

A submission to Project Application 08_0194 – Kings Forest.

It is my submission that, for reasons set out below, this application is not fit for approval, and that unless amended, should be refused.

Alternatively, any decision on the Project Application should be deferred until courts rule on the applicant company's unauthorized recent clearing and draining of parts of Cudgen Nature adjacent to the subject land.

Summary

- A. The EAR is riddled with internal inconsistencies in the description of (a) the proposal for which approval is being sought and (b) the measures proposed for mitigation of adverse impacts. Accordingly, the EAR is inconsistent with the Director-General's requirements.
- B. Significant parts of the environmental management plans required under the Concept Plan are so inadequate they should be rejected.
- C. The timing of dedication of land to NPWS remains unclear. The rehabilitation works in areas to be dedicated are poorly described. It is not clear who will pay for and supervise the works and when they are to take place. Despite the fact that the approval for the concept plan requires these matters to be dealt with by way of voluntary agreement, it is my submission that these details should have been more or less finalised by now, and subjected to public scrutiny as part of this exhibition process to help ensure they are not contrary to the public interest.
- D. The Project Application proposes an indefinite delay in the dedication of any of the land zoned for environmental protection to be dedicated to Council. Some of this land is adjacent to the proposed lot 1 commercial development and road intersection works. Biota in this area are likely to be adversely affected by the development. It is unreasonable that rehabilitation of land zoned for environmental protection east of the coast road and dedication to council should not take place as part of the construction of these works.
- E. The proposed application to amend condition C2 would, if approved, create further uncertainty with regard to the scope and timing of flora and fauna rehabilitation / compensation works and related dedications of land and is likely to lead to damaging delays. It is my submission the proposed amendment should be refused. (Amendments would be welcome if they help clarify these matters and reduce the potential for delay in works and dedications.)
- F. The exhibited amendments to the Koala Management Plan effectively propose to lock Koalas out of the majority of the development site because the site cannot serve as a safe means of passage. This is effectively an admission that a fundamental basis for approval for the rezoning and concept plan was deeply flawed (the Concept Plan Koala Management Plan proposed that "barriers to Koala movement will be avoided within the site"). The admission should

prompt the government to overturn the rezoning and Concept Plan and provides a sound legal basis for taking this step.

- G. The quality of information and analysis of impacts regarding changes to land levels in Buffer Zones is inadequate.
- H. The assessment of impacts regarding the proposed “maintenance” of Blacks Creek is seriously flawed and should not be accepted. This part of the application should be refused.
- I. The EAR appears to have no detail with respect to cross and longitudinal sections of Blacks Creek assumed for the flood analysis. This is somewhat extraordinary, given it is admitted in the EAR that “the main east-west drain will need to be maintained to provide adequate drainage for the site, which is important in the event of flooding”. All the more extraordinary given the recent unapproved excavation undertaken by the applicants of the section of Blacks Creek within Cudgen Nature Reserve. It is reasonable to ask whether they excavated it to specifications they have assumed for their flood modeling, but for obvious reasons have not published in this EAR. Flood modeling should not be accepted until details are provided regarding assumptions for the cross section of Blacks Creek within the property and in Cudgen Nature Reserve.
- J. It is unacceptable that proposed sportsfields would be located on ground that would be particularly low-lying and poorly drained, especially given they are reduced to this condition in order to supply fill for other parts of the development.
- K. At Section 8.2 of the draft Statement of Commitments, there appears to be an attempt to rewrite the rules that normally apply for timing of payment of Section 94 and 64 contributions. The time for payment should be prior to release of any linen plan for subdivision that triggers the need for relevant contributions or (in the case of development that is not subdivision) at the time nominated in any development approval. It would not be appropriate for contributions to be paid only at “the issue of any construction certificate for the dwellings” (as proposed in the EAR).

Further detail on some of these matters is set out below

Inconsistencies generally

The EAR is riddled with internal inconsistencies in the description of (a) the proposal for which approval is being sought and (b) the measures proposed for mitigation of adverse impacts. Accordingly, the EAR is inconsistent with the Director-General’s requirements.

The relevant specifications of the DGs Requirements are:

- *General Requirement 9 - “that the information contained in the (EAR) is (not) misleading.”*

- *Key issues 9.4 - “each Plan (for Koalas, vegetation, threatened species, feral animals, weeds, buffers and golf course) is to consider all other plans for the site (including presumably plans for urban development) to ensure that management strategies do not conflict....”*

The proposal in the Concept Plan would have very significant impacts on flora and fauna within and adjacent to the site. A major part of the justification for approval of the Concept Plan was the offer to do works, dedicate lands and put instruments in place that ensured management regimes that would compensate / mitigate the adverse impacts to some extent. Conditions of approval for the Concept Plan were accordingly attached and they have also become part of the Director-General’s Environmental Assessment Requirements.

