

20 August 2012

**DETERMINATION OF PROJECT APPLICATION 07_0089
FOR A PROPOSED TOURIST RESORT DEVELOPMENT
AT LOT '490' AT CASUARINA WAY, SOUTH KINGSCLIFF**

1. DELEGATION TO THE COMMISSION

The above project application lodged by Leighton Properties Pty Ltd has been referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011, as more than 25 submissions were received.

On 29 June 2012 the Commission received the Director-General's Environmental Assessment Report and documents associated with the application.

For this matter the Commission consists of Mr Paul Forward (chair) and Ms Abigail Goldberg.

2. PROJECT APPLICATION

The project application seeks approval for a tourist resort development with associated community facilities and vegetation rehabilitation works on land commonly referred to as 'Lot 490' alongside Casuarina Way at South Kingscliff. The site is bisected by Casuarina Way in a north-south direction.

On the eastern side of Casuarina Way a tourist resort is proposed with 180 units/bungalows, resort facilities including a conference facility and associated parking, and public car parking providing access to the beach.

On the western side of Casuarina Way the proponent proposes community facilities including pedestrian/cycle paths, 12 public car spaces, bicycle racks, picnic shelters, a tennis court, a half basketball court and pontoon access to Cudgen Creek.

Environmental rehabilitation works are proposed across the site, concentrated on the western side of Casuarina Way and on the eastern side of the site between the proposed tourist resort and the beach.

3. DEPARTMENT'S ASSESSMENT

The Department of Planning and Infrastructure (the Department) exhibited the Environmental Assessment (EA) between 21 April 2010 and 24 May 2010. The Department received 49 submissions on the proposal, being nine from public authorities and 40 from the general public and special interest groups.

Following exhibition of the EA, the proponent provided a response to the issues raised in submissions, and modified the scheme to that set out in the Preferred Project Report (PPR).

The Director-General's Environmental Assessment Report (the DG's report) considered the PPR scheme and the project's background, statutory context, submissions and relevant

environmental planning instruments. The DG's report also provided an assessment of the project in relation to the following key issues:

- Impact on biodiversity;
- Density of development and visual impact;
- Bushfire protection;
- Integrity of proposed tourist use;
- Maintenance and management obligations;
- Beach safety;
- Traffic and access;
- Infrastructure and developer contributions;
- Coastal flooding, climate change and coastal hazards;
- Cultural heritage;
- Hydrology; and
- Socio-economic impact.

Following its assessment, the Department has recommended approval of the project application subject to a number of modifications and conditions of consent. The Department's recommended modifications would reduce the number of units/bungalows from 180 down to 127. Density of the development is discussed in section 5.2 below.

The Commission's determination is of the PPR scheme, taking into consideration the DG's report and recommendation.

4. CONSULTATION

The Commission members carried out unaccompanied site visits on both 25 and 26 July 2012.

4.1 Tweed Shire Council

The Commission met with Tweed Shire Council on 25 July 2012, and the Council noted that it was generally happy with the Department's recommendations and proposed conditions of approval. The following matters were discussed with Council:

- upgrade and relocation of the water main;
- upgrade of Casuarina Way;
- provision of community facilities;
- foreshore parking
- proposed density of the development;
- condition to enforce use of the development as a tourist resort;
- determination of developer contributions;
- vegetation management plan and fire protection; and
- access for emergency vehicles.

Tweed Shire Council suggested changes to the Department's draft recommended conditions in an email dated 8 August 2012 to the Commission, which were duly considered.

4.2 Proponent – Leighton Properties Pty Ltd

The Commission met with the proponent on 25 July 2012, and the following was discussed:

- history of the site and the application;
- the proposed tourist use and how it was intended to operate;
- efforts to minimise impact on and to enhance biodiversity, with particular regard to the Banksia and Freshwater EECs;

- improved visual impact, including the presentation to Casuarina Way;
- the community facilities and benefits;
- bushfire, including protection measures and the conflict between bushfire and retention of vegetation;
- issues that would arise from the recommended occupancy restriction condition;
- issues that would arise from a reduction in the density of development;
- surf life saving and beach safety;
- the recommended road upgrade of Casuarina Way;
- the recommended upgrade and relocation of the water main alongside Casuarina Way; and
- the recommended S94 contributions.

