

17 December, 2008

Director-General
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Our Reference: 0037659L12RL.DOC

Attention: Mr Ray Lawler

Dear Ray,

**RE: POST PREFERRED PROJECT PLAN SUBMISSION - LOTS 1 AND 2
DP 725785, PACIFIC HIGHWAY, MOONEE BEACH - PROJECT
APPLICATION FOR RESIDENTIAL SUBDIVISION - MP06_0143**



1.0 Introduction

I refer to your correspondence dated 30 October 2008, requesting additional information following submission of the Preferred Project Report (PPR) after the exhibition of the Environmental Assessment (EA) for the Project Application under Part 3A of the Environmental Planning Assessment Act (EP&A Act) for the abovementioned project and to our meeting on 7 November 2008 at your office where we discussed the contents of your correspondence. As you are aware from our recent telephone conversations and emails we are now in a position to formally respond to the various issues which have been raised and have prepared this post PPR submission for your consideration.

The purpose of this submission is to address each of the six key unresolved issues, the 15 additional information and comments and the various issues raised in the authority letters associated with your correspondence referred to above.

2.0 Key Unresolved Issues

For ease of reference *Table 1* below summarises the key unresolved issues detailed in your correspondence and cross references additional information provided in the Annexures attached to this submission. The responses to the issues raised are consistent with our discussions on 7 November 2008.

Table 1 Key Unresolved Issues

Issues	Relevant Annex
1. Pacific Highway Access	
<ul style="list-style-type: none"> • Rothwell Boys Pty Ltd have been requested to provide access to the estate via the proposed northern collector road shown in the Moonee DCP. This is Rothwell Boys preferred access. A successful outcome has now been negotiated with two of the adjoining land owners to the south of the site (see adjoining land owner's consents in <i>Annex A</i>). Negotiations with the remaining adjoining land owner are well advanced and we anticipate the one outstanding land owner's consent will be signed in the coming weeks. • If unforeseen problems arise and construction of the northern collector road is delayed for any reason or a more favourable means of access is identified, the option of having an alternative interim access available should be allowed for, subject to approval of the Director General. The limitations suggested by the Roads and Traffic Authority (RTA), relating to restricting the number of allotments released within the Glades Estate until a traffic study is completed and any recommended roadworks to upgrade the intersection of the Pacific Highway and Moonee Beach Road are undertaken to the RTA's satisfaction, is unacceptable. Any limitation will have an adverse impact on the viability of constructing the northern collector road. If capacity restrictions only allow a relatively small number of lots to be developed then some form of interim access arrangements should be permitted until these capacity restrictions are eliminated. • The construction of the northern collector road will address the concerns raised by Council and the RTA regarding the interim access proposed to the Pacific Highway from the site. It will provide public road access to Moonee Beach Road in an acceptable manner. To then require potential additional works to the intersection of the Pacific Highway and Moonee Beach Road is unacceptable as funding of this regional infrastructure should not be the responsibility of some local land owners. If delays are experienced at this intersection then traffic will take slightly longer to disperse. This potential problem will be eliminated when the RTA upgrades this intersection. 	<i>Annex A</i>
2. Riparian Buffers	
<ul style="list-style-type: none"> • DECC and the Marine Parks Authority (MPA) are insisting on 100 metre buffers to Moonee Creek (MPA also wants a 100 metre buffer to Skinners Creek despite the fact that the Moonee DCP only requires a 50 metre buffer), even though Council is supportive of the development footprint proposed. 	<i>Annexures H and O</i>

