

24 March 2021

Customer Service | 1300 292 872 | (02) 6670 2400

Industry Assessments
Department of Planning, Industry & Environment
Locked Bag 5022
PARRAMATTA NSW 2124

tsc@tweed.nsw.gov.au
www.tweed.nsw.gov.au

Fax (02) 6670 2429
PO Box 816
Murwillumbah NSW 2484

Please address all communications
to the General Manager

ABN: 90 178 732 496

Attention: Patrick Copas

Dear Sir / Madam

**Tweed Shire Council Submission - Australian Bay Lobster Producers (ABLP)
Response to Submissions DA 282-11-2004-i Mod 4**

I refer to your email of 8 March 2021 inviting Council to comment on the proponent's Response to Submissions (RTS) in relation to the proposed modification of DA 282-11-2004-I Mod 4 for the Australian Bay Lobster Facility at Lot 1 DP 1192506, 9484 Tweed Valley Way, Chinderah. Council officers have undertaken a review of the proponent's RTS and provide the following comments for the Department's consideration.

1. Component No 1: ABLP Site Earthworks

At present the Consent requires ABLP to construct a bund wall as a flood mitigation precaution for Stages 2 and 3. Component No 1 of MOD 4 seeks to modify the Consent to permit ABLP to continue to fill and raise the ABLP site (to approximately RL 4.0m AHD as has occurred for Stage 1) for Stages 2 and 3 in lieu of the bund, as the method of flood mitigation. It is noted that the importation of acid sulfate soils (ASS) or potential acid sulfate soils (PASS) is no longer being pursued by ABLP. The proposal to fill the site with Excavated Natural Material (ENM), as well as the current approval for Virgin Excavated Natural Material (VENM) would require modification to existing Condition 4.39. The proponent's proposed modification of Condition 4.39 is noted as follows:

4.39 Any fill material brought to site must be Virgin Excavated Natural Material (VENM) and Excavated Natural Material (ENM).

1.1 Fill

With regard to the proposed importation of ENM, the proponent has stated that they "...will be imported in accordance with the EPA Resource Recovery Order and Exemption".

Council raises no objections to the importation of ENM pursuant to EPA resource recovery order and exemption. No objections are raised to the proposed modification of Condition 4.39.

In addition, a new condition is recommended with regard to the proposed importation of fill:

The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the

NSW Environment Protection Authority “Waste Classification Guidelines”.

The importation of waste to the site is restricted to the following:

- a. Virgin excavated natural material (as defined in Schedule 1 of the Protection of the Environment Operations (POEO) Act);***
- b. Any other waste-derived material subject to a resource recovery exemption under Part 9 Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.***

The exportation of waste must be transported to a licenced waste facility or an approved site subject to a resource recovery order and exemption.

Any virgin excavated natural material or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material’s compliance and must be provided to the Principal Certifying Authority or Council on request.

1.2 Dust Impact

As previously noted by Council, the proposed filling of the site will result in a significant increase in the volume of fill being transported to the site. Whilst it is noted that the proponent states that existing air quality and dust management methods would be employed, it is considered appropriate that a review of dust control assessment be undertaken by the proponent.

It is noted that dust impact was considered in the original assessment and applicable conditions applied: 4.48, 4.49, 4.50, 8.2 (CMP). Part of the proponent’s review should consider whether the existing conditions are still suitable or need amendment to address the proposed additional fill.

It is also recommended that the CEMP be updated with specific details of dust monitoring and management methods.

1.3 Flooding Assessment

The proponent proposes to amend the currently approved perimeter flood bund to a conventional fill pad. Approximately 2 million cubic metres of fill is required and it is proposed to be imported on an opportunistic basis as fill becomes available.

As noted previously, from a flooding perspective, there is very little difference in these two approaches. The Tweed Valley Floodplain Risk Management Study investigated the effects of cumulative development scenarios including bunding of the subject site to 1% AEP level. This scenario was deemed to have negligible effect of flooding. Therefore, the proposed filling is acceptable.