The inconsistencies and other failures (described elsewhere in this submission) are significant because they cause uncertainty with regard to the position of the edge of the development, the amount, type, location, timing and quality of compensatory plantings / rehabilitation works and who is to undertake the works.

It is of concern that these failures have occurred despite the obligations of the lead author and the Department of Planning to ensure the EAR is fit for exhibition prior to its public release. It is reasonable in the circumstances to expect that an amended EAR should be re-exhibited for further public scrutiny prior to any decision on the application.

It is not possible to describe all the inconsistencies and errors, but some examples are set out below.

Inconsistencies in the description of the proposal for which approval is being sought

At Section 3.11 of the EAR, it is said that Stage 1 of the Project Application involves “bulk earthworks (in) precincts 1, 2 and 3...”. At Section 3.2 of the EAR there is an exposition of bulk earthworks for which approval is being sought and references to Figures in Appendices (the references numbers are wrong!!) and to Figure 2 in the EAR itself. None of the figures referred to depict earthworks in precinct 3.

Inconsistencies in description of proposed compensation / mitigation for adverse impacts on flora and fauna.

There are three considerably different depictions of the areas to be the subject of heath regeneration / revegetation works and the location of the three types of treatment proposed. The “Regeneration and Revegetation” figures in the Vegetation Management Plans and the Buffer Management Plans are presumably intended to replace the figures submitted by JWA to the Department in 2010 and dated 22 March 2010 (which are nonetheless included in exhibition material). Unfortunately, the former two depictions are not consistent with each other and neither of them is consistent with the exhibited plans for development.

The version of the “Regeneration and Revegetation” figures in the Buffer Management Plans appears to be the product of the most recent field survey and analysis, yet at some parts of the buffers it appears to be more inconsistent with proposed development plans than earlier versions. One consequence of errors / inconsistencies in the version depicted in the Buffer Management Plan is that claims with regard to the area of proposed regeneration / revegetation of heath in precinct 5 should not be accepted

See figures 1 and 2 to this submission (Appendix 1) which depict part of the buffer in precinct 5.

Environmental management plans are inadequate

Significant parts of the environmental management plans required under the Concept Plan are so inadequate they should be rejected.

The management plans that deal with proposed regeneration / revegetation provide no detail on the very different types of heath appropriate to the very different plant habitat types proposed for treatment. There is no exposition on the expected diversity of species in each type.

There is no mention whatsoever of the difficulties likely to be encountered in re-establishing native vegetation in areas of cut. It is possible that following excavation, the surface will consist of indurated layers or other soils hostile to the growth of plants. The proposed thin layer of local topsoil proposed to be excavated, stored and then re-spread is unlikely to be sufficient where excavation causes indurated or other sub-soils to be at or close to the surface. If indurated soils are ripped / cultivated in order to overcome this problem, it is likely to have other adverse consequences, particularly for hydrological conditions in proposed re-vegetation areas, but more particularly for retained, adjacent native vegetation (see comments elsewhere about adverse effects of excavation on hydrology of retained adjacent native plant communities).

Though some of the performance criteria in the management plans are helpful, the criteria are generally so poorly defined that they are useless. Examples of useless criteria are:

- “Maintenance of 100% of planted diversity” (what does this mean?)
- “Natural recruitment of native seedlings throughout planting areas” (how much, what sort of diversity?)
- “...environmental weeds less than 1%” (are all exotic species to be considered environmental weeds?)
- “Plantings providing variable habitats for native fauna species” (how is this to be measured and reported?).

There is no indication whether all of the listed criteria will need to be met, or if it is proposed to apply some sort of weighted formula that at this stage is not defined.

In the absence of clear specifications for diversity of plantings, there are no criteria for measuring the diversity of the result.

There appear to be no provisions to make it at least likely that the monitoring will be independent and will reflect the real outcomes (to ensure for instance that the location of transects and plots are not in relatively well grown areas untypical of the overall result).

Weed management plans add nothing to work done previously and so fail the specifications of Section C2 of the amended Concept plan approval which requires that: “all future applications are to include...stage-specific management plan updates”.

In the draft amended weed management plan approved as part of the concept plan, information on locations and type of weeds was very broad and incomplete. There is virtually no new spatial data on locality and cover of weeds in the exhibited plans. Indeed, the weed management plans on exhibition simply republish the figure depicting location of weeds in the Concept Plan management plan (Figures 11 and 10 in the exhibited plans).