Issues	Relevant Annex
<ul style="list-style-type: none"> • The development footprint is consistent with the Masterplan in the Moonee DCP (Map 2) which envisaged some limited encroachment into the buffer areas (see <i>Annex O</i>). As discussed at our meeting on 7 November 2008, where less than a 100 metre buffer to Moonee Creek is proposed special fencing as detailed in Plans 10 and 11 in <i>Annex H</i> will be constructed to prohibit vehicular and pedestrian access. It is important to look at the underlying objectives of the proposed riparian buffers. These relate to reducing water quality impacts on the creeks by maintaining wide, vegetated corridors adjacent to the creeks. Where these corridors are reduced in width, special fencing is proposed to prohibit vehicular and pedestrian access so that erosion and the generation of sediment resulting from illegal access is avoided and litter is controlled. Care has been taken to ensure that no drainage infrastructure will be constructed within these buffer areas. • It should be noted that if increased buffers were provided the site density and lot yield would reduce which in turn reduces affordability. It would also make it more difficult to achieve the urban outcomes desired and impact on the feasibility of infrastructure provision. 	
3. Wildlife Corridor	
<ul style="list-style-type: none"> • Asset Protection Zones (APZ) have been amended so that they no longer impact on the central vegetated wildlife movement corridor (see amended APZ in <i>Annex B</i>). In order to achieve this, the standard of construction of future dwellings on land in the vicinity of this central vegetated corridor has been increased in terms of fire safety. This means that additional cost will have to be incurred at the dwelling construction stage to ensure that fire safety requirements are adhered to. • The corridor width is consistent with that shown in the Moonee DCP Masterplan Map 2 (see <i>Annex O</i>). As discussed in 2 above any increase in corridor width will result in reduced densities and lower lot yields. This would negatively impact on affordability and reduce the viability of providing the necessary infrastructure required. As discussed at our meeting on 7 November 2008, the existing vegetation will be retained within the vegetated corridor and edge effects will be eliminated by the erection of appropriate fencing to exclude unauthorised vehicular and pedestrian access (see <i>Annex H</i> – Plans 10 and 11). 	<i>Annexures B, H and O.</i>
4. Sea Level Rise	
<ul style="list-style-type: none"> • Additional flood modelling has been undertaken based on the worst case scenario documented in the Department of Environment and Climate Change's (DECC) Floodplain Risk 	<i>Annex C</i>

Issues	Relevant Annex
<p>Management Guideline (see the results in <i>Annex C</i>).</p> <ul style="list-style-type: none"> The Revised Hydraulic Assessment prepared by Cardno Lawson Treloar presents an analysis based on a sea level rise of 0.91 metres as required in DECC's Policy dated October 2007 on Practical Consideration of Climate Change which recommends low (0.18 metres), medium (0.55 metres) and high (0.91 metres) scenarios be assessed. The Cardno Lawson Treloar assessment concluded that the 1% AEP flood event combined with a 1% AEP ocean water level in conjunction with maximum increases in flows and levels due to sea level rise will not result in any inundation of allotments or roads (with a minimum fill level of 4.75m AHD as proposed). There will still be in excess of a 600 mm freeboard under the 0.91 metre worst case sea level rise scenario. 	
5. High Water Table	
<ul style="list-style-type: none"> Discussion on the effectiveness of the operation of infrastructure in the proposed fill platforms under a worst case climate change scenario where groundwater levels increase is provided in <i>Annex D</i>. The modelling documented in <i>Annex D</i> demonstrates that even under the worst case climate change scenario contained in DECC's Practical Considerations of Climate Change Policy, infrastructure within the fill platforms will function efficiently. This is because the water tables at their highest point within the land to be filled are significantly higher than the estimated sea level even with the worst case rise in sea level of 0.91 metres. Therefore the fill activity will not interfere with the existing groundwater regime. No detrimental changes are expected. 	<i>Annex D</i>
6. Acid Sulfate Soils	
<ul style="list-style-type: none"> Additional ASS investigations have been requested prior to determination of the application to ensure that the site is suitable for residential development and to identify appropriate management or mitigation measures. Additional ASS investigations were undertaken over those areas of the site where ASS had the potential to occur as documented in the ASS and Groundwater Management Plan prepared by Gilbert and Sutherland and reproduced as part of the PPR. These investigations failed to record any ASS. However, Acidic Soils were identified and are likely to occur elsewhere on the site. Management plans have therefore been prepared for Acidic Soils and ASS. If these soils are encountered during construction they will be treated in accordance with these management plans. The extent of disturbance of soils in the low lying areas (where ASS may occur) will be minimal given the necessity to fill these areas. 	NA

3.0 Additional Information

Where the additional information and comments raised in your correspondence dated 30 October 2008 have required further documentation to be provided in Annexures to this submission, this is cross referenced in *Table 2* below.

