

7 August, 2007

Paula Tomkins
Department of Planning
GPO Box 39
SYDNEY NSW 2001
AUSTRALIA

Our Reference: 0045027 TRAFFIC NOISE L4.DOC



Attention: Paula Tomkins

Dear Paula,

**RE: ROAD TRAFFIC NOISE IMPACT ASSESSMENT ON PROPOSED
DEVELOPMENT AT THE CORNER OF GREGORY STREET AND
ARAKOON ROAD, SOUTH WEST ROCKS**

1. INTRODUCTION

ERM has been engaged to undertake a traffic noise impact assessment on the proposed subdivision of Lot 2 DP 581117, Gregory Street, South West Rocks, within the Kempsey Local Government Area. The assessment applies the NSW Department of Environment and Conservation (DEC) guidelines.

The lot is bordered by Gregory Street to the west, Cooper Street to the north and Arakoon Road to the south. The proposal is for 45 residential lots and will be developed in three stages. This assessment predicts traffic noise impact for 2016.

This assessment is based on traffic data derived from the 'Rosarii' Proposed Residential Subdivision Lot 2 DP 581117, Gregory Street, South West Rocks: Traffic Assessment, prepared by ERM, November 2006 and the current project plans.

2. ROAD TRAFFIC CRITERIA

Gregory Street is deemed a main arterial road which services the South West Rocks area and Arakoon Road as a collector road that links Gregory Street to the residences of Arakoon.

The NSW DEC Environmental Criteria for Road Traffic Noise (ECRTN, 1999) sets acceptable noise limits according to road types and land use. The ECRTN recommends that residences located along Gregory Street and Arakoon Road should be designed to meet the following daytime and night time criteria:

Gregory Street:

- Day time: $L_{Aeq,(15hr)}$ 55dB(A).
- Night time: $L_{Aeq,(9hr)}$ 50dB(A).

Arakoon Road:

- Day time: $L_{Aeq,1hr}$ 60dB(A).
- Night time: $L_{Aeq,1hr}$ 55dB(A).

For traffic noise assessment, the DEC defines daytime and night time hours as 7am to 10pm and 10pm to 7am respectively.

3. INTERNAL NOISE LEVELS

The ECRTN states, "It is preferable for internal noise level criteria to be set by the relevant planning or building authority. The internal levels that are set may vary depending on the type of development the planning authority wants to encourage for an area. The Hornsby Shire and Sydney City councils have codes for internal noise level criteria in place. Sleeping areas are usually the most sensitive to noise impact, so in the absence of any local codes internal levels of 35-40dB(A) at night are recommended. As a guide for other living areas, internal noise levels 10dB below external levels are recommended on the basis of openable windows being opened sufficiently to provide adequate ventilation (refer to building code of Australia for additional information). For most residences this equates to a minimum of 20% of the window area left open."

4. ASSESSMENT METHOD

Calculation algorithms based on ECRTN guidelines were used to predict the traffic noise impact on residences along Gregory Street and Arakoon Road.

To simplify calculations two residences on each street were selected to be representative of 'worst case scenario' when compared with other residences. Some of the factors considered when determining traffic noise impact on residents: are the façade set-back from the traffic centreline in each road; the elevation of the traffic and the receivers; the volume and composition of traffic flow; and the applicable criteria.

The selected assessment locations for Gregory Street are Lot 105 and Lot 103. The façade of these dwellings will be setback approximately 17m and 21.5m from the edge of the road pavement respectively. Future dwellings on the remaining Lots along Gregory Street are likely to be setback at a distance that is equivalent to or greater than 21.5m.

Lot 121 and Lot 122 represent residences along Arakoon Road. The façades of these residences may be the nearest to traffic on Arakoon Road. A proposed 1.5m metal boundary fence along Arakoon Street was included as it will provide a barrier affect to noise from road traffic on Arakoon Road.

Lot 121 is located on the corner of Gregory Street and Arakoon Road. The ECRTN indicates that the most stringent of either criterion will apply at this position. Due to the proposed fencing along Arakoon Road residences were assessed for noise impact for the ground floor and the first floor.

The 2016 projected total number of vehicles per day for each street is estimated to be (ERM, 2007) as follows:

- 4,795 (vehicles/day) on Gregory Street,
- 1,110 (vehicles/day) on Arakoon Road.

