Department of Primary Industries

OUT16/21783

Ms Jane Flanagan
Priority Projects, Key Sites & Industry
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

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Dear Ms Flanagan

Residential Subdivision, Lot 1 DP 1097743, Pacific Highway, Moonee Beach, Coffs Harbour Local Government Area (*SSD 7198, formerly MP 09_0067*)
Comment on the Response to Submissions Report

I refer to your email dated 12 May 2016 to the Department of Primary Industries in requesting comment on the above matter. Comment has been sought from relevant divisions of DPI. Any further referrals to DPI can be sent by email to landuse.enquiries@dpi.nsw.gov.au.

DPI has reviewed the Response to Submissions document and provides the following recommendations and advice:

- A buffer of 50-100 metres should be provided as measured from the highest astronomical tide.
- It is important that the level of stormwater treatment during both construction and operation of the development is of a standard that does not compromise key fish habitats or the values of the Solitary Islands Marine Park.

Further information regarding this advice is provided in Attachment 1.

Please contact Mr Patrick Dwyer, Patrick.dwyer@dpi.nsw.gov.au or 0407 264 391 for further information.

Yours sincerely

Mitchell Isaacs
Director, Planning Policy & Assessment Advice
8/6/2016

Attachment 1

DPI Fisheries, including Solitary Island Marine Park

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. Development proposals are assessed in accordance with the objectives of the *Fisheries Management Act* 1994, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*. Within and adjacent to marine park areas such as the Solitary Islands Marine Park the potential impacts are considered against the objects of the *Marine Estate Management Act* 2014 and the *Marine Estate Management (Management Rules) Regulation* 1999. In addition DPI Fisheries is responsible for ensuring the sustainable management of commercial, quality recreational fishing and viable aquaculture within NSW and impacts of development on these industries is also considered.

The review of the Response To Submissions Report considered the extent to which matters raised by DPI Fisheries and Marine Parks have been addressed. DPI Fisheries acknowledges that in response to submissions received the proponent has proposed that the waterway crossing to Lot 2 will be designed in a fish friendly manner. Also relocation of stormwater infrastructure from the proposed habitat buffer is supported. It is important that the level of stormwater treatment during both construction and operation of the development is not compromised. The proposed buffer between the proposed development and the estuary (which is part of the Solitary Islands Marine Park) remains inadequate, however, because the buffer does not commence from the level of Highest Astronomic Tide. The following points are raised to explain why DPI Fisheries remains concerned about this matter.

Buffer to Moonee Creek Estuary

As DPI Fisheries highlighted in 21 August 2013 coastal saltmarsh is a Key Fish Habitat that occurs between the MHWM to the Highest Astronomic Tide. DPI Fisheries policy and guidelines classify coastal saltmarsh areas >5m^2 as 'Highly Sensitive (TYPE 1) Key Fish Habitats". Intermittently closing and opening coastal lagoons with a generally natural entrance regime like Moonee estuary are also TYPE 1 Key Fish Habitats. Likewise, all areas within Marine Parks are TYPE 1 Key Fish Habitats. Mangrove areas are considered TYPE 2 (Moderately Sensitive) Key Fish Habitats. With regard to these sensitivity classifications DPI Fisheries Policy 3.2.3.2 (4) states:

> NSW DPI will generally not approve developments or activities that do not incorporate foreshore buffer zones of 50-100 m width adjacent to TYPE 1 marine vegetation and at least 50 m width adjacent to TYPE 2 marine vegetation. Where a buffer zone of at least 50 m is physically unachievable due to land availability constraints, the available buffer width must be maximised to achieve protection of TYPE 1 and 2 marine vegetation (i.e. from edge effects, changes to water quality, flood protection and to allow for climate change adaptation). The buffer zone should not be used for other asset protection purposes (e.g. as a bushfire or mosquito buffer). Please note that this policy does not apply to developments involving maintenance to existing, or construction of new roads or bridges crossing a waterway, but may apply to developments involving roads that are adjacent to, but not crossing a waterway (e.g. new subdivisions, rezoning proposals involving new access roads, new road developments along a new alignment).

