



**Environment,
Climate Change
& Water**

Your reference
Our reference
Contact

: MP9_0016
: FIL06/2306-07, DOC10/39353
: Biodiversity - Adrian Deville 66402514
Aboriginal Cultural Heritage - Glenda Roberts 66598225/66402509

Mr Alan Bright
Acting Director, Regional Projects
NSW Department of Planning
GPO Box 39
SYDNEY, NSW 2001



PCU015165

30 SEP 2010

Att: Enguang Lee

Dear Mr Bright

RE: MAJOR PROJECT MP09_0016 - MIXED USE TOURIST AND RESIDENTIAL AND DEVELOPMEN - TWEED COAST RD AND CYPRESS CRESCENT

I refer to the Environmental Assessment and accompanying information provided for the above proposal received by the Department of Environment, Climate Change and Water (DECCW) on 27 August 2010.

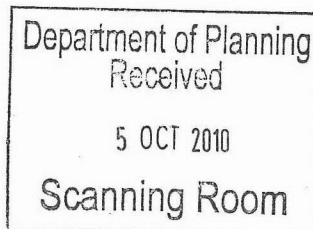
DECCW has reviewed the information provided in relation to Aboriginal Cultural Heritage and biodiversity conservation issues and has determined that it is able to support the proposal subject to the Department of Planning seeking the amendments to the draft Statement of Commitments, identified in Attachment 1. Attachment 2 contains DECCW's assessment of the proposal, including justification for the amendments.

It is expected that DECCW will be given an opportunity to review the draft Director-General's Environmental Assessment Report for this proposal. If the amendments to the draft Statement of Commitments are not included to the satisfaction of DECCW, we will be recommending that they are included as Conditions of Approval, if approval is recommended by the Department of Planning. It should be noted that these amendments are important for DECCW's ongoing support of the proposal.

Should there be any other matters, or should the Department of Planning be in possession of any further information of interest to the DECCW associated with the proposed development, please contact Adrian Deville on (02) 6640 2511.

Yours sincerely

KRISTER WAERN
A/Head, Biodiversity Management Unit North Coast
Environment Protection and Regulation



ATTACHMENT 1 - RECOMMENDED STATEMENTS OF COMMITMENT/CONDITIONS OF APPROVAL

DECCW recommends that the Department of Planning seek the following amendments to or additional statements of commitment (SoC) from the proponents, or apply the following as conditions of approval as appropriate, before the proposal is approved. Justification for these recommendations is found in Appendix 2.

Biodiversity Conservation Issues

The following refer to commitments in Section 7 of the draft SoC, contained in turn in Sections 2.3.3 and 2.6.4 of the *Flora and Fauna Assessment* (FFA) by James Warren and Associates (JWA), March 2010:

1. Reference to the “construction of one formalised path providing access to the beach” should be removed.
2. Wording of commitments relating to impact avoidance on Cudgen Nature Reserve should be strengthened from the optional ‘should’ to the mandatory ‘must’ in relation to measures concerning signage, brochures, access to vehicles and weeds.
3. Wording of commitments relating to impacts on vegetation should be strengthened from the optional ‘should’ to the mandatory ‘must’ regarding weed control, endemicity of landscape plantings.
4. Wording of commitments relating to mitigation of impacts on fauna should be strengthened from the optional ‘should’ to the mandatory ‘must’ in relation to measures to ensure endemicity of landscape plantings and the sourcing of landscape and landfill materials that prohibit the introduction of cane toads.
5. More clarity needs to be provided before final approval is issued in relation to intended mechanisms underlying the commitment concerning “appropriate disposal of rubbish and food scraps to reduce opportunities for non-native predators and disturbance adapted competitors”.