To determine compliance or not with the relevant criterion for each street the traffic volumes for 2016 have been treated as follows:

For Gregory Street:

- The day time LAeq, (15hr) traffic volume = (Vehicles per day) x 85%,
- The night time LAeq, (9hr) traffic volume = (Vehicles per day) x 15%.

This is based on common practice traffic estimation techniques.

Assessment for Arakoon Road requires the determination of the $L_{Aeq,(1hr) \text{ peak}}$. Peak hour is assessed between 6am and 9am, however the ECRTN night time period is between 10pm and 7am. Given this overlap in times the $L_{Aeq,(1hr) \text{ peak}}$ will apply for traffic during both night time and day time at Arakoon Street.

Thus for Arakoon Road:

- o Day time $L_{Aeq,(1hr) \text{ peak}}$ = night time $L_{Aeq,(1hr) \text{ peak}}$ = (Vehicles per day) x 10%.

A heavy vehicle volume of 6.4% is used in both cases.

5. PREDICTED TRAFFIC NOISE

5.1 EXTERNAL NOISE LEVELS

Table 5.1 shows the predicted traffic noise contributions in 2016 at each representative assessment location for the day and the night time. Assessment location Lot 121 has been split into west and south facing to address both Gregory Street and Arakoon Road traffic. Values that exceed the relevant criteria are highlighted in a bold font. It must be noted that the first floor was modelled for future dwellings along Arakoon Road because a 1.5 metres high fence will act as a barrier to the ground floor level. The modelled noise at ground floor level for future dwellings along Gregory Street is adequate to assess future noise impacts on dwellings on those lots, even if dwellings are more than single storey.

Table 5.1 Predicted External Traffic Noise Levels for 2016, dB(A)

Gregory Street Lot	Ground floor		First floor		Criteria	
	Day	Night	Day	Night	Day	Night
105	61	55	-	-	55 Leq(15hr)	50 Leq(9hr)
103	60	54	-	-		
121W	56	51	-	-		
Arakoon Road						
122	51	51	55	55	60 Leq(1hr)	55 Leq(1hr)
121S	51	51	55	55		

Notes: 1. For Gregory Street, quoted noise levels are Leq(15hr) and Leq(9hr) for the day and night respectively. For Arakoon Road the quoted noise levels are Leq(1hr).

Table 5.1 shows projected traffic noise in 2016 will exceed the DEC criteria at proposed residences along Gregory Street. The Gregory Street criteria will apply in the case of Lot 121.

Table 5.1 shows that traffic noise is not predicted to exceed DEC criteria during the day time or night time along Arakoon Road in 2016.

5.2 NOISE MITIGATION

The ECRTN states, "Where there is new residential development that can be affected by noise from existing roads, it is expected that developers will be able to use a number of control options to mitigate traffic noise. These options include designing developments so that sensitive land uses are protected from excess noise through the use of options such as optimum location and orientation on the site, well planned internal layouts", this includes location of sensitive areas away from noise affected areas to minimise noise impact and to utilise noise insulating building materials and construction methods to facilitate noise control.

In the context of internal noise levels, when improved glazing and door construction in the façades exposed to the road are applied, reduction from external traffic noise shown in Table 5.2 can be expected.

Table 5.2 Internal noise reduction from façade treatments

Building type	Windows	Internal noise reduction
All	Open	10dB(A)
Light frame	Single glazed (closed)	20dB(A)
	Single glazed (closed)	25dB(A)
Masonry	Double glazed (closed)	35dB(A)

Heavier glass can sometimes be just as effective as double glazing, especially if design constraints restrict the size of the air gap between the two sheets of window glass.

The most cost effective approach has been shown to occur when effective measures are incorporated during the design stage of a development.

5.3 INTERNAL NOISE LEVELS

Exceedances shown in *Table 5.1* during the night time period may reasonably be considered in the context that residents are generally indoors at this time. In this case a 10dB reduction in the noise level will typically apply for windows or doors partially open.

By way of example, *Table 5.3* shows expected internal noise levels from 2016 Gregory Street traffic volumes when light framed single glazed windows are considered. Both open and closed window results are provided.