4.3 Public Meeting

At the public meeting held on 26 July 2012 at the Kingscliff Beach Bowls Club, 26 people spoke with regard to the following summarised matters:

- history of the site, the application and other development sites in the area;
- the proposal's failure to meet community expectations regarding a low-impact tourist facility for the site;
- the proposal seeking to develop Crown Land which is public land and should remain undeveloped;
- lack of benefits for the local community and the potential for a financial burden;
- lack of transparency in the process including lack of access to any Crown lease;
- concern about the lack of, and form of, community consultation undertaken;
- concern about the scope, depth and accuracy of the environmental assessment;
- impact on flora and fauna including the Casuarinas, the Glossy Black Cockatoos, and the Curlew;
- potential pollution impacts on Cudgen Creek;
- need to retain the 30m buffer zone to Salt (to south of the site) as dense vegetation, in addition to the asset protection zone;
- the development would be a residential subdivision, not a tourist resort;
- need to differentiate the Tweed Coast from the Gold Coast, and the Tweed's drawcard for tourists is its natural undeveloped environment;
- existing tourist facilities are already not viable, and the proposal is not commercially viable;
- beach safety;
- the proposal will not provide a sustainable employment option, and unemployment a local issue; and
- need to apply the precautionary principle.

A number of documents were forwarded to the Commission after the public meeting, which were duly considered along with matters raised at the meeting itself.

4.4 Department of Planning and Infrastructure

The Department met with the Commission on 31 July 2012, where the following matters were discussed:

- history of the site and the application, including the Department's discussions with stakeholders;
- location of the community facilities;
- provision of beach-side public parking;
- beach safety;

- bushfire risk and the interrelationship between the asset protection zones and retained vegetation;
- rationale for recommended deletion of selected units/bungalows;
- impact on flora, fauna and the environment including the Glossy Black Cockatoo, Casuarinas and Cudgen Creek;
- the recommended restricted occupancy condition; and
- the Casuarina Way upgrade and the water main relocation.

Following this meeting with the Department, the project application was also discussed via telephone with the Crown Lands Division on 31 July 2012.

5. COMMISSION'S COMMENTS

The Commission has considered all the information before it including the matters raised in the public meeting, and it makes specific comment on the following:

5.1. Tourist Resort Use

From written and oral submissions it was evident to the Commission that many in the community have reservations about any redevelopment of the site as it is Crown Land, and that there is a long history in relation to both the site and this project application with concerns that community expectations are not being met through the proposal.

The site is in close proximity to Kingscliff and sits between the Salt development and Kingscliff. Historically, the vast majority of the site was subject to sand mining and since cessation of this activity the site has been revegetated with a mixture of mature trees and shrubs. Large parts of the site are weed infested.

The Draft Lot 490 Plan of Management (PoM) prepared by the then Department of Lands & Department of State and Regional Development in 2005 established broadbrush design and management principles for the site. The majority of the site is zoned as 2(f) Tourism Zone under the Tweed Local Environmental Plan 2000.

The Commission can only consider the planning merits of the project application before it for determination, and notes that should nothing progress on this site the opportunity for broader community benefits including environmental rehabilitation and community facilities including access, parking and sports/leisure facilities would not be realised. The site would also remain vulnerable to weed infestation and illegal dumping, and uncertainty over its future use would be unresolved.

The Commission, in considering the planning history and current zoning of the site, supports a tourist development with public benefits including environmental regeneration of a substantial portion of the site and provision of community facilities. The proposal would also generate jobs during construction and operation, and support tourism through the provision of a different type of accommodation offer to that in the site's vicinity.

The Commission is satisfied in principle that a tourist resort development of the nature proposed is suitable for the site, and its primary considerations then relate to minimising and mitigating detrimental impacts that may arise and their affect on the environment and community.

5.2. Density of Development

The Department's assessment concluded that the proposed number of units/bungalows on the site was excessive, and that a number of benefits would ensue from a reduction from 180 units/bungalows down to 127 units/bungalows.

The proponent does not support the deletion of the selected units/bungalows on the basis the selected deletions appear arbitrary, it could make the project unviable, and as modifications already suggested between the EA and the PPR would suffice in resolving the Department's concerns.