DPI Fisheries Policy 6.1.4.1 (3) also states:

NSW DPI will require riparian buffer zones to be established and maintained for developments in or adjacent to TYPE 1 or 2 habitats (see guidelines below). Please note that this policy does not apply to developments involving maintenance to existing, or construction of new roads or bridges crossing a waterway, but may apply to developments involving roads that are adjacent to, but not crossing a waterway (e.g. new subdivisions, rezoning proposals involving new access roads, new road developments along a new alignment). Riparian buffer zones shall be measured from:

- the highest astronomical tide level in tidal areas (generally 1.0 m AHD), or
- from the top of the bank/drainage depression along CLASS 1 to 3 waterways (Table 2).

NSW DPI will require the design of riparian buffer zones to incorporate the maintenance of lateral connectivity between aquatic and riparian habitat. Installation of infrastructure, terraces, retaining walls, cycle ways, pathways and grass verges within the riparian buffer zone shall be avoided or minimised.

DPI Fisheries' submission dated 21 August 2013 reflects these policies and notes that the proposed buffer zone which varies between 64 – 85 metres, generally achieves a 70 metre width. Cognisant that immediately beyond the buffer the site incorporates areas of open space such as the coastal pathway and a development ring road DPI Fisheries could accept a buffer zone of this width. Importantly though DPI Fisheries' letter did also note that: *"At a minimum the buffer distances proposed for the development should be measured from the Highest Astronomical Tide Level"*

Measuring the proposed 64 – 85 metre buffer from the outer edge of the tidal zone, ie the Highest Astronomic Tide (HAT) is required to ensure the whole of the wetland is actually afforded protection by the buffer. The present proposal for a buffer that commences from the intertidal zone behind a stand of mangroves (Figure 1), approximating the Mean High Water Mark (MHWM). The outcome is that the buffer intersects the intertidal wetland itself. Approximately half of all high tides will extend beyond the MHWM. The edge of the estuary is generally considered to include up to the Highest Astronomic Tide. It is DPI Fisheries view that the HAT was the commencement point for the 100 metre buffers proposed in the Moonee Beach DCP and the Moonee Estuary Management Plan.

A further consequence of the present proposal is that areas of TYPE 1 (Highly Sensitive) Key Fish Habitat such as saltmarsh will not be fully protected by the buffer. In the subject proposal an area of intertidal habitat approximately >100m^2 occurs within the buffer itself rather than being surrounded and protected by it. It warrants noting that Figure 32 of the Concept Plan presents maps that concur with DPI Fisheries' assessment of the marine/estuarine habitats (*Surveyed extent of Marine Habitat in JW Planning Pty Ltd Part 3A Concept Plan Environmental Assessment – Pacific Highway Moonee (MP09_0067) June 2013 Page 59 of 120*) in contrast to the buffer edge proposed in the subject proposal. I have included a scanned image of the JW Planning map as Figure 2.

The need to establish buffers complying with DPI Fisheries policy and guidelines and set from the edge of the HAT, (intertidal ecological unit) has been raised by DPI Fisheries and Marine Parks at several stages during the assessment process and is reflected in several submissions from other agencies. Because of the inaccurate setting of the buffer / wetland edge the current proposal falls short of the 50-100 metre buffer required to satisfy DPI Fisheries policy. Considering the location of the proposal adjacent to a Habitat Protection Zone within the Marine Park achieving a buffer comprised of the full 100 metre distance being rehabilitated with native endemic riparian vegetation is the best aquatic habitat outcome.

The buffer in the subject proposal remains inconsistent with the Moonee Beach DCP and the Moonee Estuary Management Plan and DPI Fisheries policy and guidelines. It is DPI

Fisheries view that the Response To Submissions Report has not provided a sufficient robust case to substantially deviate from the recommendation in these documents to fulfil a 100 metre buffer and DPI Fisheries recommends that the buffer is modified. However, as stated above and in previous correspondence, DPI Fisheries could accept a buffer zone of 64 – 85 metre (generally 70m) buffer from the outer edge of the tidal zone, ie the Highest Astronomic Tide (HAT) cognisant that immediately landward of the buffer the site incorporates areas of open space such as the coastal pathway and a development ring road.