Table 2 Additional Information and Comments

Issues	Relevant Annex
1. Open Space Dedication Plan	
<ul style="list-style-type: none"> The plan has been amended in line with the feedback received that larger and fewer dedications are desirable (see the revised plan in <i>Annex E</i>). 	<i>Annex E</i>
2. Upgraded Project Plan	
The further information required to be included on the Project Plan has been added (see <i>Annex F</i>).	<i>Annex F</i>
3. Noise Attenuation	
<ul style="list-style-type: none"> The noise attenuation works will all take place within the boundaries of the site on land owned by Rothwell Boys Pty Ltd. 	NA
4. Flora and Fauna	
<ul style="list-style-type: none"> A simplified figure has been prepared as requested (see <i>Annex G</i>). 	<i>Annex G</i>
5. Landscape and Open Space	
<ul style="list-style-type: none"> The landscape and open space plans have been upgraded to provide the additional information requested (see <i>Annex H</i>). 	<i>Annex H</i>
6. Maintenance of APZs for Bushfire Protection	
<ul style="list-style-type: none"> Council has indicated it is willing to maintain all land to be rezoned Open Space 6(a) after the initial maintenance period and hand over takes place. The Moonee DCP requires this land to be dedicated to Council. The RFS publication "Planning for Bushfire Protection" provides examples of circumstances where APZs may be acceptable on adjoining land (including public land). The extract at <i>Annex N</i> makes it clear that where easements are provided for drainage and other works associated with utilities and there is an ongoing need to keep these areas free of standing vegetation, then APZs on public land can be acceptable. This is the case in the Glades Estate. 	<i>Annex N</i>
7. Design Guidelines	
<ul style="list-style-type: none"> The means of enforcement of the design guidelines will be via an 88 B Instrument under the Conveyancing Act. The EA provided some indication of the style of development which would be permitted (Figure 7.1 Indicative Building 	NA

Issues	Relevant Annex
Envelopes and Built Form) and the PPR provided Design Guidelines (Annex S) to further elaborate on this issue. An 88B instrument is the means proposed to used to enforce these design guidelines.	
8. Aboriginal Heritage	
Further consultation with Aboriginal Groups will take place if it is necessary to undertake activities which will cause ground disturbance in the areas outside the development footprint (eg) in areas of remnant vegetation.	NA
9. Biodiversity Conservation	
<ul style="list-style-type: none"> While a five year maintenance period has been suggested, the standard minimum two year period accepted by most local government authorities in NSW is what is being proposed. Given the changes to the revised Open Space Dedication Staging Plan, as a general rule the dedication of land to Council will not take place until the last stage in each phase (see <i>Annex E</i>) is released and therefore in relation to most stages the maintenance period will be well in excess of the two year minimum. 	<i>Annex E</i>
10. Cats and Dogs	
<ul style="list-style-type: none"> The proposal to ban dogs from the Estate is to be enforced by way of an 88 B Instrument under the Conveyancing Act (an 88 B Instrument which prohibits dogs is reproduced in Annex J). It is proposed to encourage responsible pet ownership through brochures made available to prospective owners and new residents. 	<i>Annex J</i>
11. Road Noise	
<ul style="list-style-type: none"> The proposal to attach a condition to the approval to be issued which ensures that the ECRTN noise objectives are met at property boundaries is acceptable. 	NA
12 Traffic Calming	
<ul style="list-style-type: none"> Traffic calming measures will be incorporated into the engineering drawings to be provided to Council for approval at the time a Construction Certificate is sought. To prepare this level of detail at the Project Application stage when conditions of approval can make it clear that they are required at a later stage is considered unreasonable given the time delays and costs which would be incurred. The approach being adopted with identifying bus stops, lay bys and shelters as detailed below is considered more appropriate. 	NA
13. Bus Services	
<ul style="list-style-type: none"> It is agreed that details related to bus stops, lay bys and shelters should be provided as part of the Construction Certificate. 	NA

