



**A SUBMISSION TO THE
Port Stephens Council**

From

**TOMAREE RATEPAYERS AND RESIDENTS
ASSOCIATION**

On

**Port Stephens DA 16-2009-811-1 – Eight (8) Lot Subdivision – Torrens Title,
155 Salamander Way, Salamander Bay**

**“Reject this proposal because it will create a poor quality town
centre, at great environmental cost!”**

1 December 2010

Executive Summary

The Tomaree Ratepayers and Residents Association (TRRA) calls on the Joint Regional Planning Panel (JRPP) to reject this proposal because it will create a poor quality town centre, at great environmental cost

This proposal will lead to a poor quality commercial centre which will exacerbate existing problems rather than reduce them. The centre already comprises a collection of stand alone retail and other service sub-centres with minimal pedestrian connectivity. This DA simply adds another ring of isolated retail and service precincts with their own separate car parks. This will further encourage clients to drive between the various precincts. The result will be a sea of car parks with poor aesthetics, poor pedestrian access and no public place and open spaces. This is far from best practice, town centre planning.

The DA fails to acknowledge that the Salamander shopping centre and its immediate surrounds has already attracted many town centre functions such as the library, community meeting rooms, child minding, church and school facilities. It is the major public transport interchange for the Tomaree Peninsula. It will continue to evolve as the social, commercial, shopping and community service hub of the Peninsula. **This DA without a comprehensive Masterplan does not make provision for these broader urban functions or for the essential integration of the proposed development sites.** It does not meet some of the key objectives of the LEP Zoning or of the DCP. It will not create a vibrant town centre and commercial district. The scope for inclusion of some residential development within the precinct has not been given the a priority it should have to achieve a real mixed use town centre.

The Statement of Environmental Effects (SEE) has understated the environmental values of the site (as set out in our submissions) and grossly understated the impacts. The applicant is seeking to avoid compliance with both the objectives and the specific requirements of the SEPPs (14, 44 and 71), the Threatened Species Conservation Act, and Part 5A of the EPA Act.

The justifications provided by the applicant for why the significant environmental destruction is necessary do not stand up to any sensible scrutiny.

No legitimate attempt has been made to avoid or minimise environmental impacts. In fact ALL the environmental values of the site will be destroyed and the very inadequate proposed mitigation measure will either **increase** the environmental impacts in the surrounding area, and/or are unlikely to achieve their objectives into the long term.

The community is in favour of development in this area, but is strongly opposed to this configuration of lots and the destruction of ALL the environmental values on the site. Over 100 people attended a public meeting in July 2010 and they unanimously opposed this proposal. A copy of the resolution is contained in the appendix of this submission.

Council has not been forthcoming with the community about this proposal. We submit that there are still significant gaps in the information provided to both you and to the community.

We believe a better alternative can be easily achieved, which can meet the needs of the community and the commercial objectives of future business, and also bring a financial

return to Ratepayers, while protecting the environmental values of the site and creating a vibrant town with active streets and good public spaces and pedestrian flows.

We call on the assessor and the JRP Panel to closely scrutinise this proposal and question the Applicant's assertions. We believe that if you do this you will REJECT this proposal and recommend that Council prepare a professional Masterplan for this town centre precinct, involving extensive community consultation.

- 1. We totally reject the need to clear, drain and fill ALL the vegetated areas on the site, and believe this approach will be enormously costly to the environment and to Ratepayers.**
- 2. We reject the need for the ring road to go all the way along the western boundary – it could easily go along a less destructive route, and alternative loop roads created.**
- 3. We ask that lots 4 and 5 be excluded from the subdivision, and the Stormwater Reserve be relocated away from the environmentally significant vegetation.**
- 4. We reject the assertion that the principle and preferred option of the *2001 Draft Salamander Planning Guidelines* cannot be achieved. We believe they only require minor modification and improvements.**
- 5. We call for a large and meaningful area to be set aside in an appropriate location for public open space, which could accommodate a versatile area with a playground, a space for markets or performances, and rest areas; which will not be possible in the 'reserve' which is in fact only a storm water retention basin.**
- 6. We reject the assertion that there are grounds for a waiver of the Port Stephens Comprehensive Koala Plan of Management (PSCKPoM) requirements. This proposal fails to meet the objectives or specific criteria of the PSCKPoM.**
- 7. We believe that planting koala feed trees along the roads will INCREASE koala mortality, by luring koalas into contact with increased traffic and dogs.**
- 8. We reject the assertion that SEPP 14 does not apply and that the ring road will act as a buffer and asset protection zone to the SEPP14 wetland. A 50meter buffer to the SEPP14 wetland can and should be achieved.**
- 9. We assert that the environmental impact of this proposal will be significant, and does increase *the risk* of localised extinction, on the wetland, koalas, EEC and other species, especially when the long-term (sea level rise) impacts are considered. An SIS should be prepared.**
- 10. SEPP 71 has not been adequately considered and this development fails to meet the criteria.**

