

Council Reference: DA10/0238 LN73704
Your Reference: MP07_0089

2 June 2010

NSW Department of Planning
GPO Box 39
SYDNEY NSW 2000

Dear Sir/Madam

Development Application DA10/0238 - construction of a tourist resort and associated community facilities comprising 180 unit/bungalows conference centre restaurant bar retail premises resort associated amenities Aboriginal interpretive centre children's playground pontoon tennis court half basketball court carparking areas picnic shelters walking trails and a public amenity building consisting of toilets showers and change rooms (MP 07_0089) at Lot 489 DP 47021; Lot 500 DP 1095235; Lot 490 DP 1095234 Sutherland Street, Cathedral Court, and Casuarina Way KINGSCLIFF.

I refer to your letter dated 15 April 2010 in which you offer Council an opportunity to review MP 07_0089 for the redevelopment of Lot 490 at Kingscliff.

Please find following comments from various Council Officers relating to this application. Please specifically note that Council has not undertaken a detailed assessment in regard to all aspects of the proposal (specifically Flora and Fauna) but rather has only provided comments on core issues that may affect Council into the future.

Planning Matters

Enforcing Tourist Accommodation

The applicant has acknowledged that the site has significant and permanent legal restrictions (including within the plan of management) stating that no development proposal can be lodged that would permit any part of the site being permitted for permanent residential accommodation. The applicant further states that potential purchasers will be advised that they can not reside in the premises permanently.

One of the most common enquiries and compliance related matters that Council's Development Assessment Unit handles relates to property owners or potential purchasers wanting to know whether they can permanently live in tourist accommodation and if not how long can they stay in the tourist accommodation in any given year.

Over the years this has not be handled consistently within Council or consistently within the Department of Planning (for Major Projects).

The most effective and clear consents have conditions restricting the length of stay with this being duplicated on title by way of a restrictions as to user. Furthermore, the onus is placed on the unit owners to keep records of stay to demonstrate compliance with the length of stay provisions as shown on title should a compliance matter arise. These consents are easy to understand, easy to convey to potential purchasers and easy to enforce should complaints be received.

Leighton Properties have lobbied Council and the Department of Planning not to impose such conditions of consent. Leighton's have advised that they will notify potential purchasers that they can not reside in the premises permanently but that they do not want a condition of consent restricting the length of stay.

Council strongly opposes Leighton Properties not having such conditions for length of stay imposed on the proposed development.

On 22 April 2008 Council considered the inconsistent approach to this matter and accordingly resolved as follows:

"That an amendment to the draft Plan (Draft DCP Section A1) be made to the effect that it shall specify that all tourist nominated developments made under that Plan are to include a condition of approval requiring that the nominated use and any incidental residential occupational time limit restrictions thereto are to be registered on the title to the subject land."

This shows a clear intention from Council to try to rectify the misleading and confusing circumstances surrounding tourist accommodation within the Tweed Shire.

It is strongly requested that the Department of Planning adopt Council's preference for the following two conditions to be imposed on any consent:

1. *The occupancy of the development is restricted to short-term tourist accommodation only, as specified on the development application form. For the purposes of this development, short term accommodation means temporary accommodation for holiday or tourist purposes which for any one person is restricted to a period of accommodation not exceeding forty two (42) consecutive days with an interval of at least fourteen (14) days between occupancies and not exceeding a total of ninety (90) days in any twelve (12) month period.*

[USE0015]

2. *The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:*

- *All units within the proposed development are to have a restriction as to user stating that:*

"The occupancy of the development is restricted to short-term tourist accommodation only, as specified on the development application form. For the purposes of this development, short term accommodation means temporary accommodation for holiday or tourist purposes which for any one person is restricted to a period of accommodation not exceeding forty two (42) consecutive days with an interval of at least fourteen (14) days between occupancies and not exceeding a total of ninety (90) days in any twelve (12) month period."

[PSC0835]

The Implications of the Dual Key Provisions and Developer Contributions Generally

The application as proposed caters for a dual key arrangement for 122 of the 180 units. This effectively means that 122 of the units can actually be rented out as 244 units not just 122 units. This effectively means that at any one time the site could theoretically be occupied by 302 separate visitor groups.

The applicant has indicated to Council that if this dual key arrangement generates additional contributions then they may consider amending their application.

Accordingly Council has worked out to the two differing applicable contributions.

Scenario 1 assumes no dual key arrangement (just 180 tourist bungalows – this would require amended floor plans to delete the potential for dual key arrangements) while Scenario 2 includes the applicable contributions if the applicant proceeds with the currently proposed dual key setup.