Table 5.3 Predicted Internal Traffic Noise Levels for 2016 Gregory Street traffic

Gregory Street Unit	Predicted Noise Levels, dB(A)				Internal noise level criteria, dB(A)	
	Day		Night		Living Area	Sleeping Area
	Open	Closed	Open	Closed		
105	51	41	45	35	45	35-40
103	50	40	44	34	45	35-40
121W	46	36	41	31	45	35-40

Internal noise levels shown in *Table 5.3* are for rooms with windows that face Gregory Street. *Table 5.3* shows that:

- living rooms with windows on the noise affected façade, will need to have the windows closed during the day (peak hour) to meet the internal noise level criteria;
- living rooms with windows on the noise affected façade, will meet the internal noise level criteria when windows are either open or closed during the night-time period;
- windows in bedrooms on the noise affected façade will need to be kept closed during the night-time to meet the internal noise level criteria.

To meet reasonable human comfort levels with windows closed air conditioning would be necessary.

The predicted traffic noise levels are based on peak hour traffic volumes and as such are conservative estimates. The predictions indicate that internal noise levels can be readily achieved by adopting one or a combination of the above mitigation measures.

6. CONCLUSION

ERM has undertaken a traffic noise impact assessment on the proposed residential development at South West Rocks in accordance with DEC guidelines. External traffic noise exceedances have been predicted to occur at the proposed residences along Gregory Street in 2016.

Methods designed to mitigate against the impact of traffic noise on residents have been suggested. It is expected that the reasonable and feasible application of effective noise mitigation measures can effectively reduce noise impact on residences to within acceptable limits.

Yours sincerely,
for Environmental Resources Management Australia Pty Ltd



Julian Bassett
Acoustic Engineer



Najah Ishac
Senior Acoustic Engineer

16 July, 2007

Department of Environment and Climate Change
PO Box 498
GRAFTON NSW 2460

Attention: John Keats

Our Reference: 0045027_DECC_L1



Dear Sir,

**RE: ROSARII SOUTH WEST ROCKS ECOLOGICAL ASSESSMENT-
RESPONSE TO DECC**

We refer to the comments from the Department of Climate Change (DECC) in a letter dated 23 April 2007, in relation to the major project application for a proposed subdivision at Gregory Street, South West Rocks (MP05_0058).

The letter raised issues relating to the loss of hollow bearing trees for threatened species and the potential ecological endangered community. The proponent considers the proposed mitigation measures set out in the environmental assessment report as appropriate however, following the DECC letter and discussions with Mr Krister Waern from your office, the following pages sets out a revised approach to avoid, mitigate and compensate for the removal of threatened species habitat from the site. The approach has been prepared by Ms Renae Baker, Ecologist, from ERM following an ecological impact assessment conducted as part of the design stage of project.

The area of scattered trees proposed for removal is approximately 3 hectares. Given the small area of disturbed habitat to be removed for the development of the site, these measures are considered appropriate at the local and regional level.

1. MEASURES TO AVOID AND MITIGATE THE POTENTIAL IMPACTS OF THE PROPOSAL

Impacts of the proposed development were considered with respect to the area of land to be affected, types of vegetation present and the threatened species habitat that may be impacted.

1.1 AVOIDING IMPACTS

To avoid potential impacts to threatened species on the site, a development constraints and opportunities assessment was undertaken as part of the design phase of the project. Consequently, the footprint for development was designed to retain as many hollow-bearing trees, and as many suitable trees, as possible. The proposal incorporates a tree retention plan which identifies trees to be retained, including six of 12 hollow bearing trees identified on lot 2 (as identified as part of Stage 1 of the subdivision).

1.2 MITIGATING IMPACTS

Approximately six hollow-bearing trees will be removed under the current proposal. The number of hollows that will be lost from the site is eight (total of 2 large hollows and 6 small hollows). The mitigation approach proposed in the EA included compensatory tree planting as part of the proposed landscape works and the installation of an equal number of nest boxes in trees that are retained. It was proposed that the nest boxes would be installed prior to any tree removal from the site and inspected and maintained by a suitably qualified person for a period of 12 months after the installation.

In reviewing the submissions received and the subsequent discussions with DECC a number of alternative mitigating options have been considered as a method of providing alternative habitat. Rather than provide the nest boxes the proponent has considered opportunities to compensate for the impacts off-site (refer to section 2 below).

The proponent continues to commit to retaining as many suitable trees as possible and the pre-clearance surveys, which will be undertaken to mark hollow-bearing trees and pre-clearance protocols will be implemented to ensure that no animals are injured during tree removal. The protocols developed for this project are provided as *Attachment A* to this letter.