1.4 Erosion & Sediment Control

Council’s previous comments with regard to erosion and sediment control remain unchanged, which have been noted by the proponent.

1.5 Traffic

It is noted that the proponent has proposed to delete a number of obsolete / unnecessary access / traffic conditions (**Conditions 4.29, 4.31, 4.33, 4.36 and 4.37**) to reflect the upgrade of the interchange and roundabout.

No objections are raised with regard to the deletion of these conditions, noting that Transport for NSW (TfNSW) is the appropriate authority in this regard.

The proponent's request for further discussion with TfNSW and the Department in terms of amending the access licence is also noted.

1.6 Additional Amendments under Component 1

It is noted that Council's previous comments with regard to **Conditions 4.10, 4.13, 4.15 and 4.16** have been suitably addressed by the proponent. No objections are raised to the proposed modification of the following conditions:

4.10 The Applicant must design, construct, operate and maintain all stormwater infrastructure to direct all stormwater runoff to the site's ~~berrow pit~~stormwater retention dam prior to discharge from the site. Such stormwater infrastructure must be capable of collecting, containing and treating all stormwater for at least a one in three month ARI storm peak flow and must be constructed prior to the commencement of any building work.

4.13 The Applicant must design, construct, operate and manage the development to ensure that the flood protection measures for the ~~buildings on the main aquaculture development site~~ABLP Site (including the perimeter walls) are capable of excluding up to and including a 1 in 100 year ARI flood event. In this regard, ~~the land is to be filled and raised, or~~ an impervious perimeter bund ~~is to be constructed~~ around the ~~main aquaculture development~~ABLP Site, ~~site is to be constructed to a~~ minimum height of 4.0m AHD.

Note: For the purposes of this condition, "main aquaculture development site" refers to the area of approximately 45 hectares on which Farms 1 to 3 will be located on part Lot 1 DP267742 and part Lot 706 DP1000580.

4.15 The area inside the perimeter bund is to be ~~protected by appropriate floodgates or flaps on stormwater conduits that penetrate the bund wall~~filled and raised to a minimum height of 4.0m AHD.

2. Component No 2: Approved Operations

Component No 2 of Mod 4 seeks to expand the permitted operations at the ABLP site to include aquaculture operations that are complimentary to the cultivation of bay lobster. To achieve this, the proponent is requesting to update the wording in Schedule 1 of the Consent along with an amendment to Condition 1.3 (in terms of restrictions), and a new Condition 1.3a to provide a mechanism for NSW DPI Fisheries to approve new species to the cultivated species list.

1.3 The development is restricted to the commercial tank based cultivation and research of marine species, including *Thenus* spp., and the processing, packaging, storage, holding and distribution of commercial quantities of marine species.

1.3a The Applicant must not vary the cultivated species at the ABLP Site, namely *Thenus* spp., unless approved by NSW Department of Primary Industries.

Note: *Thenus* spp. are commonly known as Moreton Bay Bugs, Slipper Lobsters and Bay Lobsters (the latter being the internationally recognised name for these species).

Council has no objection to the proposed amendments / new condition with regard to Component No 2, noting that the Department of Primary Industries (Fisheries) is the appropriate authority in this regard.

3. Component No 3: Emergency Accommodation / Research Accommodation

Component No 3 of Mod 4 relates to the proposed inclusion of short term Emergency Accommodation on the subject site. The proponent states that the short term accommodation on the ABLP site would be for use in emergency situations "...at times of unavoidable natural and human risks" to ensure the health and safety of personnel on site.

The proposal incorporates three 'Emergency Relocatable Structures' in Stage 1 (currently on site) and an additional six structures in Stages 2 and 3.

3.1 BCA Assessment

In response to Council's previous comments, the proponent's RTS incorporated a BCA compliance report which identifies non-compliances / lack of certification in respect of clauses D2.14, D2.15, F1.1, F1.7, F1.03, Part E2 and Part D3 of the BCA Volume 1.