The Commission supports the Department's recommendation to reduce the number of units as it will provide a number of benefits as set out by the Department including:

- the provision of additional areas preserving mature Banksia/Tuckeroo vegetation within the resort;
- provision of a greater ability to comply with Asset Protection Zone (APZ) bushfire protection measures;
- increasing buffering of EECs within the resort;
- increasing opportunity to visually buffer the resort as viewed from Casuarina Way;
- to achieve greater consistency with the PoM vision and objectives and reduce the 'urbanised' appearance of the development; and
- increasing the permeable area reducing surface water flows towards Cudgen Creek.

The decrease in the number of units/bungalows would also reduce the number of parking spaces by 46 and reduce traffic generation, and it would provide space to accommodate relocation of the community facilities from the western side of Casuarina Way to the east of Casuarina Way as discussed in section 5.4 below.

The Commission notes that as a result of the reduction in the number of units, as well as other modifications to the project application, the proponent is required to prepare amended plans under Schedule 3, Condition B1 to the satisfaction of the Director-General.

5.3. Occupancy Condition

The Department has recommended imposition of draft Schedule 3, Condition E2, which restricts occupation of any villa or other accommodation on the site to a maximum of 42 consecutive days or in aggregate to no more than 150 days in any 12 month period. Should the site be subdivided in the future, a restrictive covenant to this effect should be imposed under s88b of the *Conveyancing Act 1919*.

The proponent has objected to the Department's recommendation, as it considers that applying this restriction would detrimentally impact on the ability of purchasers to obtain lending and affect the viability of the scheme. The proponent considers that as it is a Crown site which does not allow permanent residency this restriction would suffice, and it notes the development is for tourist units which would be too small and of a form that would not be attractive to long-term or permanent residency.

The Commission notes that the need to demonstrate and secure the development as non-permanent and short-stay tourist accommodation was set out in the Director General's Requirements dated 14 August 2008. Similar restrictions have also been imposed by the Department on other tourist developments. There appeared to be broad support at the public meeting for occupancy restrictions, if the development was to proceed.

In the Commission's view, to be consistent with the PoM objectives and to maintain the site's integrity of tourist use as permitted by the zoning, it is reasonable and necessary for a condition to be imposed restricting the occupancy. The number of continuous and aggregate days as set out by the Department is based on precedent, and is also considered reasonable.

5.4. Impact on Flora and Fauna and Relocation of Community Facilities

Section 5.1 of the DG's report assessed the proposal's impact on threatened species. From submissions made and from hearing speakers at the public meeting it was also clear that the proposal's impact on various aspects of the environment is a significant issue for the community. Key concerns related to loss of vegetation including Casuarinas as a food source for Glossy Black Cockatoos, impact on threatened flora and fauna species, and potential impact on water quality in Cudgen Creek.

The Commission considers that the proposal is a good opportunity to secure revegetation and environmental rehabilitation of a large portion of the site, particularly to the west of Casuarina Way and the sensitive dune and vegetation zone alongside the beach.

In the Commission's view, the reduction in the number of units/bungalows and parking provides an opportunity to relocate the proposed community facilities from the west of Casuarina Way to the east of this road. This would mean that the area west of Casuarina Way would remain intact other than revegetation/environmental rehabilitation and provision of a pedestrian path only.

Provision of the community facilities (i.e. tennis court and half basketball court) within the tourist resort area would also reduce potential impacts on water quality in Cudgen Creek, improve pedestrian safety by reducing the need to cross Casuarina Way, improve passive surveillance of the community facilities, and reduce the need for parking spaces. However, it is acknowledged that it is not possible to relocate some facilities proposed, and the Commission requires deletion of the pontoon access to Cudgen Creek.

Schedule 3, Conditions A1, B2 and B10 have been amended to reflect the Commission's decision. The modification set out in Schedule 3, Condition B2(6) makes specific reference to ensuring the community facilities are clearly separate to the tourist resort, and publically accessible.

5.5. Infrastructure Contributions

As set out in section 5.8 of the DG's report Casuarina Way is a two lane Council owned road currently finished with a rural standard of surface. Following consultation with Tweed Shire Council and based on the estimated traffic generation as set out in the submitted project, the Department recommended securing an upgrade of Casuarina Way.