2. COMPENSATION FOR IMPACTS

In addition to avoiding and mitigating the impacts of the proposal, the proponent has considered the option of compensating for any impacts to native flora and fauna through off-site revegetation. The proponent has been actively seeking revegetation / rehabilitation projects within the immediate area however, attempts to identify projects in liaison with Kempsey Shire Council, Northern Rivers Catchment Management Authority and DECC have not been successful.

Following further consultation with Krister Waern of Grafton DECC, the proponent proposes to make available an amount of \$18,400.00 for contribution towards an appropriate environmental project. The amount of the proposed contribution has been calculated on the area of scattered trees proposed for removal (approximately 3 hectares) and the costs of revegetation as cited in *The Costs of Revegetation Final Report* (Greening Australia and ANU Forestry 1999). A worst case scenario of revegetating ex-pasture was used to determine the costs and has been calculated to be \$12,000, the balance of the compensation being \$6,400 provides for the installation of the nesting boxes offsite.

The purpose of the contribution is to fund the revegetation or protection of similar vegetation type in the local area, namely grassy woodland/forest. The proponents preferred option is to make this money available to the NSW National Parks and Wildlife Service, as their knowledge of the local area will ensure an appropriate project is identified in the near future. The manner in which the money is contributed would be subject to discussion with NSW National Parks and Wildlife Service and would be paid prior to the release of the Construction Certificate and form part of the proponents Statement of Commitments.

3. ENDANGERED ECOLOGICAL COMMUNITIES

In response to the DECC concern that the proposal will result in the removal of an area of endangered ecological community (EEC) Subtropical Coastal Floodplain Forest of the NSW North Coast an assessment of significance was undertaken to determine the potential impacts of the proposal on the community (see *attachment B*).

The vegetation to be removed is 0.7 hectares of Forest Red Gum Woodland that was considered in a previous assessment by Connell Wagner, as potentially representative a degraded example of the EEC.

We note that an assessment incorporated as part of the Ecological Assessment submitted with the application identified that the general absence of diagnostic understorey and ground cover species on site meant that this area of vegetation could not be positively identified as Subtropical Coastal Floodplain Forest.

In addition, it is considered that if current and ongoing disturbances were removed from this area the community would not return to its pre-disturbance state, as the *in situ* native biota have been largely replaced by exotic species, and the soil has been disturbed.

A photograph of the area of concern is provided as *Photograph 1* below. It is evident from the photograph that the area consists of scattered canopy trees to approximately 18 metres in height, over a disturbed and exotic-dominated ground cover. The majority of the area is used for horse agistment and has been subject to soil disturbance.

The assessment in attachment B found that no significant impacts to the community are expected within the locality or region as a result of the removal of this area from the site.

As a result of the assessment of condition, area and potential impacts to this community as a result of development, it is concluded that the intended compensation for removal of vegetation from the site as a whole would be adequate to cover the loss of this area.



Photograph 1 Area of concern regarding presence of Subtropical Coastal Floodplain Forest EEC.

4. CONCLUSION

Based on the above the proponent proposes to revise the statement of commitments to replace the commitment to install nest boxes with a commitment to make available a compensatory payment of \$18,400 to offset the loss of the six (6) hollow bearing trees (eight hollows) and to contribute to revegetating or protecting of similar vegetation type in the local area, namely grassy woodland/forest offsite. This would be made available to the NSW National Parks and Wildlife Service. In addition the statement of commitments would be revised to include the attached pre-clearance protocol.

We trust that the above approach to avoid, mitigate and compensate are a satisfactory response and look forward to your confirmation. We request that should you have any queries that you contact the undersigned on 8584 8827.

Yours sincerely,
for Environmental Resources Management Australia Pty Ltd

A handwritten signature in black ink, appearing to read 'Fiona van der Hoeven', with a stylized flourish at the end.

Fiona van der Hoeven

Senior Planner

ANNEX A: PRECLEARING PROTOCOL

The following procedure will be followed prior to clearing:

- Flag and GPS habitat trees.
- Survey for threatened fauna to identify any potential den trees and mark trees recorded as containing threatened fauna.
- Report on survey and provide recommendations for clearing.

Procedure for 2 stage clearing process.