It is admitted in the exhibited plans that; “due to the large vegetated areas within Environmental Protection Zones not all areas of vegetation were investigated, and particular attention was paid to ecological buffers”. The author of this submission has surveyed the site in the past and can inform consent authorities that there are significant areas of weeds within EPZs well away from boundaries with proposed development. It is my submission that a thorough survey of weed cover needs to be undertaken now and the results published in a plan that can be assessed by the public prior to considering approval of this application.

The exhibited plan provides little or no guidance on where the main weed management tasks are located or a schedule that specifies the timing of initial and follow-up tasks. It simply republishes a figure of “Work Areas” from the Concept Plan management plan (Figures 12 and 11 in the exhibited plans) and associated tables. Additional work areas are identified in the plans on exhibition. They are not mapped, but simply described as buffers to EPZs.

At section 4.1 of the Weed Management Plans is stated that: “the proponent should appoint a preferred contractor following approval of the project, so that works can commence immediately”. Commencement some time soon after approval is probably appropriate, but the words used are not a satisfactory way to specify the time.

Work area 13 (of the Weed Management Plans) does not appear to be mapped or labeled.

Uncertainties regarding the dedication of land to NPWS and rehabilitation prior to dedication

The timing of dedication of land to NPWS remains unclear. The rehabilitation works in areas to be dedicated are poorly described. It is not clear who will pay for and supervise the works and when they are to take place. Despite the fact that the approval for the concept plan requires these matters to be dealt with by way of voluntary agreement, it is my submission that these details should have been more or less

finalised by now, and subjected to public scrutiny as part of this exhibition process to help ensure they are not contrary to the public interest.

Clause C3 of the amended concept plan approval requires “the proponent (to) provide evidence of an agreement for the dedication to DECCW of approximately 150 ha of land as addition to the Cudgen Nature Reserve prior to construction of stage 1”. Unfortunately, the words used do not make it clear whether the agreement should be made before works on stage 1 commence, or if the proponent has the option of leaving it until all stage 1 works are complete. The latter interpretation would be totally unsatisfactory, given that one possible interpretation of the “Stage 1” includes all of the massive earthworks described in the Project Application (for a description of the “Project Application for stage 1” see for instance page vii of the EAR).

Clause C3 also requires the proponent to provide boundary fencing and tracks and “suitable funding for the amendment of existing reserve specific fire, pest, weed and management plans” and that “the funding should be sufficient to ensure actions within the amended plans relevant to the new additions are able to be completed”.

Unfortunately, the words in Clause C3 used to describe the timing for completion of these work (including rehabilitation works) is equally if not more unclear.

In the absence of exhibition material specifically dealing with rehabilitation works in the areas propose to be dedicated, it can only be assumed that works depicted in the exhibited management plans for areas proposed to be dedicated will form the basis of plans and works required under Clause C3. To this extent, the plans and works would have the same inadequacies as described elsewhere in this submission and would therefore be inadequate.

Earthworks in Buffer Zones

The quality of information regarding changes to land levels in Buffer Zones is adequate only for Precinct 5. Very large areas outside of precinct 5 would be affected by earthworks for which approval is sought under this application, but no useful information or analysis is provided for these areas.

It is likely that earthworks on the development site will have adverse effects on hydrology of retained adjacent native plant communities, especially where significant excavation occurs close to the native plant communities (eg in precincts 5 and 14 where cuts of up to 2m depth occur near retained, existing native vegetation).

The analysis of effects on groundwater and biota in environmental zones adjacent to drainage swales in buffers to precinct 5 is no more than convenient speculation and is counter-intuitive. It should not be accepted.

Regardless of recharge that might occur via the swales, at five of the cross sections illustrated in the Buffer Management Plan the bottom of the drain is lower than existing ground level. Four are about 1 metre lower and one is 2 metres lower.

Proposed drainage works in SEPP 14 wetlands

The assessment of impacts regarding the proposed “maintenance” of Blacks Creek is seriously flawed and should not be accepted. This part of the application should be refused.

Considerable parts of the watercourse the subject of this part of the application are in the SEPP 14 and if it were not for the fact that this project application was made under the state significant development provisions of the EPA Act, this part of the application would be designated development subjected to a rigorous process of assessment, and if an approval were granted it could be appealed by objectors on its merits.