Scenario 1 - Assumes **no** dual key arrangement:

Contribution Payable	S94 Contribution Plan Number/ Sector	Area CP5 Only	Units/lots or rate/ha	Amount
WATER HEADWORKS	S64		124.81ET @ \$10,709.00	\$1,336,590.30
WATER HEADWORKS (South Kingscliff incl Kings Forest for supply of PID demand)	S64		124.81ET @ \$248.40	\$31,003.00
SEWERAGE HEADWORKS	S64		187.753ET @ \$5,146.00	\$966,176.90
TRCP - DURANBAH/ CABARITA	4/7		722.5Trips @ \$955.00	\$689,988.00
CASUAL OPEN SPACE – LOCAL	5	1	137.2312ET @ \$526.00	\$72,184.00
LIBRARIES	11		137.1626ET @ \$792.00	\$108,633.00
COMMUNITY FAC NORTH	15		137.018ET @ \$581.00	\$79,607.00
COUNCIL ADMIN - TECH SUPPORT	18		137.7362ET @ \$1,759.90	\$242,401.94
CYCLEWAYS	22		136.9744ET @ \$447.00	\$61,228.00
CASUAL OPEN SPACE - REGIONAL	26	1	137.1324ET @ \$1,031.00	\$141,384.00
TOTAL AMOUNT DUE				\$3,729,196.14

Scenario 2 - Assumes dual key arrangement as currently proposed in the DA:

Contribution Payable	S94 Contribution Plan Number/ Sector	Area CP5 Only	Units/lots or rate/ha	Amount
WATER HEADWORKS	S64		140.67ET @ \$10,709.00	\$1,506,435.00
WATER HEADWORKS (South Kingscliff incl Kings Forest for supply of PID demand)	S64		140.67ET @ \$248.40	\$34,942.00
SEWERAGE HEADWORKS	S64		212.153ET @ \$5,146.00	\$1,091,739.30
TRCP - DURANBAH/ CABARITA	4/7		1025.06Trips @ \$955.00	\$978,932.00
CASUAL OPEN SPACE – LOCAL	5	1	182.9202ET @ \$526.00	\$96,216.00
LIBRARIES	11		182.9004ET @ \$792.00	\$144,857.00
COMMUNITY FAC NORTH	15		182.7192ET @ \$581.00	\$106,160.00
COUNCIL ADMIN - TECH SUPPORT	18		183.4974ET @ \$1,759.90	\$322,937.07
CYCLEWAYS	22		182.8342ET @ \$447.00	\$81,727.00
CASUAL OPEN SPACE - REGIONAL	26	1	182.797ET @ \$1,031.00	\$188,464.00
TOTAL AMOUNT DUE				\$4,552,409.37

Please note the above tables have included the applicable charges under Plan No's 5 (Casual Open Space) and Plan No. 22 (Cycleways) even though works in kind may negate this payment. The applicant will need to demonstrate that the proposed works meet the plans works in kind provisions and that the amount of works in kind exceed the applicable contribution which would make the contribution redundant.

It is requested that the Department of Planning liaise with Council to ensure the most appropriate Contributions are levied for this development.

Urban Design

The application needs to place an emphasis on the measures to be undertaken to ensure the external parameters of the development present well to the street. This is especially important with regard to fencing, and landscaping.

T there is concern regarding the potentially poor visual appearance of the proposed car park areas (southern end) when travelling along Casuarina Way.

Traffic & Access

Casuarina Way Design Standard

Historically the developers of SALT agreed to build that part of Casuarina Way through Lot 490 to a rural standard knowing that should re-development of Lot 490 occur the

landowner/developer of Lot 490 would be required to upgrade the road to an urban standard depending on the nature of the development being proposed.

The applicant's proposal has been reviewed and it is understood that Leighton Properties argue that the retention of the existing rural road design for Casuarina Way is justified given that the proposed development does not address the frontage of Casuarina Way. It is further understood that barrier fencing signified in Leighton's development proposal will restrict pedestrian access from the road to designated pathways and entrances, thus minimising the use of this section of road by pedestrians and the need for an urban road cross section with integral kerb and gutter and adjacent footpaths.

Notwithstanding the earlier intention for Casuarina Way through Lot 490, it is agreed that the existing rural cross section is acceptable, provided it is enhanced with the following attributes:

1. Re surface the pavement with Asphaltic Concrete with a 25mm thickness;
2. Provide a concrete edge strip to seal on both sides of Casuarina Way
3. Provide a grass lined table drain consistent with Water Sensitive Urban Design Principals
4. Ensure that Street lighting is compliant with Australian Standards for a rural road.

It will also be necessary to ensure traffic and pedestrian movement across Casuarina Way is restricted to within the nominated crossing areas only as per the proponents plans and that in all other areas the development fencing and or landscaping will restrict free pedestrian and vehicular movement from the property to the road. The ultimate design of such barriers should have strong regard for urban design implications and safety by design implications.

General Traffic and Access Issues

- 4.0m internal road widths cannot cater for right angle parking as shown on the proposal plans. A 6.0m minimum aisle/road width is required (refer AS2890.1 Off Street Parking Code). This has been identified in the traffic report but not shown on the proposal plans.
- A concrete footpath is required between the proposed bus stops and the proposed pedestrian refuge crossing on Casuarina Way.
- The majority of the proposed internal roads do not connect to the proposed primary access and roundabout on Casuarina Way. The internal road network requires revision. The connection of the internal road network with the maintenance area access should be deleted to prohibit general development traffic using the maintenance area access from Casuarina Way.
- The cycleway near the pedestrian refuge is to be extended to the east (towards the beach) external to the resort via road reserve. Another pedestrian crossing of Casuarina Way, possibly integrating with a roundabout approach island, should be considered which connects with the existing coastal cycleway.
- The existing coastal cycleway is shown splitting the proposed northern car park area. This requires clarification.

