in consultation with the registered Aboriginal parties for the project.

#### **Management of Aboriginal cultural heritage**

OEH refers to Section 3.9.1 and the unlabeled Heritage Commitment detailed in Table 4 of the PPR. It is noted that the proponent has committed to the development of a 'Heritage Park' within the northern portion of the project area and this area will be designated as an area where any Aboriginal objects salvaged during the proposed development will be relocated. OEH generally supports this process. However, OEH notes that the proponent has not provided any further evidence that the RAPs for the project support this final management strategy. It is recommended that further evidence of consultation with the RAPs is provided by the applicant to support the final management commitments for Aboriginal cultural heritage. OEH has included a recommended condition of approval below to target this matter.

OEH refers to the Zoning Plan of the PPR (Ref: A003 Rev. F). It is noted that plan identifies the proposed Heritage Park as being located in a 2A - Residential Low Density zone. This zoning is not ideal and limits the protection available to this land through the zoning process. OEH is also concerned with the close proximity of the park to proposed residential housing lots and any proposed ongoing maintenance and management actions undertaken by the proposed new land owners. OEH understands that Coffs Harbour City Council will be responsible to manage these lands if the proposed land transfer occurs. It is also understood that open space land associated with residential lots is regularly landscaped and mown as part of Council's management strategies and to assist in managing bushfire risk. It is therefore strongly recommended that the zoning for the proposed Heritage Park is amended to E2 - Environmental Conservation lands to limit any opportunity to indirectly impact or harm any associated Aboriginal cultural heritage values.

OEH also reiterates that the proponent has not detailed specific management strategies for the proposed Heritage Park to ensure any Aboriginal cultural heritage values located there will be protected from impact or harm in perpetuity and during any proposed management strategies proposed by the land owners. This concerns OEH. Such strategies should be developed and implemented in consultation with the RAPs for the project (refer to additional comments below), should be provided in support of the Aboriginal cultural heritage assessment undertaken and provided in support of the development application regardless of any proposals to have this area of the project transferred into an alternative land

owner/manager. OEH has accordingly reiterated below a recommended condition of approval to target this matter.

OEH also notes that the proponent has not committed to the development of any additional management strategies/mechanisms in order to ensure that the Aboriginal objects likely to be impacted by the development will be identified during the development process and then relocated to the Heritage Park. OEH reiterates that the following additional management strategies should be developed and implemented for the project to appropriately manage the potential risk of impact or harm from the project on any Aboriginal objects which may be located in the project area:

1. a monitoring and salvage program of known Aboriginal sites: #22-1-0350 (LE-AI & PAD 1) and #22-1-0351 (LE-PAD 2),
2. a chance finds procedure,
3. a human remains procedure, and
4. an Aboriginal Cultural Heritage Induction Program.

OEH has accordingly included recommended conditions of approval to target these matters.

### **Local Aboriginal community consultation**

Effective heritage management requires knowledge of values or cultural significance. An understanding of what makes a place culturally significant and why, enables appropriate decisions to be made about the management of that place. OEH recognises and acknowledges that Aboriginal people are the primary source of information about the value of their heritage and how this is best protected and conserved and must have an active role in any Aboriginal cultural heritage planning process.

OEH refers to the heritage commitments in Section 7.0 of the publicly exhibited Environmental Assessment (EA) for this development application undertaken during August and September 2009. OEH also refers to the final Aboriginal cultural heritage management strategies presented in Section 3.9.1 of the PPR and note that they differ significantly from the previous heritage commitments and in particular, the management recommendations of the archaeological consultant's report (Appendix Y) prepared for the EA.

However, the PPR does not include any evidence that the proponent has conducted any additional consultation with the RAPs for the project in finalising the current management strategies. The lack of evidence of recent consultation with the Aboriginal stakeholders concerns OEH and demonstrates that the local Aboriginal consultation process for the development application is incomplete.

In order to progress these inadequacies, OEH recommends that the proponent seek final comments/evidence from all RAPs to form a complete submission.

OEH has developed the '*Aboriginal cultural heritage consultation requirements for proponents 2010*' to assist proponents with consultation with the Aboriginal community. While these guidelines are aimed at proponents seeking an Aboriginal Heritage Impact Permit under the NPW Act, the guidelines provide a useful reference to guide broader community consultation during the development of a major project application.

OEH also encourages the proponent to continue to engage with the RAPs in maintaining appropriate cultural heritage outcomes for the proposed development. As a general rule, gaps in the consultation process of 6 months or more will not constitute a continuous consultation process. Where a proponent envisages a gap of more than 6 months it is recommended that RAPs are regularly informed of any progress. OEH has included a

recommended condition of approval for Aboriginal cultural heritage values below addressing this matter.