- Clearly delineate clearing boundary.
- Clear everything else around those trees marked as above. Leave hollow bearing trees standing to allow resident fauna to relocate.
- Habitat trees should be left standing overnight (minimum) to allow resident fauna the chance to relocate. During this time the ecologist may set traps to capture resident animals.
- Fell habitat trees as carefully as possible. If possible use swivelling heads so the habitat trees can be lowered to the ground with minimal impact
- Hollows potentially supporting fauna can either be cut, or, if there is a risk of injury (animals can be cut in two) the logs can be left on the ground & rechecked the following day or placed on the edge of adjoining habitat.
- Relocate hollows to adjacent land.
- Bag/trap and transfer any animals captured.
- Take any injured animals immediately to wildlife carer or vet - contact details will be supplied to surveyors and clearing contractors.
- Any trapped animals would need to be kept in care until all HBT are removed.
- Provide clearing report outlining any fatalities and number and species of animals relocated.

ANNEX B: ASSESSMENT OF SIGNIFICANCE

Subtropical Coastal Floodplain Forest of the NSW North Coast

A small area (0.7 ha) of Forest Red Gum Woodland was recorded on site. All of this area will be removed under the current proposal. This vegetation has been subject to high levels of disturbance and could not be positively determined to represent the EEC. However, using the precautionary principle, and following concerns from DECC (Grafton), ERM undertook the following assessment of significance to assess the impacts of the proposal on Subtropical Coastal Floodplain Forest of the NSW North Coast Bioregion.

i. How Is The Proposal Likely To Affect The Lifecycle Of A Threatened Species And/Or Population?

- displaces or disturbs threatened species and/or populations
- disrupts the breeding cycle
- disturbs the dormancy period
- disrupts roosting behaviour
- changes foraging behaviour
- affects migration and dispersal ability
- disrupts pollination cycle;
- disturbs seedbanks;
- disrupts recruitment (ie. germination and establishment of plants);
- affects the interaction between threatened species and other species in the community (eg. pollinators, host species, mycorrhizal associations).

Not applicable to an ecological community.

ii. *How Is The Proposal Likely To Affect The Habitat Of A Threatened Species, Population Or Ecological Community?*

- o disturbs any permanent, semi-permanent or ephemeral water bodies;

The proposal does not disturb any permanent, semi-permanent or ephemeral water bodies.

- o degrades soil quality;

The proposal will not result in the degradation of soil quality. The area that may represent EEC will be removed from the site and there are no vegetated areas surrounding the site considered to represent the community that may be impacted by the development.

- o clears or modifies native vegetation;

The proposal will result in the removal of approximately three hectares of native vegetation in the form of mature trees and some native shrubs and ground cover species. This includes the removal of 0.7 ha of Forest Red Gum Woodland. The vegetation of the site has been described in greater detail in *Chapter 3 of South West Rocks Rosarii Ecological Assessment (ERM 2006)*.

- o introduces weeds, vermin or feral species or provides conditions for them to increase and/or spread;

There are no areas of habitat for the EEC that will be impacted by weeds, vermin or feral species as a result of the development. Cats will be banned from the proposed residential development, landscaping will use endemic species, residents will be educated regarding the use of native species and the planting of species considered to be environmental weeds and Weeds of National Significance will not be permitted. In addition, to discourage vermin, residents will be encouraged to cover all garbage and compost. Therefore the proposal should not result in the increase of weeds, vermin or feral species within the local area.

- o removes or disturbs key habitat features such as trees with hollows, caves and rock crevices, foraging habitat;

Not applicable to an ecological community.

- o affects natural revegetation and recolonisation of existing species following disturbance; and

The total area of Red Gum Woodland occurring on site will be removed under the current proposal. There is no EEC occurring on properties immediately adjacent to the site. In addition, the disturbed nature of the area means that if the EEC occurs in other parts of South West Rocks, the vegetation on site is unlikely to be contributing to the genetic resources and ongoing viability of those areas. Therefore the removal of the EEC will not impact on natural revegetation or recolonisation of the EEC in the local area.

- o does the proposal affect any threatened species or populations that are at the limit of its known distribution.

Not applicable to EEC.

iii. How Is The Proposal Likely To Affect Current Disturbance Regimes?

- o modifies the intensity and frequency of fires;

The total area of potential EEC occurring on site will be removed under the current proposal. There is no EEC occurring on properties immediately adjacent to the site. Therefore the development of the site is unlikely to impact on the frequency of fires in any EEC within the vicinity of the site.

- o modifies flooding flows.