- Street lighting is required to AS1158 for the following areas:- public parking areas, the pedestrian refuge, bus stops, the roundabout and the maintenance access intersection.
- Casuarina Way is to cater for on-road cycling in both directions.
- Off-street carparking is to be provided in accordance with DCP-A2. In this regard 100% occupancy of the development must be assumed, not 85% as stated in the traffic report. Also the beach parking of 300 spaces per kilometre of beach frontage should be generally complied with (only about 60 spaces have been proposed which is about half of which is required). This beach parking can be located further back within the proposed development and does not necessarily need to be right on the beach front.

Infrastructure Engineering

Flooding

Council's DCP Section A3 - Development of Flood Liable Land specifies that land for the purposes of "residential flat buildings/dual occupancy shall be filled to a minimum level of the design flood level" (DFL) of RL 2.6m AHD.

There are portions of the development site either side of Casuarina Way that are below DFL. No filling of land on the western (creek) side of the road is necessary, other than for the proposed recreation courts. If these are to be transferred to Council ownership, minimum fill level is 1.6m AHD (DFL - 1m).

The applicant should provide additional fill in and around dwelling sites on the eastern side of the road, taking into account areas for stormwater detention, environmental areas etc. Other options for piered structures connected by raised walkways would also be acceptable, provided they are of flood compatible design

Otherwise the flooding commitments are adequate for development of the site.

Stormwater Management

No objection to the proposed stormwater management system. Stormwater Management and Erosion and Sediment Control Plans should be prepared and submitted with a s68 application for Council approval prior to issue of a construction certificate.

Water & Sewer Infrastructure

The Environmental Assessment (EA) lodged for this proposed development has not adequately addressed issues that have previously been raised by Tweed Shire Council Water Unit (this includes comments on the proposed development and also the Subdivision Application DA07/0716 previously lodged by the Department of Lands). These include works that would have been required at subdivision stage under the provisions of the Tweed DCP Part B9. It appears that despite Council advice to the proponents, no commitment to these works are included in the draft Statement of Commitments.

It is noted that proposed public amenity block on Lot 500 is proposed to be serviced by the tourist developments internal water supply and sewerage systems. Unless this land is aggregated with the proposed Lot 1 (Tourist Development Site), this does not comply with the normal requirement to provide separate connections to water supply and sewer.

Water Supply

As noted in the application, Tweed Shire Council's DCP Part B9 provides guidelines for water supply works associated with development in this locality.

Water is available through a main in Casuarina Way at the Southern Boundary of this site. This main has been progressively relocated and upgraded as the road in which it was located has been realigned and constructed as Casuarina Way (B9.6.3 Planning Strategies TSC.S.6.5 & 6.6). At this location, a temporary connection from the new main at the northern end of the Salt Village development and its original alignment in Lot 500 is in place.

When the realigned Casuarina Way was constructed ahead of the development of Lot 490, the realignment was deferred until the development of Lot 490 was to proceed.

Although the development may not require an upgrade of the main to provide Peak Instantaneous Demand (PID), Council desires to upgrade this section of the main to complete an upgraded alternative supply route through which water may be supplied to Kingscliff or to Tweed Coast in the event of supply interruptions through the normal mains. Council will be prepared to contribute the marginal cost difference to provide this upgrade between the Cudgen Creek Bridge and the northern end of Salt Village development.

It is now appropriate that this development realign the water main within the new road reserve. TSC will require it to be constructed as 450 dia and will be prepared to contribute the marginal difference in cost.

It is requested that realignment of this trunk water main to the road reserve from the Cudgen Creek Bridge to the end of the 450 dia main in Casuarina Way be included in the Statement of Commitments and as a condition of consent for this development.

When this relocation proceeds, the location shown by the EA Infrastructure Provision Report for the water connection will be abandoned and another connection to the main would be required. As it stands at the moment, the section of main that has been indicated as the connection point is on the Kingscliff pressure zone side or a closed valve and has a much lower pressure than that available in the 450 dia main. It may be possible, however to use a portion of this 250 dia main to provide the connection to the development. Details of this connection can be determined when the water connection application is lodged.

As noted above, the public amenity block is located on a separate lot and hence, a separate water service is required for this amenity block.

It is requested that provision of a water supply connection of suitable size to each lot requiring a water service be included in the Statement of Commitments and as a condition of consent for this development.

Sewerage

As it stands at present, neither of the lots in this development are connected to sewer. The point of connection to Council's Sewerage System is the intersection Tweed Coast Road and Cudgen Road (DCP Section B9.6.3 Planning Control/Action TSC.6.9).

The previous development of Salt Village has provided much of the necessary infrastructure, but still requires the upgrading of the Sewerage Pump Station SPS4030, Point Break Circuit and duplication of the Cudgen Creek Sewer Rising Main crossing.

Council will be providing the necessary augmentation of pumping capacity at SPS4030 from S64 Developer Contributions, but the duplication of the Cudgen Creek crossing is to be provided by the developers of Salt and/or Lot 490. A steel envelope was placed under Cudgen Creek when the original crossing was constructed for the purpose of the future installation of the duplicate main. This is required before either Seaside City or Lot 490 can be connected, and may be provided by either development or both developments jointly.

It is requested that installation of this sewer rising main across Cudgen Creek be included in the Statement of Commitments and as a condition of consent for this development.

