

To Department of Planning and Infrastructure  
GPO Box 39, Sydney, NSW,2000

From Roger Barker,  
PO Box 4281, Coffs Harbour Jetty NSW 2450  
Ph 0422 572 752

For Attention Ms Heather Warton

Re. Submission of Objection  
MP09\_0067

**Without Prejudice.**

31<sup>st</sup> July 2013

Dear Ms Warton

I am the owner of Lot6 DP 252223 since 1987 and this land is relied upon for the purpose of home sanctuary with dwelling and stable establishments, believed to be misrepresented By Mr Wasiak of JW Planning in his Environmental Assessment (EA).

I am purported by JW Planning to be involved in a Major Project Proposal between Moonee Parkland Trust and myself.

I discovered that various activities had been undertaken contrary my consent and against my best interests. I was assured that I would be party to all consultation and information. This was not the case. Consequently I withdrew my part in this project on 19July2012 and that was acknowledged by Mr Wasiak at that time.

I make this submission, as it appears that the project continues without my cooperation or consent and I object to the detrimental impact on my land being proposed in MP09\_0067. I believe it to be both contrary to my consent and my best interests.

In Mr Wasiak's EA, executive summary, it is stated that the site is 23ha and shows inclusions of both Lot1 and Lot6, but in the same EA it is proposed in references that Lot1 is the site and or impact site. It is unclear if Lot6 is being implied as part of this Part3A campaign or not, and what the actual site description is. This quandary is further borne out by the proponents random misrepresentations of relevant property boundaries.

Further, my other queries are;-

Has my withdrawal been ignored and thus Lot6 has been submitted as a party to this application, without consent, consultation or due care?

Or

Is Lot6 not submitted but misrepresented with disregard for my interests?

There is assumed control by the misrepresentation of Lot6 as part of the 23ha site by the other parties. While at the same time my interests are ignored.



[illegible]



Attempting to gain some form of assurance here has become increasingly paramount, as my reliance on home sanctuary weighs against equitability of development progress. Without assurance, there is no perceivable benefit to me for the proposed Collector Rd through my land, and this application MP09\_0067, with regard to an implied ecological constraint provides none. In fact it would be of enormous detriment to my current situation. An unacceptable sacrifice for my being prejudiced.



*Key: Red cleared areas with no koala habitat. Green lines forest with some habitat but little to none (at some localities) of known koala feed trees. blue lines include known koala feed trees and in some localities they are the dominant trees. Also this blue area has greater density of larger trees with established understorey, is largely in the lower and far eastern half of this area (as can be seen by the aerial). The pink line roughly identifies the boundary for the recommended reserve area. Red polygon == lot 1 and Blue polygon = Lot 6*

As of the date of this submission, there is **no arrangement for owner consent** over Lot6 to construct a Court Approved realignment of a Collector Rd.

The other parties make claim; the concept plan provides for a collector rd along the western boundary of the site and therefore satisfies clause 101.

I believe this claim is incorrect.

In the Environmental Assessment submitted by JW Planning it is stated at 5.4.1.2

*Clause 101 Development with frontage to classified road* requires the consent authority to not approve development on land that has a frontage to a classified road, in this instance the Pacific Highway, unless it is satisfied that vehicular access is provided by a road other than a classified road and that the ongoing safety, efficiency and operation of the classified road will not be adversely affected by the development.



The approved Glades development to the north of the site is required to achieve access to the Pacific Highway by way of a collector road running southward through the site to the Moonee Interchange that is now being constructed as part of the upgrade of the Pacific Highway as a dual carriageway through Moonee. The approval for the collector road itself was made by the Land and Environment Court in July 2012. The concept plan provides for the collector road along the western boundary of the site and therefore satisfies Clause 101.

And in the Amended DGR's it is required on page 5

5.9a Provide details of the proposed staging/timing of the development with respect to the Pacific Highway Upgrade (Sapphire to Woolgoolga), the development of Glades Estate to the north (currently described as Lots 1 & 2 DP725785), and the development of the Bateman site to the south (Lot 5 DP252223). In particular the Glades Estate has triggered interim upgrades to the Moonee Beach Rd/Pacific Highway intersection prior to the construction of the Pacific Highway Upgrade – address how the Proposal will interact with this interim access and outline any arrangements made to facilitate this.

The Court has approved a Collector Rd. But as observed by His Honor Craig J Approval of itself affords no right to construct.

- 7 The collector road is proposed to be constructed over part of three lots, Lot 6 DP 1140702, Lot 6 DP 252223, and Lot 1 DP 1097743, which is land not owned by Rothwell. The third respondent, Mr Roger Barker, owns Lot 6 DP 252223. Rothwell negotiated with all relevant landowners for the construction of the collector road, including a Deed entered into with Mr Barker dated 14 July 2009. The alignment for the proposed collector road has been amended. Mr Barker was joined as a party to the appeal, and an order was made for the determination of a separate question concerning owners consent for the development application. On 9 February 2012 Craig J determined that the Deed between Rothwell and Mr Barker was evidence that the owner of Lot 6 DP 252223 consents to the making of the development application as amended for the purposes of cl 1(i) Schedule 1, *Environmental Planning and Assessment Regulation 2000: Rothwell Boys Pty Ltd v Coffs Harbour City Council* [2012] NSWLEC 19. At [37] Craig J observed that any grant of development consent has no impact upon proprietary rights, and in particular, if the result of the present appeal is that consent is granted to construction of the collector road, that consent, of itself, will afford no right to Rothwell to enter upon Lot 6 and undertake road construction. At [43] of his judgment, Craig J noted that having answered the separate question in the affirmative, Mr Barker had no further role to play in the litigation, however no order was made as to the constitution of the proceedings.