Draft recommended Schedule 3, Condition B9 - 'Casuarina Way Design Standard' sets out the requirement for the proponent to upgrade the length of Casuarina Way bi-secting the site including:

- Resurfacing with asphaltic concrete (25mm);
- Providing a concrete edge strip to seal on both sides of Casuarina Way;
- Providing a grass lined table drain;
- Ensuring street lighting is compliant with Australian Standards for a rural road.

The proponent considers the Department's condition unnecessary as the road was built to rural standards when Salt was developed approximately 8-9 years ago, and that the

population/traffic generation increase that would arise from the proposed tourist resort would not be significant or provide a sufficient nexus to justify the level and cost of upgrade required. In addition, the proposal would provide \$5.2 million worth of rehabilitation and community works, in addition to s94 contributions (including \$935,305 for roads) and the requested relocation of a water main.

The Commission notes Section 94 contributions for roads are to be levied, and that the Department's recommendation would reduce the size of the development which would in turn reduce on-site parking and traffic generation. In the location of the development both sides of Casuarina Way would largely appear as vegetated, and a rural road is consistent with the location and surrounds.

The Commission concurs that the proponent is required to carry out road upgrade works, particularly in conjunction with new access points. However, the Commission has determined that the scope of the works should be reduced in that only the resort side of the road would be provided a concrete edge strip and Schedule 3, Condition B9 is amended accordingly.

The proponent raised objection to the Department's recommendation to relocate the water main at its expense (draft Schedule 3, Condition B18). The Department confirmed with the Council that the Department of Lands was aware of the relocation requirement since 2009. Any upgrade of the pipe size is reasonably at the Council's expense as the 250 diameter pipe is sufficient to service the proposed development. The Commission concurs with the Department's recommendation in this regard and recommends that the relocation of the water main be undertaken at the same time as the road upgrade, with the water main to be located in the Casuarina Way road reserve.

5.6. Beach Safety

Beach safety has been a concern raised in a number of submissions and at the public meeting. To the east of the site is some 400m of unpatrolled beach, and locals advise the water is highly hazardous in this location. However, this part of the beach is also popular for walkers, and dogs are permitted on the stretch of beach adjacent to the site, north of Salt.

The proposal incorporates a tourist resort with pedestrian paths to the beach, additional beach-side public parking, and additional beach-side facilities which would attract more people to this stretch of beach.

After discussions with Tweed Shire Council the Department recommendation is to permit 60 public beachside parking spaces. This is half the Council's DCP guidance of 120 spaces (being 300 per 1km), however the site is outside of the town centre and tourists staying in the resort would walk to the beach. On balance, the Commission concurs with provision of public beach parking as it allows local beach-goers good public access for a range of beach activities beyond swimming, and it would enhance passive surveillance of this stretch of beach.

Draft Schedule 3, Condition A7 makes reference to the most recent report prepared on behalf of the proponent, the *Kingscliff Resort Development Coastal Public Safety Risk Assessment and Treatment (September 2010)* and that these recommendations need to be addressed prior to issue of the first construction certificate.

The proponent's report makes a number of recommendations, including that based on a risk assessment that surf life-savers should patrol the beach adjacent to the proposed tourist resort seven days a week in peak summer, and during weekends and public holidays in the fringe period.

Due to the highly hazardous nature and the proposed tourist resort's close and integrated relationship with the beach, the Commission concurs with the report's recommendations and imposition of Schedule 3, Condition A7.

6 COMMISSION'S DETERMINATION

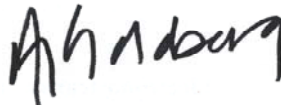
The Commission has considered the Director-General's Environmental Assessment Report and associated documents including submissions received, and heard representations from the parties outlined in the above report.

The Commission has approved the project application, subject to modifications to the project and amendment to conditions that address a number of issues including:

- Support for a reduction in density of the proposed development.
- Support for a condition limiting the duration of occupancy to reflect the tourist use.
- Recognition of beach safety issues.
- Retention of a greater area of undeveloped vegetation by the deletion of community facilities west of Casuarina Way, and selected relocation of these to east of Casuarina Way; and
- Reduction in the upgrade level of Casuarina Way.



Paul Forward (Chair)
PAC Member



Abigail Goldberg
PAC Member