Subject to a satisfactory response to the flooding concerns raised below, retention of the Emergency Relocatable Structures would also be subject to a Building Information Certificate, Structural Engineers Certificate, certification of BCA compliance and lodgement of a sewer application in respect of water supply and sanitary drainage to the three existing structures. Appropriate conditions are recommended below, in the event that Council's flooding concerns are adequately addressed:

- # A Building Information Certificate application in respect of the Three Existing Emergency Relocatable Staff Accommodation - Class 3 buildings which were erected without prior approval is to be lodged with Tweed Shire Council together with a report certifying structural adequacy from a practising structural engineer, a BCA report demonstrating compliance with the deemed to satisfy requirements or the performance requirements of the BCA.**
- # An application under Section 68 of the Local Government Act is to be lodged with Tweed Shire Council in respect of water and sewerage works associated with the Three Existing Emergency Relocatable Staff Accommodation - Class 3 buildings which were erected without prior approval. This application is to include works as constructed plans and certification in respect of AS 3500.**
- # Prior to the issue of any occupation certificate in respect of the three existing Emergency Relocatable Staff Accommodation - Class 3 buildings which were erected without prior approval a Building Information Certificate is to be obtained from Tweed Shire Council for these structures.**
- # Prior to the issue of any occupation certificate a final inspection report is to be obtained from Tweed Shire Council in relation to**

the plumbing and drainage works for the three existing Emergency Relocatable Staff Accommodation - Class 3 buildings which were erected without prior approval.

- # *A person must not commence occupation or use of Three Existing Emergency Relocatable Staff Accommodation - Class 3 buildings which were erected without prior approval (within the meaning of Section 6.9 and 6.10 unless an occupation certificate has been issued in relation to these buildings (maximum 25 penalty units).***
- # *An occupation certificate is not to be issued until a fire safety certificate has been issued for the Three Existing Emergency Relocatable Staff Accommodation - Class 3 buildings which were erected without prior approval to the effect that each required essential fire safety measure has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing to at least the standard as required by the BCA.***

It is also questioned as to whether the inclusion of short term accommodation on the site meets the provisions of s4.55(2) of the EP&A Act, in that the proposed modification to include Emergency Accommodation is not substantially the same as that originally approved.

3.2 Flooding Assessment

As noted previously, the subject site has the following flood levels:

Design Flood Level = 3.3m AHD

Minimum Habitable Floor Level = 3.8m AHD

PMF Level = 8.3m AHD

The proponent has prepared a 'Flood Response Assessment Plan' (FRAP) in an attempt to address Council's previous comments. However, the document provided is considered to be a *structure and set of procedures for emergency management*, or a 'Flood Action Plan', rather than a FRAP as intended by DCP-A3 *Development of Flood Liable Land*.

The proponent claims that the emergency accommodation is only intended to be used for flood <4.0m AHD at the site and that the facility will be evacuated in any events greater than this. However, this is based on an assumption that accurate forewarning of an approaching extreme event will be made at a time when evacuation routes are open. This is considered unlikely. A more realistic scenario would be that the extreme nature of a flood only becomes apparent during an unfolding event. In this case workers, who expected a manageable <4.0m AHD flood, would be stranded at the site and subject to the effects of the extreme event. These workers should be provided with a suitable refuge to guard against the risk of loss of their lives.

The applicants FRAP does not address the residual risk to life outlined in Council's previous comments. Evacuation from the site is unlikely during extreme flood events and therefore workers sheltering at the site should be provided with a suitable flood refuge to protect against loss of life. It is recommended the emergency workers accommodation be required to incorporate a PMF refuge in accordance with DCP-A3.

3.3 Non-Emergency Research Activities

It is noted that the proponent's RTS has introduced an additional use of the proposed Emergency Accommodation on site; this being accommodation for research activities by internal staff or research institutions, not exceeding 30 nights per annum.

The significant flooding concerns raised above also apply to the use of the Emergency Accommodation for research activities. As such, unless the proponent can adequately address DCP A3 provisions (in terms of providing PMF Refuge), the proposed use of the Emergency Accommodation for research activities is not supported.