As the site is already surrounded by roads and rural residential development, flooding flows are not considered to be a significant ecological component of the site and the development is therefore unlikely to modify any natural flooding flows in the local area.

iv. How Is The Proposal Likely To Affect Habitat Connectivity?

- o creates a barrier to fauna movement;

Not applicable to ecological communities

- removes remnant vegetation or wildlife corridors;

The proposal will result in the removal of some remnant native vegetation (predominantly trees) that has been subject to ongoing disturbances including slashing and noxious weed invasion. This includes the removal of approximately 0.7 ha of Red Gum Woodland. The development of the site is unlikely to be a significant barrier to movement of vegetation pollinators through the site, and vegetation will remain as scattered trees mature within the development.

- modifies remnant vegetation or wildlife corridors.

Approximately 0.7 ha of Red Gum Woodland will be removed from the site. Trees to be retained will be within development areas and managed as APZ.

v. How Is The Proposal Likely To Affect Critical Habitat?

There is no critical habitat that will be directly or indirectly affected by the proposal.

- removes or modifies key habitat features;
- affects natural revegetation or recolonisation of existing species following disturbance;
- introduces weeds, vermin or feral species
- generates or disposes of solid, liquid or gaseous waste;
- uses pesticides, herbicides, other chemicals.

Conclusion

The removal of 0.7 ha of degraded Forest Red Gum Woodland from the site will not result in direct or indirect impacts to any potential EEC within the site, the locality or the region.

File

Your reference : MP 05_0002
Our reference : GR 166/18
Contact : Krister Waern, 66402503

Peter Anderson
Macleay Vally Property Group
PO Box 3254,
NARELLAN NSW 2558

6 AUG 2007

Dear Mr Anderson

RE: MAJOR PROJECT 05_0058. MACLEAY VALLEY PROPERTY GROUP PTY LTD FOR PROPOSED 46 LOT SUBDIVISION.

I refer to your email received 29 July 2007 requesting comments from the Department of Environment and Climate Change (DECC) in regard of the above Development Proposal, specifically relating to the 'avoid, mitigate and compensate' approach.

Our discussions so far have indicated that you would like the DECC to consider the 'compensate' option as you believe the 'avoid' and 'mitigate' options do not seem viable with respect to the site.

The DECC has reviewed the information that you have supplied and provide the following comments on the your 'compensate' approach.

1. The \$12,000 nominated for revegetation needs further information to clarify, where and how this is to occur, who is to be involved and what protective measures and maintenance is to be afforded.
2. The \$6,400 nominated for nest boxes, again, requires further clarification about where they are to be located, who will be maintaining them and who will be involved. The DECC has previously advised that nest boxes require on going maintenance and are not highly regarded as an appropriate compensatory measure.

It is the role of the applicant to investigate and detail an approach that adequately compensates for the proposed impacts associated with the development. The DECC is concerned about an adequate and fair compensatory outcome to compensate for the impacts on biodiversity from the proposed development and not necessarily concerned about the amount of money put forward by the applicant. Some strategies may be more expensive than others. It is up to the applicant to investigate some of the example strategies listed in Appendix 1 or other strategies which may adequately compensate for the proposed damage.

To provide some further guidance with the limited information supplied, the current proposal provides for some revegetation with little or no maintenance and the provision of nest boxes. This

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Department of Environment and Conservation NSW

does not seem an adequate compensatory measure at this stage. Much more detail needs to be provided so the DECC can consider and evaluate the proposal.

To build upon your current proposal, it has come to the attention of DECC that Kempsey Shire Council is considering rehabilitating parts of Spencers Creek at South West Rocks in the near future. This may be an option which you could consider investigating.

We trust that the information provided within this letter provides a broad framework for you to develop and detail your compensatory approach. Further information regarding the 'avoid, mitigate and compensate' approach is provided for your information in Appendix 1.

If you would like to discuss any of the above matters, please contact Krister Waern on (02) 6640 2503

Yours sincerely
Signed
Jon Keats

JON KEATS
Head Regional Operations Unit North Coast
Climate Change and Environment Protection

Co: Heather Warton
Director, Urban & Coastal Assessments
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Appendix 1

The DECC assesses proposed developments with the 'avoid, mitigate and compensate' approach. The applicant of a proposed development needs to carefully consider and use this approach, being:

Step 1: where possible, **AVOID** (e.g. eliminate, locate elsewhere) the process causing the impact;
Step 2: where step 1 is not possible, **MITIGATE** (reduce the intensity and or extent or other undesirable characteristic (or any combinations of these three) of the impact);
Step 3: where steps 1 and 2 are not possible, **COMPENSATE** for the impact.