The actual connection of the sewer may be at the collector manhole of SPS4030 or if it can be demonstrated that there is adequate capacity, at the 225 sewer in Casuarina Way at the northern boundary of Salt Village as shown in the EA Infrastructure Provision Report.

As noted above, the public amenity block is located on a separate lot and hence, a separate sewer connection is required for this amenity block. It is also noted that the internal sewerage system was proposed to service the public amenity block on Lot 500, a separate parcel of land. Council will not take responsibility for the internal sewage pump station and internal collection system on proposed Lot 1. Accordingly, a separate public sewer connection should be provided to Lot 500 and the amenity block connected to that connection.

It should also be noted by the applicant that approval under Section 68 of the local Government Act will be required for the construction and operation of the internal sewage pump station (Health and Environment Unit responsibility).

It is requested that provision of outfall sewerage to each lot requiring connection to sewer in accordance with Council's Standards be included in the Statement of Commitments and as a condition of consent for this development.

Council also seeks the dedication of an easement covering the portions of the existing and new sewer rising mains from SPS4030 where they traverse the south west corner of Lot 490 (proposed Lot 2).

It is requested that the dedication of an easement over the existing and proposed sewer rising mains within Lot 490 (proposed Lot 2) be included in the Statement of Commitments and as a condition of consent for this development.

Public Infrastructure Works

Works on Council water supply and sewerage systems require approval under s68 of the Local Government Act and works within a road require Council approval under s138 of the Roads Act. With the magnitude of works required by Council above, the most appropriate mechanism for this approval and supervision of the works is by way of a Construction Certificate application through Council's Development Engineering Section.

Given the magnitude of the works, it is requested that a condition of consent require the developer to lodge a Construction Certificate application for all public infrastructure works, or at least, all public water supply and sewerage infrastructure works to enable suitable design review and construction supervision for works which will become Council assets.

Recreation Services

Maintenance, Public Liability and Guaranteed Public Access

Clarification is needed regarding the long term maintenance responsibilities for the following facilities and areas

- Facilities proposed to be fully accessible by the general public, as described in the Environmental Assessment (section 3.1 Development Summary) and also in a separate document (Community Facilities Plan as found on Leighton properties website) that was not included in the application.
- Open space areas indicated as catering to members of the general public, including Lot 500, Lot 489 and the part of Lot 490 west of Casuarina Way. These areas include the riparian area and dunal areas.

It is currently Council's understanding that all such facilities and land will be the responsibility of the lessee for the period of the lease, being 70 years.

The EA states public access to these areas and facilities will not be restricted (Section 3.1). Council seeks an assurance that this will occur for the term of the lease. Additionally, public liability matters associated with members of the public using a privately leased area must be addressed to Council and the Tweed Coast Reserve Trust's satisfaction.

The EA acknowledges that TSC and the Tweed Coast Reserves Trust have a management role for Lots 500 and 489, however it remains unclear what this role is to be. In recent times there has been little communication with the Trust regarding their role in Lots 500, 489 and 490 regarding matters such as general maintenance and other management issues common on coastal locations, such as illegal vegetation clearing, dune management and user conflicts.

Both TSC and the Tweed Coast Reserves Trust are seeking to negotiate a funding and management plan with the Land and Property Management Authority that clarifies contribution and expenditure obligations for the whole Tweed Coast Reserve. Accordingly TSC and the Trust need a greater understanding of such matters for Lot 490 and the adjacent part of Lot 500 and Lot 489.

Surf Life Saving Provisions

The submitted Kingscliff Resort Surf Lifesaving Management Plan' is not acceptable in its present form. As submitted, the plan does not adequately address risk to life arising from the increased usage of nearby beaches arising from this development. It does not propose any form of practical support for the 2 adjacent Surf Life Saving Clubs, nor is it proposed to provide surf lifesaving services in the area of the resort.

The applicant has previously been advised that to address risk to life from surfing activities associated with this development, they must, in particular, fully consult with **Surf Life Saving Australia (SLSA)**, as well as the two adjoining local surf life saving clubs (SALT and Cudgen Surf Life Saving Club's), to determine the beach safety risks associated with the development, and to identify appropriate ways to manage these risks. The TSC Beach Safety Liaison Committee is also an important component of local beach safety decisions and should be consulted. The submitted Surf Lifesaving Management Plan makes no reference to such consultations having been undertaken. No approval or support for this development can be provided until this matter has been adequately addressed.

In particular, the 'Tweed Shire Council Coastal Risk Assessment and Treatment Plan 2008' prepared by Surf Life Saving Australia must be **reviewed and amended** to incorporate the changed access and beach use patterns the development will bring.

Until these risks to life are addressed, this development cannot be supported.

The submitted 'Kingscliff Resort Surf Life Saving Management Plan' is to be amended following the above consultation, and must provide more acceptable ways to manage beach safety issues adjacent to the resort. Should a financial contribution to the existing surf life saving services at Salt or Kingscliff be recommended, an appropriate amount must be determined and such report must include a mechanism by which this can occur. Please note that S94 Contributions is no longer an option following the State Government review of Contributions.

In this regard if a monetary contribution is recommended any special legal agreements designed to allow the Lot 490 developer to support surf life saving in the area should consider that the manager of Lot 490 is the Department of Lands, not Council or Tweed Coast Reserves Trust.