Issues	Relevant Annex
14. Roads	
<ul style="list-style-type: none"> Some preliminary road design has been undertaken as evidenced in Annex L. This has demonstrated that the road hierarchy proposed will be satisfactory and achieved the aims of minimising through traffic in local roads, providing an acceptable separation between pedestrians/ cyclists and vehicular traffic and illustrating how stormwater drainage and sewerage can be effectively treated and dispersed. Further detailed road and drainage design consistent with Schedule 1 of Coffs Harbour Council DCP will be undertaken at the Construction Certificate stage. 	Annex L
15. Plans for Stamping	
<ul style="list-style-type: none"> Three copies of the sets of plans to be stamped have been provided with this submission. 	NA

4.0 Issues Raised by Other Agencies

The issues raised by the other agencies who have responded to the PPR circulated for comment by DoP are discussed in this section of this submission. Where the issues raised by agencies have already been covered in the preceding sections of this submission (in other words they have been raised by DoP), they are not dealt with again.

4.1 Coffs Harbour Council

The issues raised by **Council** (in addition to those already covered by in *Tables 1* and *2*) include;

4.1.1 Open Space Dedication

Status: Council has asked DoP to ensure the land zoned Open Space 6(a) is dedicated at no cost to Council.

Response: The staging of Section 94 contribution payments is the subject of a submission which has been forwarded to Council (see *Annex M*). Council's response is also included in *Annex M*. While Council is prepared to accept the notion of forward funding of the northern collector road, it is not prepared to give any recognition in terms of reduced Section 94 payments when the land zoned Open Space 6(a) is dedicated to Council. In Council's letter in *Annex M* it states "The land to be purchased which is included in the contributions plan relates to creek frontage for provision of the coastal walk only on other land parcels within the Moonee development area." If the contributions plan needs to be amended to

provide for the acquisition of creek frontage land within the site which will accommodate the coastal walk then this should be undertaken to ensure that a consistent approach is adopted.

The Section 94 contribution condition which has been agreed to (as documented in the PPR) commits Rothwell Boys to a contribution in excess of \$12 million. This equates to \$23,107.43 per allotment which is high by non metropolitan coastal council standards. Rothwell Boys have agreed to accept this contribution on the understanding that some flexibility in terms of forward funding infrastructure (such as the northern collector road) will be available and that recognition of works in kind and the dedication of land for public purposes will be reflected in terms of credits being provided. In return, the local community will benefit by having millions of dollars injected into the local economy and important infrastructure provided ahead of schedule.

The Section 94 contributions which have been agreed to are generous and the proposal as documented in *Annex M* is both fair and reasonable. It will provide much needed infrastructure to match the growth being experienced in the Moonee DCP area. Either the approach outlined in *Annex M* should be adopted or a new Section 94 Contributions Plan should be prepared.

4.1.2 No Permanent Access

Status: Council believes owner's consent is required pursuant to Clause 8F of the EP&A Regulations as the land over which the northern collector road travels will provide permanent access to the Glades Estate.

Response: As the adjoining land is not part of the Part 3A application owner's consent is not required under the EP&A Regulations. Two of the adjoining land owners have signed agreements which will allow construction of the northern collector road over their land (see *Annex A*) and the remaining land owner is likely to sign in the coming weeks. Given

Given the uncertainty associated with the timing of the construction of the northern collector road, it is requested that the Part 3A approval for The Glades Estate be treated as a deferred commencement approval so that it does not take effect until the northern collector road (or suitable alternative access as approved by the Director General) is constructed and dedicated as a public road. This course of action is considered prudent and is supported by Council.

4.2 Department of Environment and Climate Change

The additional issues raised by DECC were;

4.2.1 Ratio of 1:10 for Certain Tree Planting

Status: The Statement of Commitments (SoC) is not specific about the extent of tree planting. DECC is seeking a change to the SoC so that for every tree removed (of a certain species) ten similar species trees have to be planted.

Response: This requirement can be included in a condition attached to an approval issued under Part 3A.

4.2.2 Need for Detailed Rehabilitation Management Plan

Status: DECC are concerned that the landscape management plan which has been prepared does not provide sufficient detail.