A detailed description and justification of the measures proposed to address any adverse effects of the proposal on all affected threatened species and endangered ecological communities must be provided. Each measure identified must indicate which of the above three categories the measure falls within.

The information provided on each identified measure must include:

- objective(s);
- justification;
- description;
- geographic scope: extent and location (within the subject site and all areas within the study area within the control of the proponent that are likely to be affected, directly or indirectly, by the proposal);
- time frame;
- relative to the implementation stages (pre-construction, construction and operation) of the proposal; and
- absolute (duration); and
- frequency of application;
- the person(s) and/or organisations responsible for implementation; and
- performance management criteria (specific and measurable).

If the impacts of the proposal on affected threatened species and ecological communities cannot be avoided or significantly reduced by amelioratory measures, compensatory strategies must be considered. These strategies must contribute significantly to the long term conservation of one or more affected threatened species or ecological communities. The extent of these compensatory strategies should reflect the extent and conservation significance of the endangered ecological communities and of the habitat(s) of threatened species being impacted, and the level of the degradation or destruction of the habitats being compensated for. The proposed actions of a compensatory strategy must be located (in order of preference) within the study area, locality or region.

Compensatory strategies may involve one or more of, but are not limited to:

- provision of funds to enable lands containing habitat(s) of high conservation value to be purchased and subsequently owned or managed (or both) by organisations with appropriate conservation management expertise, preferably the NPWS;
- identification and implementation of measures to improve habitat(s) of high conservation value; and
- Identification and implementation of measures (for example, changes in land tenure or zoning, or the application of other planning instruments) to improve the level of protection of areas of high conservation significance.
- They must outline desired outcomes and proposed implementation mechanisms.

If proposed compensatory strategies require the involvement of individuals, community groups or organisations external to the proponent, these potential stakeholders must be consulted where appropriate regarding the strategy and their likely responses provided. More than one

compensatory strategy may be outlined if considered appropriate, to identify and facilitate discussion of alternative approaches.

The following principles should be considered when negotiating/developing biodiversity offsets or compensatory approaches to achieve conservation outcomes in situations where there is a loss of biodiversity. Impacts must be avoided first by using prevention and mitigation measures.

Offsets are then used to address remaining impacts.

- All regulatory requirements must be met.
- Offsets must never reward ongoing poor performance.
- Offsets will complement other government programs.
- Offsets must be underpinned by sound ecological principles.
- Offsets should aim to result in a net improvement in biodiversity over time.
- Offsets must be enduring – they must offset the impact of the development for at least the period that the impact occurs.
- Offsets should be agreed prior to the impact occurring.
- Offsets must be quantifiable – the impacts and benefits must be reliably estimated.
- Offsets must be targeted – they must offset impacts on a like-for-like or better basis.
- Offsets must be located appropriately – they must offset the impact in the same region.
- Offsets must be supplementary – they must be beyond existing requirements and not already be funded under another scheme.
- Offsets and their actions must be enforceable – through development consent conditions, licence conditions, conservation agreements or a contract.



PAUL STUBBS LAW OFFICE
SOLICITORS & CONVEYANCERS

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OUR REF: CJS:LN:2188
YOUR REF: LF:ME:050997

10 August 2005

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Stacks the Law Firm
PO Box 234
TAREE NSW 2430

Paul Stubbs
ABN 62 651 626 619

Dear Sirs

RE: SALE OF 334-356 COOPER STREET EAST, SOUTH WEST ROCKS

You will recall that the contract, in special condition 8, referred to the existence of a pumping station on the property.

We enclose:

- (i) Copy letter dated 26 July 2005 together with attachments received from the solicitors acting for Kempsey Shire Council; and
- (ii) Copy of our response.

As you will see we have asked Council to indicate when it would expect to conclude arrangements in relation to the pumping station so that the settlement of this sale will not be delayed on this account. We will contact you again as soon as we have a response.

Yours faithfully
PAUL STUBBS LAW OFFICE

Per:


Christopher Strong

HSCH

02 AUG 2005

HOWARD SHERIDAN COONEY HARVEY
LAWYERS & CONVEYANCERS

CPC:LS:50811
Christopher Strong

26 July 2005

Paul Stubbs Law Office
Solicitors
PO Box 115
SOUTH WEST ROCKS NSW 2431

Dear Sir

**RE KEMPSEY SHIRE COUNCIL AND S M SCOT AND ORS
PROPERTY: SOUTH WEST ROCKS**

We act for Kempsey Shire Council.