In summary, it is considered that further information / detail is required from the proponent in order to adequately address the abovementioned matters, particularly with regard to flooding concerns. Until such time that further detail is provided for consideration, **Component 3 of Mod 4 is not supported by Council.**

4. Component No 4: Wastewater Discharge

The proponent's RTS has noted Council's previous concerns with the proposed alignment of wastewater discharge with the EPA licence and has formally withdrawn this component of Mod 4.

As an alternative, the proponent has proposed alternative wording of Condition 4.4, as a means for Council to approve a greater volume of effluent discharge from the ABLP site in the future:

- 4.4 ⁸For the discharge point(s) identified under condition 4.2, the volume of effluent discharged must not exceed a total of 600 kilolitres (kL) per day for each stage of the development unless a greater volume is approved by the Council.

Note: At full-scale operation (all three stages operating), the Applicant is permitted to discharge a combined total from all three farms of 1800 kL per day or a greater volume if approved by the Council.

Of particular note, since Council's initial advice, Council's Water and Wastewater Business and Assets Unit have been in discussions with the proponent regarding the potential upgrade of the Kingscliff Wastewater Treatment Plant effluent outfall main.

Whilst no agreements have been reached at present, these discussions include a potential cost sharing arrangement for the upgrade of the existing effluent outfall main and/or the proponent bearing the cost of "bringing forward" infrastructure prior to its planned upgrade.

Of particular relevance to these discussions are the proponent's proposed amendments to Condition 4.4, which are not accepted by Council. However, a revised amendment to Condition 4.4 is recommended by Council, as noted below (Council's amendment shown in blue, bold and underlined):

- 4.4 For the discharge point(s) identified under condition 4.2, the volume of effluent discharged must not exceed a total of 600 kilolitres (kL) per day for each stage of the development unless a greater volume is approved by Council. **This approval will require a cost sharing arrangement for the**

upgrade of the existing effluent outfall main and bringing forward its future duplication prior to its planned upgrade.

Note: At full-scale operation (all three stages operating), the Applicant is permitted to discharge a combined total from all three farms of 1800 kL per day, unless a greater volume is approved by Council. This approval from Council will require a cost sharing arrangement for the upgrade of the existing effluent outfall main and bringing forward its future duplication prior to its planned upgrade. A cost sharing arrangement will need to be in place prior to Council approving any total discharge volume greater than 1800 kL/day.

5. Component No 5: Seawater Access

It is noted that the proponent is no longer seeking approval to access Jack Evans Boat Harbour for the purposes of accessing fresh seawater for operations.

The proponent's RTS acknowledges the previous concerns of Council with regard to a proposal for 24 hr collection of seawater from the Tugun Desalination Plant (TDP) for the ABLP operations.

As an alternative, the proponent is now proposing an extension of the existing timeframe to operate seawater haulage vehicles by two hours during weekdays (i.e. 0600 to 1900 as opposed to the existing 0700 to 1800). The additional two hours during weekdays will allow ABLP to maximise their full pumping schedule at the TDP and will not apply to the construction vehicles associated with the proposed filling of the site.

In this regard, the proponent has proposed the following amendment to Conditions 4.51 and new Condition 4.51b:

4.51 Activities associated with construction of the development, including-excluding activities associated with MOD 2 (i.e. the arrival and departure of vehicles delivering or removing seawater-and-wastewater), must only be carried out between the hours of:

- a) 0700 and 1800 AEST, Monday to Friday;
- b) 0800 and 1300 on Saturdays; and
- c) at no time on a Sunday or Public Holiday.

4.51b Activities associated with the arrival and departure of vehicles delivering seawater must only be carried out between the hours of:

- a) 0600 and 1900 AEST, Monday to Friday;
- b) 0800 and 1300 AEST on Saturdays; and
- c) at no time on a Sunday or Public Holiday.

From a noise perspective, the proposed additional two hours during weekdays for the delivery of seawater are considered to be acceptable. Accordingly, no objections are raised to the proposed amendment of Condition 4.51 or new Condition 4.51b, with the exception of including "AEST" for the approved hours on a Saturday, to be consistent with all other hours of operation.