Aboriginal Cultural Heritage

The following are to be incorporated as additional statements of commitment by the proponents, or as conditions of approval, as appropriate:

1. The applicant shall continue to consult with in a meaningful way and involve all of the relevant Aboriginal representatives identified for the duration of the project in relation to the ongoing management of all Aboriginal cultural heritage matters. Evidence of all Aboriginal consultation must be collated and provided to the consent authority upon request.
2. An Aboriginal Cultural Heritage Education Program is to be developed for the induction of personnel and contractors involved in the construction activities on site. The program should be developed in collaboration with all of the Aboriginal community

ATTACHMENT 2 – DECCW ASSESSMENT OF THE PROPOSAL

BIODIVERSITY ISSUES

Introduction

This development directly adjoins Cudgen Nature Reserve (CNR) to the north. This proximity and some of the specific aspects of this proposal associated with such proximity are of significant concern to National Parks and Wildlife (NPWS) and DECCW, as outlined below.¹

Caravan APZ

Historical usage of up to 30m of the CNR for bushfire protection for the land to the south pre-dates gazettal of the CNR. However, NPWS has since actively been revising the CNR plan of management with the intention of reducing the APZ on the CNR to 20 meters to rehabilitate native vegetation from that point to the north and protect the reserve from ongoing edge effects. This intention is acknowledged in the Bushfire Threat Assessment Report by BCA Check Pty Ltd, which seeks to demonstrate the 'Exceptional Circumstances' that exist to maintain use of this 20m area for asset protection purposes. Should these exceptional circumstances be reasonably deemed to apply, DECCW concedes that the 20m APZ can be factored into calculations for bushfire protection for this development.

DECCW intends to continue to maintain the Caravan APZ to a width of 20m from the common boundary for the protection of Cudgen NR and existing developments east of the proposal. Notwithstanding these circumstances however, DECCW does not wish to be, or to be seen to be responsible for the provision of fire protection for the new development.

Regarding the statement that the developer will hold "negotiations with NPWS about the responsibility of a fuel management regime in the APZ within the Cudgen Nature Reserve", as stated, DECCW will maintain the Caravan APZ to a width of 20m once the new Cudgen NR Fire Management Strategy is approved and continue to implement fuel management practices in line with Cudgen NR Fire Management Strategy. It will be the proponent's responsibility to arrange any negotiations with NPWS regarding future management of fuel loads on CNR, bearing in mind the need to be prepared to consider additional cost imposts associated with any management regimes that are substantially different from that contained in the Cudgen NR Fire Management Strategy.

DECCW is also concerned that the proposal appears to include plans that involve establishment of mature shade trees within northern boundary of the proposal. Species selection will be vital as the vegetation could undermine the fire protection requirements of the development.

Landscaping Plan 4 includes a 1.8m concrete block fence with gates from each unit leaving the property directly into the Caravan APZ in Cudgen NR. The 1.8m fence is welcome as delineating the reserve and development property. The components of the concrete fence should be of suitably fire rated to add to the fire protection potential of the development.

Finally DECCW notes that the plan includes wooden decks on the northern margins of the development, which are potentially problematic from the point of view of cinders from any bushfire. DECCW recommends that this aspect of the proposal be reconsidered.

CNR and Beach Access Issues

The proposal cites the CNR Plan of Management (p17) which identifies "specific objectives for Cudgen Nature Reserve which includes providing minimum impact public access to designated areas for appropriate nature based recreation so that the natural and cultural values of the

¹ Note: in general, DECCW assesses development proposals with regard to its *Guidelines for developments adjoining Department of Environment and Climate Change land*, available from DECCW's website.

Reserve are not threatened.” It is then proposed as a form of “compensation” to NPWS, to include “one formalised path providing access to the beach in consultation with NPWS”. DECCW does not support creation of access through Cudgen Nature Reserve which would further necessitate beach access structures that are expensive to build and to maintain and which fragment dunal vegetation. DECCW notes that access to the beach from the development property can be readily gained from Cypress Crescent. In addition, DECCW is concerned that any access through its land will introduce domestic dogs (prohibited on Nature Reserves) and other potential sources of negative ecological impact. In any case, DECCW notes that concurrence with NPWS would be required, prior to such work being undertaken within Cudgen Nature Reserve. DECCW recommends that reference to the “construction of one formalised path providing access to the beach” be removed from the draft statements of commitment (via the JWA FFA report).