- 11. We believe that the proposed environmental offset will not be effective or secure in perpetuity, and it is an untested approach to offsetting, not endorsed by DECCW. It should be totally disregarded as a mitigation or compensation measure.**
- 12. The traffic study is inadequate as it does not address peak season visitation, when the population of the area more than doubles. It fails to address the dramatic increase in truck and semi-trailer movements. It does not address the potential for a significant increase in movement between carparks within the expanded commercial area.**
- 13. A full and detailed costing of the infrastructure and the ongoing maintenance should be provided as this is to be funded by ratepayers.**
- 14. A detailed geotechnical report should be provided that addresses issues of subsidence and sub-surface movements, water table levels, localised flooding.**

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1 Introduction

It is the view of TRRA that this proposal fails to meet the requirements of a range of relevant legislation, planning instruments, and best practice guidelines. We call on the assessor and the JRPP to scrutinise assertions made by the developer and test these against other information and sources.

OUTLINED BELOW ARE THE MAJOR OMISSIONS AND ERRORS AS WE SEE THEM:

2 Inadequate Assessment of Environmental Values

The SEE has failed to adequately assess the environmental values for the site. They have failed because:

- There has been no orchid survey undertaken.
- The fauna survey methods were largely limited to the boundary of the site and did not occur in the swamp areas (which is the habitat for the most species).
- There is no acknowledgement that a large part of the western side of the site is permanently underwater.
- There is no mention of the extremely high watertable in the area and the impact this has on localised flooding and saturation.
- The geotechnical assessment, while addressing the issue of acid sulfate soils, fails to address issues of potential subsidence and movement in the areas currently underwater or subject to regular inundation. This is particularly pertinent to the potential cost of delivering and maintaining the proposed infrastructure and roads. No actual geotechnical report is provided in the documentation on public exhibition.
- The assessment has used out of date maps to assess the local extent of the SEPP 14 Wetland, EEC and Preferred Koala Habitat, that do not take account of recent legal and illegal clearing in the area.
- The flora and fauna study did not assess seed bank in degraded areas, the seed bank could still constitute EEC.
- The flora and fauna study has underestimated the extent of the EEC and is inconsistent in the assessment of the size and quality of the EEC on site.
- They have not considered the Conservation Significance Assessment of this wetland complex, or the wetland community type as set out in *Port Stephens Wetland Identification and Management Study 2005 (and determined by associated GIS layers)*.

- The Traffic Study gives no indication as to whether the one site assessment was undertaken during school holidays, or outside of peak season. During school term the traffic in the area is significantly higher at mornings and afternoons and the current roundabout at Bagnels Beach Rd and Salamander Way is clogged to standstill during the peak 'pickup' period.
- The Traffic Study fails to address the increase in truck and semi-trailers movements on the neighbouring roads and the resulting impact on road maintenance and safety.

3 Underestimated Environmental Impacts

3.1 Impacts on vegetation

Almost all the vegetation on the site has value. It is either Endangered Ecological Community, a buffer and is contiguous to SEPP14 Wetland, and Preferred or Supplementary Koala Habitat). ALL this vegetation will be lost.

The SEE has misrepresented the extent of ECC to be destroyed, and the area of EEC which will be degraded in the adjacent land. For example the SEE says that there are **4.2 ha** of ECC (pg 26 of Appendix 2 of SEE) on the site yet the assessment under part 5A EPA Act is only done for **3ha**.

The road along the western edge of the site will create an 'edge effect' impacting on the adjacent SEPP 14 wetland, EEC and koala habitat.. The impacts of the development on adjacent land have not been assessed accurately (if at all) in the SEE. An excellent explanation of 'edge effect' is provided in Appendix 9 page 87 of the Port Stephens Comprehensive Koala Plan of Management <http://www.portstephens.local-e.nsw.gov.au/files/1790/File/CKPoM.pdf> This document also contains an excellent rational for buffers for koala habitat and the same argument applies the vegetation in the adjoining wetland.