Component 5 also notes that "...ABLP requests further discussion with DPIE concerning continued access to the TDP following the construction of ABLP's seawater intake pipeline". Whilst it is recognised that the proponent is trying to ensure seawater reserve levels are maintained, no detail has been provided with

regard to the amendment of any particular condition or new condition in this regard.

6. **Component No 6: Land Description**

6.1 Land Description

It is noted that the proponent has provided a list of the applicable parcels of land associated with Mod 4.

6.2 Easement Negotiations

Easement negotiations with ABLP are continuing.

6.3 Water / Wastewater Assessment

Council's previous comments recommended the following new condition:

*The proposed seawater intake pipeline shall have a minimum separation distance of one meter from the collar of the trunk water main and/ or sewer rising main.*

In response to the above recommendation, the proponent's RTS incorporated a proposed amendment to Council's proposed new condition to allow flexibility in future discussion about the pipeline alignment, by way of allowing a separation less than 1m, "if approved by Council".

Council's Engineering Unit has been liaising with the proponent with regard to the s138 application currently being assessed by Council for the pipeline located within Council's road reserve. It is noted that the minimum 1m separation has not been encroached.

Accordingly, it is considered appropriate that the 1m separation be maintained to protect Council's water / sewer mains during construction and provide sufficient space for maintenance. As such, the proponent's amendment to Council's recommended new condition is not supported and Council's initial recommendation noted above remains unchanged.

6.3 Contaminated Land

Council's previous comments noted that the pipeline section proposed for realignment is approximately 50m north of the Cudgen (Old) cattle dip site, which is recorded as remediated. However, contamination had not been addressed by the proponent and accordingly was requested to address the DIPMAC due diligence questions.

The proponent's RTS has sought clarification as to the extent of Council's request with respect to further DIPMAC due diligence.

Any development within a 200m radius of a cattle dip site is constrained until human and health risks have been assessed and any rehabilitation is undertaken. It does not appear that any previous assessment of the cattle dip site has been undertaken by the proponent. An assessment should be undertaken in accordance with the Cattle Tick Dip Site Management Committee (DIPMAC) guidelines and relevant NSW Environment Protection Authority (EPA) contaminated land guidelines. The assessment may or may not include soil sampling.

Comments on the various amendments that have not been discussed above have been provided below:

- Schedule 1 - Proposed Activities:

- construction of a wastewater pipeline from the ABLP site to the Kingscliff ~~Sewage-Wastewater~~ Treatment Plant;

Wastewater associated with the processing operations of the ABLP site does not connect directly to Council's Wastewater Treatment Plant. As such, Council recommends the following additional wording (shown in blue, bold and underlined):

- Construction of a wastewater pipeline from the ABLP site to the outfall pipeline of the Kingscliff ~~Wastewater~~ Treatment Plant;

- Schedule 2 – Stage 1a works:

Stage 1a works

The construction and operation of Farm 1 located in the north-west section, occupying an area of approximately ~~45~~ 25 hectares and including hatchery, ~~nursery~~ and growout facilities, car parking plus processing building, workshop facilities, administration building, ~~plant room~~, seawater and freshwater storage tanks, access road upgrade, ~~site accommodation~~, the supply of seawater daily from the Gold Coast Desalination Plant, construction and operation of the ~~wastewater discharge pipeline to the Kingscliff Wastewater Treatment Works~~, the construction and operation of the seawater intake pipeline and pump house at Crown Reserve 1001008 to supply all seawater requirements for ~~operations~~; and ~~activity~~ as described under DA-282-11-2004-i, and all additional information submitted in support of the application ~~associated with the construction and operation of Farm 1~~.