Impacts on Cudgen Nature Reserve

It was concluded that the proposed development may have a minor impact on the Cudgen Nature Reserve and some avoidance and mitigation strategies have been suggested, in compliance with the CNR Plan of Management. These are found within section 7 of the draft Statements of Commitment, in turn referring to Sections 2.3.3 and 2.6.4 of the *Flora and Fauna Assessment* (FFA) by James Warren and Associates (JWA), March 2010.

In terms of impact avoidance, DECCW recommends that wording of these commitments be altered from ‘should’ to ‘must’ in relation to measures concerning signage, brochures, access to vehicles and weeds.

In terms of mitigation measures that “should be considered” in accordance with the CNR PoM, the “implementation of weed control programs and regeneration work” is suggested. While this is generally supported, it is not clear where this will be undertaken, by whom, for what period and for what outcomes. DECCW recommends that more clarity be provided in relation to this proposal.

Impacts on Fauna

Avoidance or mitigation of impacts on fauna (p10 FFA, JWA) include suggestions regarding endemicity of landscape plantings and the sourcing of landscape and landfill materials to prohibit the introduction of cane toads.

These are supported, however DECCW recommends that the wording of these commitments be strengthened from the optional ‘should’ to the mandatory ‘must’ in relation to these and that landscape plantings are entirely (not mostly) native, as well as being of locally endemic provenance.

Finally, it is not clear how the “appropriate disposal of rubbish and food scraps to reduce opportunities for non-native predators and disturbance adapted competitors” will be ensured.

Impacts on Vegetation

Avoidance or mitigation of impacts on flora (p10) include suggestions regarding:

- weed control on the development site,
- landscape plantings that include a majority of native species that will provide forage habitat for nectarivorous and frugivorous birds and
- avoidance of use of known environmental weeds (e.g. Umbrella tree) in landscaped areas.

Again, these measures are supported, however DECCW recommends that the wording of these commitments be strengthened from the optional ‘should’ to the mandatory ‘must’ in relation to these and that landscape plantings are entirely (not mostly) native, as well as being of locally endemic provenance.

ABORIGINAL AND CULTURAL HERITAGE ISSUES

DECCW has reviewed the EA and the Cultural Heritage Assessment for this development proposal prepared by Everick Heritage Consultants P/L to assess the nature and scale of potential impacts on Aboriginal Cultural Heritage (ACH). It is noted that a consultation process has been undertaken by the proponent, with the EA indicating that five individuals and the Tweed Byron LALC were identified as interest holders in the project, however, there is only documentary evidence of project support received from the Tweed Byron LALC.

In addition, the EA states it will include the Tweed Byron LALC in ongoing consultation, but does not mention the other identified individuals. DECCW would expect that meaningful consultation includes equal and fair involvement of all identified stakeholders for the duration of a project, and be not limited only to the LALC. All future consultation should make reasonable efforts to include all of the following groups/individuals:

- Bo Lourey;
- John Cavanagh;
- Harry Boyd;
- Stella Whieldon, Githabul Ngarakwal Moieties;
- Jackie McDonald; and
- Tweed Byron LALC

DECCW acknowledges the inclusion of recommendations provided in relation to the ACH assessment however, it is strongly recommended that the above statements are reflected in any approval conditions for the project, as follows:

1. The applicant shall continue to consult with in a meaningful way and involve all of the relevant Aboriginal representatives identified for the duration of the project in relation to the ongoing management of all Aboriginal cultural heritage matters. Evidence of all Aboriginal consultation must be collated and provided to the consent authority upon request.
2. An Aboriginal Cultural Heritage Education Program is to be developed for the induction of personnel and contractors involved in the construction activities on site. The program should be developed in collaboration with all of the Aboriginal community.

DECCW otherwise has no additional concerns with the ACH values assessment provided.