Response: The landscape management plan sets out the vegetation management principles which have been adopted for the estate and provides the appropriate level of detail to allow an informed assessment of the proposed development. If additional information is required prior to the construction stage, a requirement for a more detailed rehabilitation management plan can be included as a condition attached to an approval issued under Part 3A.

4.2.3 Offset Required for loss of Wallum Froglet Habitat

Status: As documented in the PPR there will be approximately 1.1 hectares of potential Wallum Froglet Foraging and Dispersal Habitat removed as a consequence of the project being constructed. DECC would like to see compensatory habitat provided to replace the habitat lost.

Response: The figure included in *Annex K* illustrates where an area of approximately 1.3 hectares of potential Wallum Froglet Foraging and Dispersal Habitat can be rehabilitated. The requirement to construct this compensatory habitat can be included as a condition attached to an approval under Part 3A. It should be noted that the seven point test concluded that removal of 18% of this potential habitat would not have a significant impact on this species.

4.2.4 Aboriginal Cultural Heritage

Status: DECC raises concerns that evidence of consultation with Aboriginal Groups has not been provided.

Response: An outline of the consultation process has been provided to DECC. Some of the documentation forwarded to the DoP in relation to the consultation process followed and other relevant documentation is provided in *Annex I*. No formal response was ever received from the respective Aboriginal Groups so further documentation cannot be provided.

4.3 Marine Parks Authority

The issue raised by **MPA** was;

4.3.1. *Sea Level Rise Assessment*

Status: MPA consider that the sea level rise could be 1 to 2 metres by 2100 and want to see this scenario addressed as well as an assessment of the impact on the buffer areas.

Response: DECC's Policy referred to in *Table 1* does not require this potential extent of sea level rise to be assessed. The assessment in *Annex C* therefore focuses on the worst case scenario as documented in DECC's Policy.

4.4 Rural Fire Service

The issue raised by **RFS** was;

4.4.1. *10 Metre APZ within Certain Lots*

Status: The RFS require a 10 metre APZ within Lot 475 and within Lots 484 - 498.

Response: This requirement can be accommodated in Lots 484 - 498, but may require Lot 475 to be consolidated with the proposed adjoining lot until the neighbouring landowner decides to develop this land for urban purposes.

4.5 Conclusions

We trust that the above documentation, supported by the Annexures to this submission, satisfactorily addresses all the issues / questions that have been raised and that the Department will now place its report before the Minister for Planning so that the Project Application can be approved. When issuing the approval we would ask that the maximum timeframe be stipulated for work to commence prior to the approval lapsing as given the depressed state of the property market, and the uncertain timing of the construction of the northern collector road, Rothwell Boys want to have sufficient time built into the approval for the market to recover so that the extensive investment in securing this approval can be realised.

We would appreciate the opportunity to review the draft conditions of approval prior to them being finalised and incorporated in your report to the Minister.

Should you require any additional copies of the plans for stamping, please do not hesitate to contact me on 4964 2150 and we will arrange for these to be forwarded to you.

Yours sincerely,

for Environmental Resources Management Australia Pty Ltd

A handwritten signature in black ink, appearing to read 'S. O'Connor', with a stylized flourish at the end.

Steve O'Connor
Principal

Encl.



ANNEXURES

ANNEX A	OWNERS AGREEMENTS
ANNEX B	BUSHFIRE RISK ASSESSMENT PLAN
ANNEX C	ADDITIONAL FLOOD MODELLING
ANNEX D	HIGH WATER TABLE
ANNEX E	OPEN SPACE DEDICATION
ANNEX F	UPDATED PROJECT PLAN
ANNEX G	SIMPLIFIED ECOLOGY FIGURE
ANNEX H	LANDSCAPE PLANS
ANNEX I	ABORIGINAL CONSULTATION
ANNEX J	88B INSTRUMENT
ANNEX K	ADDITIONAL WALLUM FROGLET HABITAT
ANNEX L	ENGINEERING DETAILS
ANNEX M	SECTION 94 CONTRIBUTIONS STAGING
ANNEX N	RFS REGULATION EXTRACT
ANNEX O	MOONEE DCP MAP 2