~~The earthworks, inclusive of filling and raising the land and construction of the bund wall, and landscaping for the ABLP Site, and MOD 1, including supply of up to 40,000 litres of seawater daily from the Tugun Desalination Plant, and direct discharge of up to 40,000 litres of wastewater to the drainage channel/Tweed River at Chinderah until 21 October 2013~~

Similar to the comments above, wastewater associated with the processing operations of the ABLP site does not connect directly to Council's Wastewater Treatment Plant. Accordingly, Council recommends the following additional wording (shown in blue, bold and underlined):

The construction and operation of Farm 1 located in the north-west section, occupying an area of approximately 25 hectares and including hatchery, ~~nursery~~ and growout facilities, car parking plus processing building, workshop facilities, administration building, ~~plant room~~, seawater and freshwater storage tanks, access road upgrade, ~~site accommodation~~, the supply of seawater daily from the Gold Coast Desalination Plant, construction and operation of the wastewater discharge pipeline to the outfall pipeline of the Kingscliff Wastewater Treatment Plant Works, the construction and operation of the seawater intake pipeline and pump house at Crown Reserve 1001008 to supply all seawater requirements for operations; and ~~activity~~ as described under DA-282-11-2004-i, and all additional information submitted in support of the application ~~associated with the construction and operation of Farm 1~~.

~~The earthworks, inclusive of filling and raising the land and construction of the bund wall, and landscaping for the ABLP Site.~~

It should be noted that if the proponent fails to satisfy Council's flooding concerns in Component No 3, the reference to 'site accommodation' will need to be removed from the proposed Stage 1 works.

- Schedule 2 – Stage 2 works:

Stage 2 works

Construction and operation of Farm 2 located immediately east of Stage 1, occupying an area of approximately ~~44-10~~ hectares and including hatchery, ~~nursery~~ and growout facilities, carparking, ~~site accommodation, processing building, workshop facilities~~ and water storage, ~~in addition to any other buildings as~~ described under DA-282-11-2004-i, and all additional information submitted in support of the application, as well as discharge of wastewater ~~to via~~ pipeline ~~to the Kingscliff Wastewater Treatment Plant~~, and ~~construction~~ operation of the ~~seawater intake~~ pipeline and pump house at ~~Dreamtime-Kingscliff~~ Beach to supply all seawater needs ~~for the operation of Farm 2.~~

Again, Council recommends an alternate amendment to ensure that the correct reference is made, as follows (shown in blue, bold and underlined):

Construction and operation of Farm 2 located immediately east of Stage 1, occupying an area of approximately 10 hectares and including hatchery, ~~nursery~~ and growout facilities, carparking, ~~site accommodation, processing building, workshop facilities~~ and water storage, ~~in addition to any other buildings~~ described under DA-282-11-2004-i, and all additional information submitted in support of the application, as well as discharge of wastewater via pipeline **to the outfall pipeline of the Kingscliff Wastewater Treatment Plant**, and operation of the ~~seawater intake~~ pipeline and pump house at ~~Kingscliff~~ Beach to supply all seawater needs ~~for the operation of Farm 2.~~

As noted above, if the proponent fails to satisfy Council's flooding concerns in Component No 3, the reference to 'site accommodation' will need to be removed from the proposed Stage 2 works.

- Schedule 2 – Stage 3 works:

Stage 3 works

~~construction~~ **Construction** and operation of Farm 3 located immediately south of Farm 1 and occupying an area of approximately ~~45-10~~ hectares and including hatchery, ~~nursery~~ and growout facilities, ~~site accommodation, processing building, workshop facilities~~, carparking and water storage ~~in addition to any other buildings as~~ described under DA-282-11-2004-i, and all additional information submitted in support of the application, ~~as well as discharge of wastewater via pipeline to the Kingscliff Wastewater Treatment Plant and operation of the seawater intake pipeline and pump house at Kingscliff Beach to supply all seawater needs for the operation of Farm 3.~~

Similarly, Council recommends an alternate amendment to ensure that the correct reference is made, as follows (shown in blue, bold and underlined):

Construction and operation of Farm 3 located immediately south of Farm 1 and occupying an area of approximately 10 hectares and including hatchery, ~~nursery~~ and growout facilities, ~~site accommodation, processing building, workshop facilities~~, carparking and water storage ~~in addition to any other buildings~~ as described

under DA-282-11-2004-i, and all additional information submitted in support of the application, **as well as discharge of wastewater via pipeline to the outfall pipeline of the Kingscliff Wastewater Treatment Plant and operation of the seawater intake pipeline and pump house at Kingscliff Beach to supply all seawater needs for the operation of Farm 3.**

As noted above, if the proponent fails to satisfy Council's flooding concerns in Component No 3, the reference to 'site accommodation' will need to be removed from the proposed Stage 3 works.