It is further noted that the official name for the beach in the location of the resort is not the one given by the proponent. The correct name according to the Geographic Names Board and Tweed Shire Council is South Kingscliff Beach, not Bogangar Beach. It is likely the name described in the SLSA publication the proponent consulted is out of date. The correct beach names were gazetted in 2008.

Community Facilities

It is desirable that a document similar to the 'Kingscliff Resort Community Facilities Plan' is included with the Development Application to ensure the Department of Planning, Council and other agencies considering the development application are fully informed on the nature of community facilities to be provided.

The EAR and associated documents list the community facilities to be provided (section 3.2), and indicative locations for these facilities have been provided, however greater detail on the actual location and design of these facilities will be required in the approval process.

A community facilities plan is required that clearly sets out ownership, management and maintenance responsibilities for all of the community facilities in perpetuity, and considering the intended timeframes for resort leases. Council must be a party to this facilities plan as the public authority for infrastructure and trustee for the Crown Lot 500. If measures are unsatisfactory to Council, facilities must be removed from Lot 500 and located within the resort development on Lot 490 for ongoing management by the lessee.

Note that public infrastructure has to date been limited within Lot 500 to public beach accesses and minor sections of cycleway/pathway for other developments to the south. More intensive facilities such as carparking and amenities have been provided outside of the 7(f) zone on development land that is subsequently dedicated to Council.

Natural Resource Management

Maintenance (General)

The application is unclear on the maintenance regime for those lands outside Lot 490. Council raised this issue with Leighton properties who advised that given Council's

questions they would review this element of the proposal and provide clarification to the Department of Planning and Council.

Council specifically requests clarification for the maintenance responsibility for all public facilities and restoration areas.

Coastal Hazards

The applicants report relies heavily upon the 2001 Tweed Shire Coastline Hazard Study and subsequent Tweed Coastline Study and Management Plan (2005). There are a few mistakes in the information provided and new information to be taken into account.

The Tweed Shire Coastline Hazard Study (2002) used a climate change component in the assessment of long term shoreline retreat specifically the Bruun rule assumptions with estimates of Sea Level Rise (from a 1990 base level) of 0.20m for 2050 and 0.50m for 2100. The predicted regional shoreline recession due to Sea Level Rise was incorporated as 10 metres for 2050 to 25 metres for 2100.

In October 2009, the NSW Government adopted the NSW Sea Level Rise Policy Statement which adopted a planning benchmark above 1990 mean sea level of 40 cm by 2050 and 90 cm by 2100.

In accordance with the *Draft Coastal Risk Management Guide: Incorporating sea level rise benchmarks in coastal risk assessments* (2009) Council is now in the process of reviewing the adopted Tweed Shire coastline hazard bands and these will be modified to conform with the NSW Government sea level rise benchmarks.

Therefore, the revised Coastal Hazard Lines for 2050 and 2100 are likely to align more closely with the existing 7(f) zone than the current lines.

All amenities are provided on the landward side of the existing bike path and this is adequate given the current erosion hazard lines. It would be preferable for all public amenities to be located on Lot 490 rather than Lot 500 (which would then be utilised for dune restoration only).

The applicant's documentation at Section 1.2.2 refers to the beach adjacent to the development site as "Bogangar Beach". The official name of this beach is "South Kingscliff Beach".

The applicant's documentation at Section 3.7.5 last paragraph provides incorrect information regarding the lines represented in Figure 3.2. The TSC hazard lines were based on a SLR of 0.20m for 2050 and 0.50m for 2100. As discussed above these lines are currently being reviewed.

The applicant should be required to review this data and amend their application accordingly.

Restoration within Lot 500

It is desirable for the maximum amount of restoration area be applied within Lot 500, therefore no additional public parking should be provided along the existing old road above what is currently provided for in the master plan. Rather, any further public parking required by Council for beach access should be provided away from the immediate foreshore area and outside of Lot 500.

Additional circuitous cycleways should not be included in the riparian restoration area. It is unnecessary and will impact on the viability of restoration efforts. Cycleways for recreational purposes can have slight weaving form but should be based on attractors i.e. destination specific.

Pontoon

The pontoon location is to be determined to reduce impact on marine vegetation. It is acknowledged that the length of gangway is required as the grade of the beach is very low. Other design options could be investigated to provide more low key canoe access rather than the pontoon.

The Pontoon gangway should be made from marine grade aluminium non-slip grating to allow light penetration below the gangway for marine vegetation growth.

Adequacy of the Ecological Assessment

- Removal of feeding habitat for the Common Blossom Bat (*Syconycteris australis*), which is listed as vulnerable under the Threatened Species Conservation Act (TSC Act), has not been adequately considered. The Ecological Assessment acknowledges that the Common Blossom Bat is likely to occur at the site, the Coast Banksia (*Banksia integrifolia*) is a primary food source for this species and numbers of mature and semi-mature Coast Banksia would be removed as a result of the proposal. However, the ecological assessment does not consider the impact the loss of this food source will have on the Blossom Bat with the assessment of significance stating “*no potential habitat for this species will be removed*”. The ecological assessment states “*efforts have been made to retain as much Coast Banksia as possible within the development footprint*”. However it appears from analysis of aerial photos, vegetation mapping and the proposed development layout that little effort has been made to avoid Coast Banksia forest and woodland, particularly the placement of car park, tennis court and portions of the cycleway in the **Riparian Management Area (RMA)**, placement of accommodation in the southern and eastern sections of the main development area, and placement of some of the carparking in the **Dune Management Area (DMA)**. The ecological assessment provides information on the areas of Coast Banksia woodland and forest that would be lost as a result of the development but provides no information on the actual food source that would be lost (i.e. number and size of Coast Banksia trees). Furthermore, the ecological assessment provides no information on the importance of Coast Banksia at the site as a food resource for this species (i.e. does the site support a number of animals that have a strong site fidelity).