We are advised that you are assisting Stephen Michael Scott and other owners of property at South West Rocks in relation to a proposed subdivision of such land and sale of the majority of the land to a development company from Nambucca Heads.

We understand Stacks are acting for that development Company.

Councils involvement in the matter arises from the construction some years ago of a sewer pump station upon the land pursuant to an agreement with the late Mrs Ardill, the mother of Mr Scott. A plan of subdivision excising the pump station area from the residue of the property was prepared in 2001 by surveyor, Mark Rogers, under instructions from Kempsey Shire Council and correspondence was forwarded to Mr Scott so that he could discuss with the family, an offer of \$2,500.00 for such land. The area of land is 256 square metres being a 16 metre by 16 metre site.

Council records did not reveal that Mr Scott had replied but in fact he has advised us that he did inform Council that the family accepted this offer and that the family are happy to proceed with the registration of the plan, the transfer of the pump station site to Council and the completion of the payment of the consideration of \$2,500.00. The costs of such exercise are to be met by Council and will of course include reasonable legal costs of the registered proprietors in having your firm advise upon the matter and more specifically, arranging for the execution of the plan by the registered proprietors and the production of the document of title in due course to achieve registration.

The relevant land is Lot 2 DP 581117 and although we suspect that you no doubt have either the title or a search of the title, we do enclose for your assistance, a photocopy of a search that we have carried out. We also enclose a photocopy of the plan prepared by surveyor Rogers



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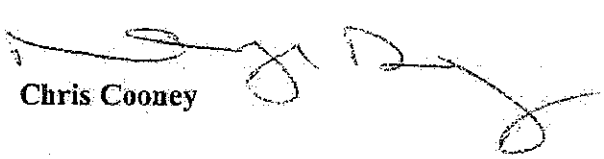
for Council in 2001. Mr Scott has inspected the plan and has confirmed that it is in order and does reflect the arrangement that was made and relates to the sewer pump station site.

Mr Scott has also advised the writer of the death in February 2005 of his former sister-in-law, Jennifer Irene Jacobson. Evidently Mrs Jacobson was the former wife of Mr Scott's late brother. Mr Scott advised that discussions that he had had in relation to Jennifer Jacobson's share of the property, have been through her surviving second husband, Gary Jacobson. We understand that she died at Warwick in Queensland.

Would you please consult with Mr Scott and thereafter provide us with full details including full names and addresses of the various registered proprietors, so that we may prepare the necessary Deed of Agreement between the Council and your clients for the transfer of the subject site for a consideration of \$2,500.00. We will then prepare the necessary documents and thereafter forward same, together with the original plan of subdivision to your office so that it may be executed by all of the registered proprietors. If you would prefer that we bear the cost of sending the plan to each of the registered proprietors for execution, then of course we are only too happy to assist and cooperate.

Yours faithfully

HOWARD SHERIDAN COONEY HARVEY



Chris Cooney

enc



OUR REF: CJS:LN:2188
YOUR REF: CPC:LS:50811

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10 August 2005

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COPY

Paul Stubbs
ABN 62 651 626 619

Dear Sirs

RE: SCOTT & ORS AND KEMPSEY SHIRE COUNCIL
334-356 COOPER STREET EAST, SOUTH WEST ROCKS

Thank you for your letter of 26 July 2005.

As it happened the owners of the subject property were committed to an exchange of contracts for the sale of the property by the time your letter was received. Contracts were exchanged on 3 August 2005.

The writer was aware of the existence of Council's pumping station on the property and a clause in general terms was inserted in the contract in relation to the existence of the pumping station.

There will need to be an arrangement reached between the owners and the purchaser which will have regard to the interests of all of the parties now involved in the completion of this matter. Since the present contract calls for completion on or before 1 November 2005 it would be appreciated if you could indicate whether documentation could be prepared and made available expeditiously to enable this matter to be concluded and registered on the title before settlement. In this regard any documentation will require the signature of seven owners.

If completion of the transaction is not likely to be probable within the time limited then we will seek to negotiate arrangements with the purchaser.

Yours faithfully
PAUL STUBBS LAW OFFICE

Per:

Christopher Strong