Figure 1: Difference between MHWM and HAT as commencement points for the buffer to Moonee Creek estuary

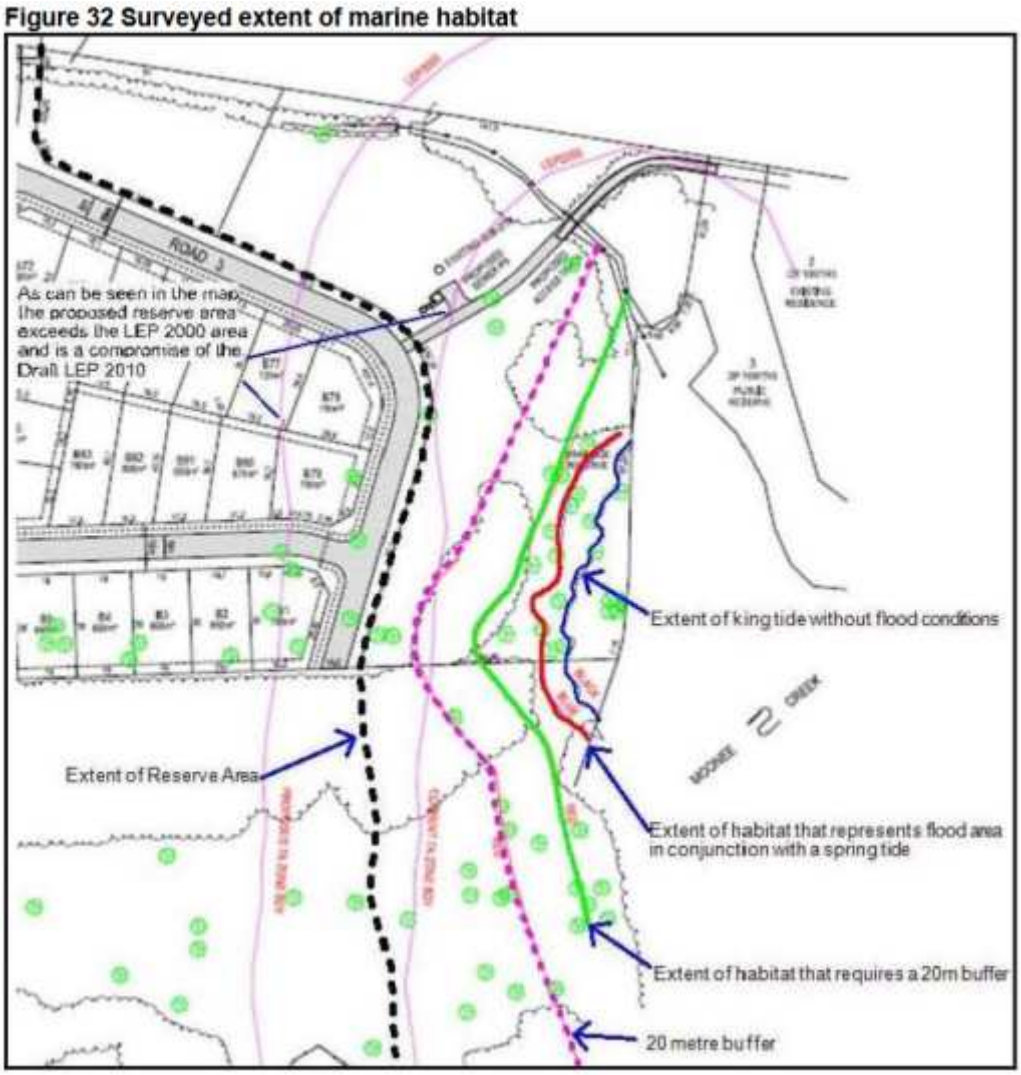

Figure 2: Scanned image of Figure 32 from JW Planning Pty Ltd Part 3A Concept Plan Environmental Assessment – Pacific Highway Moonee (MP09_0067) June 2013 Page 59 of 120 showing the extent of 'marine habitat' more closely approximating that identified by DPI Fisheries in contrast to the proposed buffer commencement in the subject proposal.

End Attachment 1.