In the absence of this information a number of recommendations are made:

The proponent should consider options to avoid and minimise removal of Coast Banksia from the site including;

- 1) Altering the proposed placement of a car park, tennis court and portions of the pathway in the RMA to avoid Coast Banksia;
- 2) Reconfigure or reduce accommodation yield in the southern and eastern sections of the main development area so the majority of Coast Banksia in this area are retained; and
- 3) Alter the placement of or reduce the amount of carparking in the DMA so the majority of Coast Banksia is avoided.

The proponent compensate for removal of Coast Banksia at a minimum rate of 2:1 (i.e. for each Coast Banksia removed regardless of size, two Coast Banksia are planted in the riparian or dune management areas). Annual monitoring of Coast Banksia plantings should be incorporated into the Dune and Riparian Management Plans. Performance criteria relating to Coast Banksia compensatory plantings should include;

- 1) At the end of year 5 there are at least 2 surviving planted Coast Banksia in the DMA or RMA for every 1 Coast Banksia cleared as a result of the proposal and
 - 2) Compensatory Coast Banksia plantings to achieve an average height of >1m by year three and >1.5m by year 5. The proponent should pay a bond to ensure that the above performance criteria relating to Common Blossom Bat compensatory habitat are met.
- Removal of feeding habitat for the Glossy Black Cockatoo (*Calyptorhynchus lathamii*), which is listed as vulnerable under the TSC Act, has not been considered. Glossy Black Cockatoo uses the Horsetail She-oak (*Casuarina equisetifolia*) as a feed source. This species has been recorded feeding on stands of Horsetail She-oak in Lot 489 and Lot 500 (on occasions in groups of greater than 10 individuals). The proposal states that Horsetail She-oaks will be removed within the DMA. The ecological assessment provides information on the area of Horsetail She-oak forest that would be lost as a result of the development but provides no information on the actual food source that would be lost (i.e. number and size of Horsetail She-oak trees). Furthermore no detail is provided on the importance of Horsetail She-oak at the site as a food resource for this species. In the absence of this information a number of recommendations are made:

It is recommended the proponent consider further options to avoid and minimise removal of Horsetail She-oak from the site within the DMA.

It is recommended the proponent compensate for removal of Horsetail She-oak at a minimum rate of 2:1 using Black She-oak oak (*Allocasuarina littoralis*) as a replacement feed tree (i.e. for each Horsetail She-oak removed regardless of size, two Black She-oak are planted). As Black She-oak has performed poorly in dune planting areas at Seaside City and SALT, Black she-oak should be planted only in the RMA. Annual monitoring of Black She-oak plantings should be incorporated into the Riparian Management Plan. Performance criteria relating to Black She-oak compensatory plantings should include

- 1) At the end of year 5 there are at least 2 surviving planted Black She-oak in the RMA for every 1 Horsetail She-oak cleared as a result of the proposal and
 - 2) Compensatory Black She-oak plantings to achieve an average height of >1m by year three and >1.5m by year 5. The proponent should pay a bond to ensure that the above performance criteria relating to Glossy Black Cockatoo compensatory habitat are met.
- It is noted that the proponent proposes to locate a cycleway, shelter sheds, carpark, basketball and tennis court within the RMA. Within the RMA, placement of infrastructure should be minimised and except for providing a single access point to Cudgen Creek, no infrastructure (including cycleway, shelter sheds, active or passive recreational facilities and carparking) should be sited within the 50m buffer zone of SEPP 14 Coastal Wetlands and Cudgen Creek. The cycleway should be relocated outside of the 50m buffer zone to SEPP 14 Coastal Wetlands and Cudgen Creek, and should not bisect an area of Swamp Oak Coastal Floodplain Forest in the south of the RMA. The cycleway should also be shortened within the RMA and the 'loop track' in the southern section of the RMA omitted to reduce the fragmentation of this area as vegetation rehabilitation proceeds. The purpose of the cycleway within the RMA should be to link the cycleways at SALT and Tweed Coast Road.

- It is noted that the proponent proposes to locate part of the APZ, public parks, community amenities, shelters, circuit training station, carparking, playground, beach access road, 3 beach access tracks and the cycleway within the DMA (or Lot 500). It is acknowledged the proposal makes use of the existing cycleway and the old Tweed Coast Road alignment. However the primary purpose of the DMA should be to restore and conserve the dune system, provide flora and fauna habitat, provide a coastal flora and fauna corridor, provide a visual buffer to the development, and provide a protective buffer for the development. At Casuarina, the only infrastructure located within Lot 500 are beach accesses, at Seaside City, the cycleway and beach accesses are located within Lot 500 and at SALT, portions of the cycleway, beach accesses and a very small area of parkland at Central Park are located within Lot 500. Therefore the placement of infrastructure in the DMA should be minimised and restoration of vegetation maximised. Placement of parks, active and passive recreational facilities, and public carparking should be included within the main resort development area. The DMA should also not serve as a dual APZ. The APZ should be contained wholly within the main resort development area as is the case on the southern boundary of the development site.

