Director Metropolitan and Regional Projects North
Department of Planning
GPO Box 39
SYDNEY NSW 2001

25 January 2012

Attention: Mr Brent Devine

Dear Mr Devine,

Re: MP08_0194 Exhibition of Stage 1 - Kings Forest,
Kingscliff, Tweed LGA

Thank you for your letter of 18 November 2011 seeking comment from the Department of Primary Industries (DPI) on the Environmental Assessment (EA) associated with the above major project. The Fisheries and Agriculture Divisions provide the following responses to issues within the EA.

Fisheries NSW
The objects of the Fisheries Management Act 1994 (FM Act) are to conserve fish stocks and key fish habitats and promote ecologically sustainable development, including the conservation of biological diversity. Secondary objects of the Act focus on the sustainable management of recreational and commercial fishing and aquaculture.

Fisheries NSW has reviewed the EA against the objects of the Act and relevant State policies. The key points of concern with the EA in relation to the conservation of key fish habitats are outlined below.

Fisheries NSW notes that the proposed maintenance (i.e. removal of snags, ongoing dredging and long term removal of marine vegetation) of sections of Blacks Creek, particularly within Cudgen Nature Reserve, is inconsistent with the objects of the FM Act and the DPI Policy and Guidelines – Aquatic Habitat Management and Fish Conservation (1999) and is therefore not supported.

DPI’s Policy and Guidelines for Aquatic Habitat Management and Fish Conservation (1999) provides guidance on how fish habitats are to be managed in order to ensure developments are sensitive to and mitigate impacts on the aquatic environment. The following policies are relevant to the Department of Planning and Infrastructure’s (DP&I) consideration of the Drainage Maintenance Impact Assessment and the Drainage Maintenance Management Plan as proposed within the EA.

Policy for dredging and reclamation:

“g) The reclamation or channelization of estuaries, creeks and streams must be avoided. In particular the character of deeper holes, snags and gravel bars at riffles (small rapids) must not be disturbed.”
Policy for minimising water pollution:

"h) Fisheries NSW opposes the spraying of waterways with pesticides to control aquatic plant growth where other viable alternatives exist (e.g. manual methods)."

Policy for snag (large woody debris) management:

"c) Fisheries NSW will not agree to snag management proposals aimed at improving or enhancing the hydraulic capacity of streams".

Blacks Creek is a natural waterway that has been highly modified in the past for agricultural drainage purposes. Blacks Creek is a tributary of Cudgen Creek and as such sections of Blacks Creek still contribute to the overall fish habitat values of the Cudgen Creek estuary and receiving waters and the surrounding Cudgen Nature Reserve.

While the EA seeks to assess the potential impacts of the drainage maintenance proposal on Blacks Creek’s hydrology, acid sulfate soils and weeds it fails to adequately assess the presence of aquatic flora and fauna, including, but not limited to, marine vegetation (e.g. saltmarsh, mangroves), fish species and communities and the likely impacts of the proposal on these aquatic ecosystems. Further, the proposal is likely to have an affect on the quantity and quality of stormwater and flood water discharges to the Cudgen Creek estuary and receiving waters and it is considered appropriate that this assessment be extended to assess the likely impacts on these waters.

Fisheries NSW notes, in particular, that the Director General’s Requirement’s for the EA include a requirement to: “address the measures to protect and manage riparian corridors and adjacent aquatic habitats in consideration of the Tweed Coast Estuaries Management Plan (TCEMP)”. While it is acknowledged that environmental buffers and management of those buffers is addressed, Fisheries NSW does not consider that the EA clearly demonstrates how the proposal meets the objectives and recommendations as outlined within the TCEMP.

DP&I is also advised that Fisheries NSW is currently investigating alleged unauthorised works within Blacks Creek associated with dredging and reclamation, harm to marine vegetation and blockage of fish passage under the FM Act, and that one of the outcomes of this investigation may be a requirement for remediation of the aquatic habitat values of sections of Blacks Creek.

Agricultural NSW

The completion of an Agricultural Buffer Zone Assessment as part of this EA is acknowledged. The agricultural lands adjoining the development site are State significant farmland that has the potential to support subtropical horticulture and therefore the mitigation of land use conflict at the urban/rural interface needs to be minimised. The conclusions and recommendations of this report appear unclear. The maps identify an agricultural buffer zone of 150m which is supported in principle. However the recommendation on Page 12 states that no agricultural buffers are proposed as the land use conflict is minimal. It is also unclear what the separation distances and appropriate buffer widths to accommodate site specific circumstances are, as mentioned on page 9. This needs further clarification.

The aims listed in page 5 of the Agricultural Buffer Zone Assessment state historical, current and potential future land use practices will be identified. This assessment has focused on the proposed short term land use of the subject site, being bulk earthworks and assessed the impact of agriculture on this land use. The future land use will be residential and therefore this section needs to highlight land use conflict relevant to this particular use. As part of this Land Use Conflict Risk Assessment (LUCRA) the impacts between both land uses needs to be measured, this includes the impact of the development on adjoining agricultural land use and the impact of agriculture on the development.
This assessment neglects to explain the purpose of the agricultural buffer and what land use will occur within this zone. A supplementary Agricultural Buffer Zone Assessment should be conducted which captures the issues highlighted above and fully examines all the potential land use conflict risks under residential land use, particularly for sub-section B, C, D, E and G. The LUCRA should be conducted in accordance with the DPI LUCRA guidelines which can be accessed at the following web address http://www.dpi.nsw.gov.au/environment/landuse-planning/agriculture/lucra. It is also noted that the last paragraph on page 10 states that a response from DPI regarding this buffer assessment had not yet been received as at June 2011, however our feedback was provided via email direct to the consultant on 10 April 2011 to a Mr Nathan Zurig.

If you require further information regarding the agriculture issues please contact Melissa Kahler on 6650 3125 or melissa.kahler@industry.nsw.gov.au.

Should you require further information or clarification on fisheries issues please contact Fisheries Conservation Manager, Patrick Dwyer, on (02) 6626 1397.

Yours sincerely

Ian Lyall
A/Director, Aquaculture, Conservation & Marine Parks