- *Condition 4.1a:*

~~4.1a—
a) be disposed of at the temporary discharge location (shown at Appendix B) and only until 21st October 2013;
b) be disposed of in a manner that does not require or cause the removal of vegetation in order to enable access to the drainage channel;
c) 4.1a The Applicant shall dispose of wastewater via the Applicant's wastewater pipeline connected to the Kingscliff Wastewater Treatment Works to the satisfaction of the Director-General and be managed in accordance with the EPL (Licence 12947) for the site which details the wastewater sampling, testing and discharge limits;
d) be transported in accordance with Clause 49 of the Protection of the Environment Operations Waste Regulation 2005;
e) be discharged in a manner that does not mobilise the sediments of the Tweed River or the drainage channel; and
f) be discharged only during the hours detailed in condition 4.5.1 and on the outgoing tide.~~

- *Condition 4.28:*

~~4.28 The carpark-Carpark designs~~ must comply with AS2890.1 1993 Off-Street Car Parking and Council's DCP2 Site Access and Parking Code in terms of manoeuvrability, disabled access and visitor/ delivery car spaces.

Mod 4 proposes an amendment to Condition 4.28 to accommodate the growing demands of the development. Whilst no objections are raised with regard to the amendment of Condition 4.28 (subject to the correct reference to DCP A2), as stated in Component No 7, the future uses of Stages 2 and 3 have not been formally assessed and should be subject to further consent.

- *Condition 4.66*

~~4.66 During normal operation, the seawater intake pipeline and associated pumping facility-well at Dreamtime-Kingscliff Beach must be sited below the substrate surface. This requirement does not extend to the pump station comprising the electrical control componentry for the pumping well which may be located above the substrate surface, and must not be visible at any point.~~

Note: It is recognised that minimising the visual impact of the pipeline and pumping facility is of key importance, however, it is noted that at some times, particularly during maintenance periods, parts of the pipeline or pumping station may be visible.

No objection is raised to the proposed modification of Condition 4.66, subject to compliance with any Crown licence or requirements of Council (as Managers of the Crown Reserve).

- *Condition 6.6*

~~Road Contributions~~

~~6.6 Prior to the commencement of operation of Stage 1b or issue of any Interim or Final Occupation Certificate (whichever comes first), the Applicant shall pay contributions to a maximum amount of \$4,704 in accordance with the Tweed Road Contributions Plan dated January 2009, in consultation with Council, and to the satisfaction of the Director General.~~

~~Note: This contribution amount shall remain fixed for a period of 12 months from the date of approval of MOD 2 and thereafter is subject to the rates applicable in the version/edition of the relevant Section 94 Plan current at the time of payment.~~

No objections are raised to the proposed deletion of the road contributions, noting that they have been paid by the proponent in 2013.

- *Condition 7.5*

7.5 Prior to the commencement of Stage 1a, the Applicant shall place signs at the access driveway to the temporary wastewater discharge site (shown at Appendix B) which identifies the site and general activities (i.e. temporary wastewater disposal). The sign shall also include a contact phone number for any community complaints or enquiries.

No objection is raised to the proposed modification of Condition 7.5, noting that wastewater discharge was temporary and no longer relevant given there is now a permanent discharge of wastewater via pipeline to the outfall pipeline of the Kingscliff Wastewater Treatment Plant.