Adequacy of the Dune Management Plan

- Horsetail She-oaks should be retained in the DMA as they provide a food source for Glossy Black Cockatoos.
- The DMA should be assessed annually by a Dune Management Committee, not towards the end of the fifth year as stated in the DMP. This will ensure intervention can be taken at an early stage if it appears performance criteria will not be met. The Dune Management Committee should be made up of representatives from Department of Lands, Tweed Shire Council, Leighton Properties and the bush regeneration contractor. It is recommended the Dune Management Committee meet quarterly to discuss the progress of implementation of the DMP.
- The DMP should emphasise the need for systematic primary and follow up weed control throughout the whole DMA, where all weeds are systematically treated in one zone before moving to the next zone. This will reduce weed reinfestation in the DMA and maintenance costs over time.
- Natural regeneration should be encouraged. However where revegetation is deemed appropriate within the DMA, tree planting spacings should be 1 tree to 1.5m spacing, not 1 tree to 3m spacing. This is based on density used for the majority of tree planting within Lot 500 at Casuarina. Increased planting density should result in quicker canopy closure, reduced follow up weeding and reduced overall maintenance costs. Shrubs and groundcovers should be dispersed between trees.
- The DMP should guide the contractor implementing the plan on the relative proportions of species to be planted in each zone of the DMA in order to restore dune communities (i.e. Coastal Banksia Forest/Littoral Rainforest). For example, Coastal Banksia should comprise at least 50% of plantings in the DMA.
- Several species are considered unsuitable for planted in the DMA (i.e. *Lomandra hystrix*, *Cordyline stricta*). *Pandanus tectorius* should be included in plantings. The DMP should consider staging the planting i.e. planting hardy species like Coast Banksia, Tuckeroo, Pandanus, Beach Alectryon, Cottonwood, etc to establish a cover. Once a protective cover has been established, more sensitive species less tolerant of salt spray and strong winds should be planted to increase species

diversity. This proved to be successful in dunal restoration at Casuarina and riparian restoration at SALT and will reduce the incidence of failed plantings.

- The DMP should include best practice guidelines for the collection and propagation of local genetic material for revegetation works. These guidelines should be written into all contracts for supply of plants.
- Fencing of the site as opposed to tree guards should be considered to protect plantings from rabbit, hare or wallaby browse. Fencing was found to be less costly than tree guards at Seaside City and hardened plants to coastal conditions from an early age.
- Installation of an irrigation system should be considered as watering will be essential to ensure survival and success of plantings.
- The adaptive management strategy should include contingencies for planting stock not being available and poor survivorship of plants.
- Frequency of maintenance is likely to be insufficient in the period when plants are becoming established, particularly if an irrigation system has not been installed. Increased frequency of maintenance should be included in the adaptive management strategy if it is found weeds are not being adequately controlled or plantings are failing.
- Performance criteria (termed criteria for success in the DMP) are considered inadequate. Essential performance criteria include;
 - 1) No inappropriate genetic material used in plantings;
 - 2) High survival rate of planted stock and naturally recruited native species (>80%);
 - 3) Trees and large shrub species to achieve an average height of >1m by year three and >1.5m by year 5;
 - 4) species diversity/cover should reflect the relative proportions of species to be planted as set by planting tables in the DMP;
 - 5) Density of native trees to average 1 per 5m² over the whole dunal area at the end of the fifth year of the Plan;
 - 6) Nil fruiting of priority weed species after primary treatment; and
 - 7) Sustained reduction of weed species to a level that ensures natural recruitment by native species is not suppressed or excluded.
- To ensure the above performance criteria can be measured, data measured in quadrats should include:
 - 1) Canopy height of natives and exotics;
 - 2) % canopy cover of natives and exotics; and
 - 3) Number and density of each native and exotic species.
- The DMP states detailed monitoring reports should be submitted biannually for years 1 to 3, then annually for years 4 and 5. From Council experience with rehabilitation projects at Casuarina, SALT and Seaside City, detailed monitoring and reporting is costly for the proponent. Provided quarterly Dune Management Committee meetings are held quarterly to discuss the progress of implementation of the DMP, detailed annual monitoring is considered adequate.

- As bush regeneration contractors would be working in Endangered Ecological Communities and threatened species habitat they are legally required to possess a section 132C licence under the National Parks and Wildlife Act. The DMP does not state this.