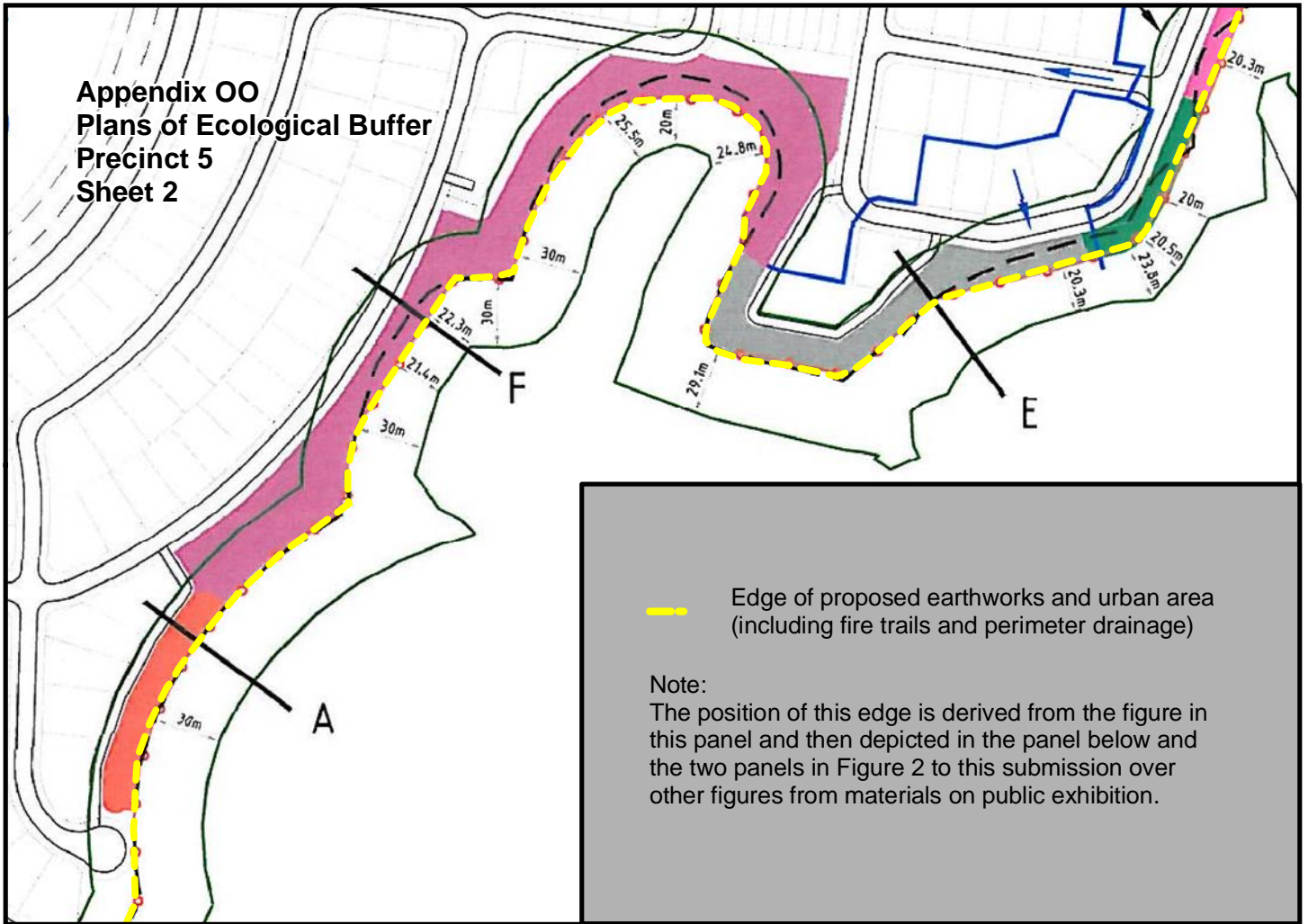
It is claimed “maintenance will not increase the depth of the drain and therefore will not result in groundwater drawdown” However, nowhere in the EAR or attachments is there any information about existing level / depths / widths of the watercourses. It appears the approach taken to defining the extent of extraction for which approval is sought is limited to description of sediment size (so-called “silt”). This approach is totally unsatisfactory, not least because it assumes that existing soils at parts of the site do not consist of silt (strictly speaking).

Further, the analyses in the reports / studies / plans submitted to date have very conveniently ignored the biological consequences of reducing the depth and duration of inundation of surface waters (as opposed to groundwaters). It is these waters that are most affected by the proposed works.

Henry James
23/12/2011

APPENDIX 1

**Appendix OO
Plans of Ecological Buffer
Precinct 5
Sheet 2**



**Concept Plan Approval
JWA Letter dated 23 March 2010
Figure 2A**