- *Condition 8.5a – Process and Effluent Water Management*

process and effluent water management

- i) details of the location, size, storage capacity etc. of all rainwater storage tanks, including methods for preventing contamination;
- ii) identification of all sources of nutrients and suspended solids brought into the tanks during operation of the development;
- iii) details of all process water and effluent water treatment systems for the development, including discharge points, effluent treatment ponds, procedures for maintenance of the systems and water quality monitoring regimes;
- iv) specification of the water quality criteria as it applies to a particular activity;
- v) procedures to be undertaken to monitor, manage and minimise the load of nutrients and suspended solids in the water column, particularly prior to discharge of the effluent water (for example, through feeding rates, aeration of tanks, use of denitrification units etc.);
- vi) measures to consider minimising the consumption of water through water capture, reuse and recycling;
- vii) details of how effluent discharged from the site will be managed such that when mixed with water at the ~~Sewage-Kingscliff Wastewater~~ Treatment Plant it is capable of achieving salinity levels consistent with the ANZECC Guidelines for Fresh and Marine Water Quality (2000);

As previously noted, wastewater associated with the processing operations of the ABLP site does not connect directly to Council's Wastewater Treatment Plant. As such, Council recommends the following additional wording to part vii of the condition (shown in blue, bold and underlined):

- Details of how effluent discharged from the site will be managed such that when mixed with water at the **outfall pipeline of the Kingscliff Wastewater** Treatment Plant it is capable of achieving salinity levels consistent with the ANZECC Guidelines for Fresh and Marine Water Quality (2000);

9. **Component No 9: Pipeline Construction Hours**

The proponent has introduced a new Component No 9, which is intended to provide Council or the Department with a means to extend the permitted hours for construction activities associated with the construction of the pipeline.

The proponent wishes to provide a mechanism that will “...*limit construction risk for certain elements of the pipeline construction*” which will be horizontal directional drilling. The risk is related to the potential for hole collapse during drilling given the length of the drill, the depth of the drill and the soft sandy substrate conditions, particularly when drilling needs to stop due to limited hours of construction.

The proponent is proposing a new Condition 4.51a which will permit extended constructions hours as follows:

4.51a Activities associated with the construction or maintenance of the pipeline may be carried out during hours outside of the hours detailed in condition 4.51 with the prior written approval of the Council or the Department.

It is also noted that Condition 4.52 is proposed to be amended as follows:

4.52 ²⁴All construction works undertaken on site (including pipeline and pumping station construction, ~~excavation of the borrow pit~~ and placement of fill) must be undertaken in accordance with the EPA's *Environmental Noise Control Manual* and must not unless otherwise approved by the Council or Department, give rise to an 'offensive noise' as defined under the *Protection of the Environment Operations Act 1997* and accompanying Regulations.

Effectively, the proponent is proposing to undertake the pipeline construction seven (7) days a week in order to minimise the risk of hole collapse and reduce the construction time overall. Whilst the increase in construction hours (to include Saturdays and Sundays) may result in potential amenity impact upon the adjoining residents, it is likely to ultimately reduce the overall construction time which is a positive outcome.

Council raises no objections to the proposed new condition 4.51a, noting that the proponent is currently negotiating a similar condition for the s138 application which is currently being assessed by Council for the proposed horizontal directional drilling within the road reserve.

No objection is raised to the proposed modification of Condition 4.52, noting that the proponent has identified in their s138 application that they are already undertaking noise sampling of background levels, which would be forwarded to Council as a requirement of any s138 approval.

With regard to both Conditions 4.51a and 4.52, it is considered that as part of any *prior approval* from Council regarding extended construction hours or lifting of noise restrictions, Council would likely request that the proponent notify surrounding residents beforehand.

Of relevance in terms of supporting extended construction hours, it is noted that the *Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020* is still in place and allows construction sites to operate on weekends and public holidays.

10. **Conclusion**

Whilst a significant amount of the previous concerns raised by Council are no longer being sought or have been suitably addressed by the proponent, there

are still a number of issues that remain unresolved and are not supported by Council or require further detail.

As noted within the comments above, of significant concern is the flood issues raised by Component No 3, which is objected to by Council, until such time that the Emergency Accommodation is removed from the development or an appropriate flood refuge (compliant with DCP A3 provisions) is provided.

For further information regarding this matter please contact Colleen Forbes on (02) 6670 2596.

Yours faithfully

Lindsay McGavin

Manager Development Assessment and Compliance