Adequacy of the Riparian Management Plan

- The RMA should be assessed annually by a Riparian Management Committee, not towards the end of the fifth year as stated in the RMP. This will ensure intervention can be taken at an early stage if it appears performance criteria will not be met. The Riparian Management Committee should be made up of representatives from Department of Lands, Tweed Shire Council, Leighton Properties and the bush regeneration contractor. It is recommended the Riparian Management Committee meet quarterly to discuss the progress of implementation of the RMP.
- The RMP should emphasise the need for systematic primary and follow up weed control throughout the whole RMA, where all weeds are systematically treated in one zone before moving to the next zone. This will reduce weed reinfestation in the RMA and maintenance costs over time.
- Natural regeneration should be encouraged. However where revegetation is deemed appropriate within the RMA, tree planting spacings should be 1 tree to 1.5m spacing, not 1 tree to 3m spacing. Increased planting density should result in quicker canopy closure, reduced follow up weeding and reduced overall maintenance costs. Shrubs and groundcovers should be dispersed between trees.
- The proposed species planting list is almost equivalent to that used for SALT Cudgen Creek Riparian Plan. Implementation of the SALT Riparian Plan achieved successful revegetation of the riparian zone. However, it is possible that as the RMA is quite flat and closer to the creek mouth it is more susceptible to saltwater inundation during king tides. Therefore salt tolerant species may be more suitable on low/flat parts of the creek bank (i.e. Cottonwood, Swamp She-oak, Broad-leaved Paperbark) and planting of salt intolerant species should be avoided. Several species are considered unsuitable for planting in the RMA (i.e. *Lomandra hystrix*, *Archidendron hendersonii*, *Syzygium moorei*). *Allocasuarina littoralis* should be included in the RMA as a feed tree for the Glossy Black Cockatoo (as compensation for loss of the feed tree *Casuarina equisetifolia*). As with the DMA, staging of planting in the RMA should be considered where hardy species are first planted to provide a protective cover followed by diversity/enrichment plantings.
- Coastal Banksia should comprise at least 50% of plantings in the RMA.
- Planting of trees and larger shrubs is considered a priority in areas subject to revegetation in the RMA in order to achieve a canopy cover as quick as possible and reduce maintenance. In the RMP, recommended numbers of groundcovers are more than double the recommended numbers of trees. Therefore the density and therefore number of trees/large shrubs should be increased at the expense of groundcovers. This should not increase planting costs considerably and it would be expected that many native groundcover species will colonise the site.
- Fencing of the site as opposed to tree guards should be considered to protect plantings from rabbit, hare or wallaby browse.
- Installation of an irrigation system should be considered as watering will be essential to ensure survival and success of plantings.

- The adaptive management strategy should also include contingencies for planting stock not being available and poor survivorship of plants. Increased frequency of maintenance should also be included in the adaptive management strategy if it is found weeds are not being adequately controlled or plantings are failing.
- Timing of maintenance is likely to be insufficient in the period when plants are becoming established, particularly if an irrigation system has not been installed.
- Performance criteria or indicators are considered inadequate. Essential performance criteria include;
 - 1) No inappropriate genetic material used in plantings;
 - 2) High survival rate of planted stock and naturally recruited native species (>80%);
 - 3) Average growth of trees and large shrub species to achieve an average height of >1m by year three and >1.5m by year 5;
 - 4) Species diversity/cover should reflect the relative proportions of species to be planted as set by planting tables in the RMP;
 - 5) Density of native trees to average 1 per 5m² over the whole riparian area at the end of the fifth year of the Plan;
 - 6) Nil fruiting of priority weed species after primary treatment; and
 - 7) Sustained reduction of weed species to a level that ensures natural recruitment by native species is not suppressed or excluded.
- To ensure the above performance criteria can be measured, data measured in quadrats should include:
 - 1) Canopy height of natives and exotics;
 - 2) % canopy cover of natives and exotics; and
 - 3) Number and density of each native and exotic species.
- The RMP states detailed monitoring reports should be submitted biannually for years 1 to 3, then annually for years 4 and 5. From experience with rehabilitation projects at Casuarina, SALT and Seaside City, detailed monitoring and reporting is costly for the proponent. Provided quarterly Riparian Committee meetings are held quarterly to discuss the progress of implementation of the RMP, detailed annual monitoring is considered adequate.
- As bush regeneration contractors would be working in Endangered Ecological Communities and threatened species habitat they are legally required to possess a section 132C licence under the National Parks and Wildlife Act. The DMP does not state this.

Environmental Health

Potential environmental health issues include:

- Residential amenity impacts during construction (dust, noise) and operation (noise, light spill)
- Land Contamination – radiation
- Acid Sulfate Soils/Dewatering Assessment

- Public Health impacts during operation – food safety, swimming pool/spa pool, microbial control, smoke-free environment
- Water Quality Management – erosion and sediment control during construction, dewatering

As the consent authority the Department of Planning will need to adequately address these matters and apply appropriate suitable conditions of consent should the application be recommended for approval.

Council's Development Engineer has specifically stated that the proposed dust and airborne control measures contained within the Construction Management Plan are **unsatisfactory**. The Management Plan should include a requirement for a wind meter to be installed on site and if wind velocity exceeds 36km/h (10m/sec) construction activity must cease until the wind velocity falls below this level.

Building Services

Council's Building Services Unit recommends that the Department impose a condition of consent that reads as follows:

All facilities that are to be handed over to Tweed Shire Council as 'public facilities' are to be designed and constructed after consultation with Tweed Shire Council's General Manager or his delegate. This is to ensure that the fixtures and fittings used will be compatible with Council's maintenance specifications and that the structures will be erected using material suitable for the corrosive environment of the site.

Council would be happy to discuss any of the matters raised in this letter and should be contacted if clarification is needed. For further information regarding this matter please contact Denise Galle on (02) 66702459.

Yours faithfully

Lindsay McGavin
MANAGER DEVELOPMENT ASSESSMENT