As noted by Commissioner Pearson NSWLEC\_1152, Paragraph 92,

*Deferred commencement condition*

- 92 As noted in [8] above, Mr Barker's primary position was that development consent should be refused. Mr Barker will not permit anyone to enter his property in order to physically construct any part of a road, and that is a matter of which innocent third parties should be aware. Mr Barker proposes (exhibit 3) a deferred commencement condition as follows:

This consent shall not operate until the applicant satisfies the consent authority by producing a copy of the consent in writing of the owner of lot 6 DP 252223 ("Lot 6") to the commencement of any building, engineering or construction work relating to the consent. Upon the consent authority giving written notice to the applicant and owner of Lot 6 of being satisfied as to that matter, the consent shall become operative and take effect from the date of such notification.

It is my assertion from this MP09\_0067 application, that by extensive collaboration, various arrangements have been made to burden Lot6 with the Ecological Offset of other parties Environmental Impact in this Precinct, without transparency, consultation or consent and also contrary to my best interests, even after my withdrawal from the Project.

I have 4 main objections to this application MP09\_0067 and will be happy to elaborate if and when required.

1/ I object to the Lot1 proposed Bulk Earthworks Plan.

Without discussion or consultation it proposes the removal of all remaining established vegetation from the Matcove property Lot1, on the western hill, much of which being established secondary Koala Feed of equal significance to any other in this precinct. The plan then proposes excavating 82,000m<sup>3</sup> to a depth of 4mtrs, which would require intensive rock breaking and many months of excavation, in close proximity to my Home Horses and Stables.

This industrious proposal to quarry excessive material from the heavily wooded knoll of predominantly Red Mahogany and Black Butt with established understory, to be transported to the lower level ground, to raise the natural ground level up to as much as 2.67mtr on the extremely low land of Lot1 Nth side, in the vicinity of a recent Osprey nest reestablishment, where Wallum Froglet Habitat has been identified in the DCP as potential, *for a reason*.

Up to and along my Nthn boundary, it is proposed to raise the ground level of Lot1 by up to 1.43mtr, flowing towards lot 6 in places, again without my consultation. It would possibly result in storm water inundation and raised water table impact on my land.

I find it surprising that there appears to be no geological reference to derelict mine on lot1 knoll, with substantial tunneling. As pictured in historic photo1964.Appendix E\_ Contamination.pdf

This earthworks proposal is totally unacceptable to me as both immediate neighbour and resident. It has negative ramifications proposing to create a lower land of my property in dispersion of Lot1 ecological pressures. **Ref.** Application MP09\_0067, Appendix K, Civiltech, sheet 3 of 8, Drawing 1277-DR3, issue B. And also the following plan 4 of 8. Issue B

2/ I object to the concept layout for Lot1, related to the proposed Bulk earthwork over the entire site and to within riparian zone. It proposes 18 housing allotment along their Sth boundary to offer a towering view over my land, which would compromise my privacy.

3/ I object to the Lot1 Drainage Plan proposing to inundate Lot6 with storm water from over charged swales proposed along Lot6 Nth boundary. Also, to the proposed retention ponds within sensitive riparian zone, with many trees proposed to be knocked over for the fill proposal to the flood water edge Ref. Appendix K, sheet 8of8 Drawing 1277-DR8,issue B



4/ I object to the Ecological Report. Representing imbalance, implied in Bias misrepresentation of the two adjacent holdings. I'm surprised the Ecologist omits mention of the recent Osprey nest in vicinity of Proposed Lot B90, and that he plays down the Ecological significance of the numerous habitat trees and hollows on Lot1 but offers a blanket constraint over Lot6. This PEA report reads like the proponent wrote it himself. It pays no attention to ecological damage to flora and fauna on Lot1(neeLot7 DP 252223 owned by Matcove P/L directed by Eric Fuller and Kerry Albert).

After many months of ecological survey, I was told by ecologist John Paul King of PEA , prior to my need to withdraw, that Lot1 had more ecology concerns than Lot6 does, which miraculously is no longer his representation.

I object to the detrimental representation of Lot6 as is proposed by MP09\_0067, to infect prospects of my land, in exchange for the proponent's own Ecological Offset.

Ecology Report may require Peer Review.

I do not comprehend corporate developers procedures, placing high demand on myself as a private land holder and lay individual. I justifiably withdrew cooperation for this long and drawn out Part3a campaign, to effect my land without consultation, while my being deprived of the promised disclosure and transparency. I ask that it be discontinued and not supported or enabled by Authorities.

There have been no arrangements made nor discussion, to facilitate access for construction of a realigned Collector Rd through Lot6. Under the current circumstances my consent is withheld.

I respectfully request that a mediation order be made for the purpose of resolution, with just consideration to these matters at hand, alternatively that this proposal be rejected.

Thankyou in anticipation of consideration.

Yours sincerely,

Roger Barker





Lot1 looking NE from rear of Proposed Lot B2, remnant habitat and hollows within 100m of Moonee Ck, numerous Red Mahogany



Lot1 looking NW from rear of proposed Lot B2 numerous Red Mahogany





Lot1 Looking NW from rear of proposed allotment B8, trees exceeding 10 yrs of age, numerous Red Mahogany



Lot1 looking Sth to Nth from rear of proposed allotment B9 towards Rothwells

