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8th March 2014

To: Ray.Lawlor@planning.nsw.gov.au
Re: Application Number 08_0194 MOD 2

Dear Mr Lawlor,

I would like to object to this application for modifications to the development. I question the proponent's justification for modifying the conditions placed on this highly sensitive land site. The proposed modifications are in effect ***a dilution*** of environmental protections designed by highly trained experts in various fields from both local and state governments after hundreds of hours of study and deliberation.

Following are my objections to the suggested modifications in the document entitled "Modification of Major Project Approval Number 08_0194 MOD 2". I refer to section 5 entitled "PROPOSED MODIFICATIONS".

5.1 Definitions.

The proponent wishes to replace the definition *"Land to be dedicated to Council as identified on the Council Dedicated Land Plan"* with the wording *"Potential Council Land as identified on the Potential Council Land Plan"*. The aim as described by the proponent is to take away the certainty that such land "**must be**" dedicated to council and to make this dedication instead subject to **"reaching an appropriate agreement with Council".**

I ask what this "agreement with Council" is to consist of? What aspect of the condition of approval that certain land be given to Council needs further "*agreement*"? This suggested modification creates considerable uncertainty and vagueness around the proponent's fulfilment of this requirement.

5.4 Land to be Dedicated to OEH

In a similar vein, the proponent wishes to amend the definition of land to be dedicated to NPWS. Currently entitled *"Offset area*" they would prefer to refer to it as "**Future OEH land"**. Their reasoning is to stress that such land was *not compensation* for development approval but something they offered "voluntarily". The proponent is in effect claiming that development approval would have been granted *without* the dedication of such land to NPWS. Such a claim is highly dubious given the very high environmental value of the adjacent Cudgen nature reserve for which this dedicated

land will serve as a protective *buffer*. Furthermore, redefining this dedication as "voluntary" introduces an element of uncertainty regarding the fulfilment of this condition which is highly worrying as it is ***critical*** that the environmental values of such a significant area remain protected.

5.2 and 5.3 Establishment & Maintenance Periods

The proponent wishes to define the "establishment period" of works specified in environmental management plans as a period of time "*necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance"*. However, they wish to ***delete altogether*** any reference to an ongoing "Maintenance Period". In doing so, they are negating their responsibility for ongoing maintenance standards and criteria as set out in the approved environmental management plans. This is a serious omission and leaves us with the question of who is to be responsible for the maintenance of these plans??

5.6 - Management & Maintenance of Environmental Lands

This condition presently requires the proponent to implement management and maintenance in accordance with Environmental Management Plans (EMPs) on lands to be dedicated to both Council and NWPS and to do so as soon as those plans are available. The proponent claims that compliance cannot be achieved because the EMPs are still being revised and because they are also still waiting EPBC approval and because of commercial considerations. The proponent is requesting instead that the trigger for implementation be ***"From the commencement of any bulk earthworks in a precinct"*** and that only the area of land ***"immediately adjacent to that precinct"*** is to be environmentally managed.

It must be questioned why environmental management cannot begin as soon as the relevant plans are ready. Any EPBC decisions are likely to require *more* not *less* work. Giving "commercial considerations" as the other reason to delay is also questionable. The proponent has accepted responsibility to manage these lands using particular criteria to a certain standard - surely the sooner they start the easier this is to achieve (and at less expense). Requesting such significant delays on implementing these EMPs does not show a sense of *commitment* to the spirit and intent of environmental management. This is especially unacceptable given the high value of the site and the very great responsibility that sits with *anyone* who is planning to develop it.

5.11 Baseline Monitoring

As with the delays to implementation, the proponent wishes also to delay the *baseline reporting* on the relevant EMPs until ***"3 month prior to the commencement of bulk earthworks"***. At present, this condition aligns baseline monitoring with the prompt commencement of EPMs. Satisfaction of this condition is in fact ***a prerequisite*** for

issuing the construction certificate for bulk earthworks. By deleting the reference to "issuing of a construction certificate," the proponent is presuming they will be issued a certificate *regardless* of the standard of their environmental reporting and that they only be asked to satisfy this condition ***when they are ready to commence earth works*.**

Such suggestions show considerable *reluctance* to taking up the role of environmental custodian. The proponent is saying that mitigation of their *very significant* impact on the Cudgen NR and surrounds should *only begin* when they actually start moving soil around. The impact of this residential development on the natural environment will be enduring and permanent. Rather than delay augmentation strategies, I would expect the proponent to willingly accept them as designed by experts in their respective fields.

5.12 Koala Plan Of Management

The proponent's request to delay koala tree planting is the most concerning out of all the proposed modifications. It should not need repeating that the Tweed Coast koala population is at dire levels and the Kings Forest colony is a vital part of their survival. It should also not need reiterating how harmful the building an urban township in the midst of their range will be.

Planting koala food trees is the minimum of mitigation measures in offsetting the many destructive impacts of urban incursion including traffic strikes and dog attacks. It will be many years before the trees mature and meanwhile the local koalas must suffer the loss of some of their trees which is a particularly distressing and deleterious thing for them. If the proponent was truly serious about koala survival, the proponent would be planting the trees as soon as possible. Postponing this to coincide with certain earthworks (potentially years ahead) is simply ***irresponsible*** and the proponent has offered no valid justification for it.

5.14 Environmental Audit Reports

Condition 49.3 at present states that if an environmental audit: "*indicates non compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted."*

The proponent requests that approval for further stages *no longer be contingent* on compliance of environmental audits. Instead, they propose to: "*review and if necessary revise the relevant management plans and undertake additional mitigation measures as required under this approval. "*

Such a measure only lessens the incentive to comply with environmental plans. It calls into question once again the proponent's commitment to environmental measures.

5.15 Bond for Environmental Restoration Works

Condition 50 presently calls for a financial bond to be lodged with Council to ensure that all environmental management plans are implemented.

The proponent wants this entire condition ***deleted*** on the grounds that it does not not provide for a refund. Section (b) of the condition clearly outlines the provision of a "refund". This refutes the proponents consequent argument that this bond would somehow be illegal and once again calls into question their genuine commitment to environmental outcomes.

CONCLUSION

In concluding the proponent justifies the modifications with a general reference to the projects proceeding "in an efficient, viable and timely manner". The proponent suggests that the Environmental Assessment accompanying their original concept plan approval is adequate.

It is glaringly evident to myself and I would hope to your department also, that these proffered modifications do in fact largely negate the list of environmental measures called for in the document "Modification of Ministers Approval" (2013).

I strongly object to *all* of the modifications outlined here for the reasons already stated. The conditions in the 2013 document are fair, expertly researched and justified considering the highly sensitive nature of the development site. It would be expected that these conditions be accepted and implemented by the developer.

Sincerely yours,

Charles Smith