The SEE does not address the long term impacts that will occur in this coastal wetland ecosystem as climate change makes sea level and water tables rise. The importance of habitat refuges is vital if these habitats and ecosystems are to survive long term. This proposal will result in this important wetland system being totally surrounded by urban development.

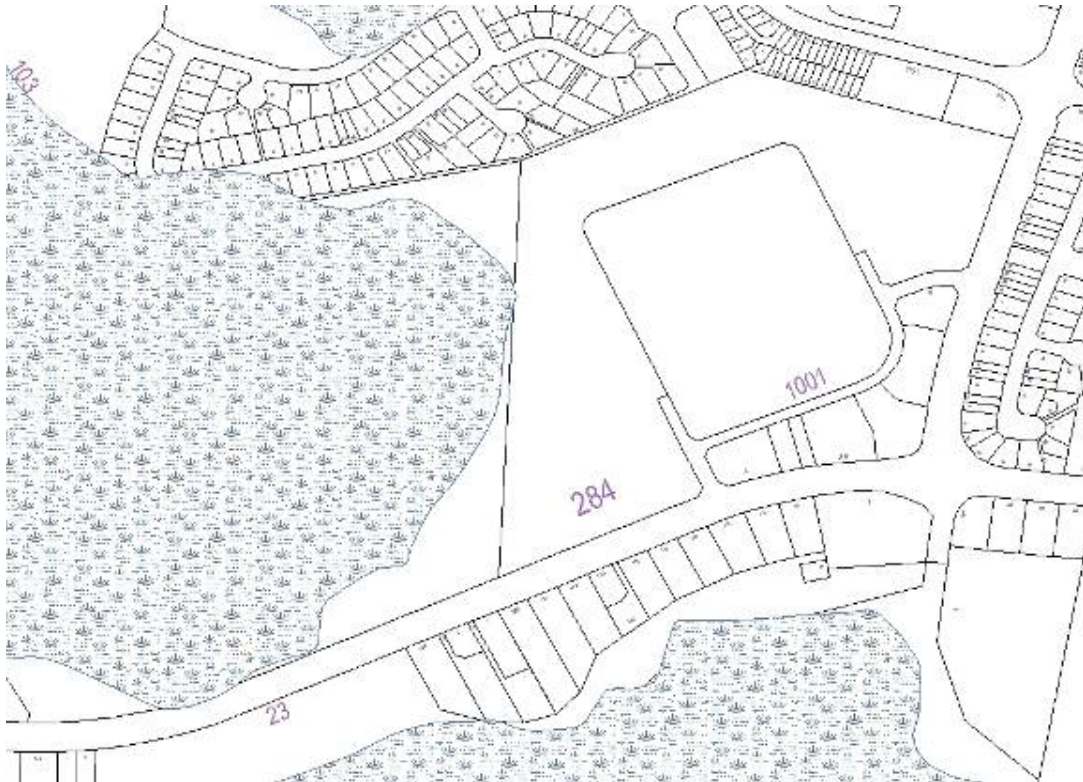
Significant other shortcomings of the environmental impact assessment are addressed below.

3.2 SEPP 14 – Coastal Wetlands

The site is immediately adjacent and contiguous with a SEPP 14 wetland. A map provided to TRRA by the Department of Planning (*see figure 1*) shows the SEPP 14 boundary is on, AND within the development site. The proposal and the assessment report states that there is no wetland on the site (Assessment report pg 5). This is not true. The ecological features of the wetland and the vegetation and hydrology on the western side of the site are clearly wetland. Some of the area they assert is not wetland is in fact permanently underwater.

The SEE suggests that the road will act as a buffer. We reject this because the road which would be right on the SEPP 14 boundary will create an 'edge effect' which will in fact **facilitate degradation** on the surrounding environment.

No buffer or set back is provided to protect the adjoining SEPP 14 wetland complex. We understand that a buffer of approximately 50-80 meters would usually be required in situations such as this. We understand the original subdivision of the site in 1992/93 did not put the road up along the western edge as it was considered important to have a 'soft' edge to protect the wetland. This is why Town Circuit is in the middle of the original block, not along the edge.



(Figure 1) SEPP 14 wetland boundary - provided by the Department of Planning July 2010

This development WILL impact on the SEPP 14 area. It will:

- Increase weeds and feral animals which will compete and destroy natural values – new road will facilitate increased access of these into the SEPP 14 area.
- Increase illegal dumping – the road will enable illegal dumping and litter to easily be deposited into the SEPP 14 area.
- Increased opportunity for arson in and adjacent to the SEPP 14 area.
- Destruction of wetland on the development site will lead to increased competition pressure for species reliant on the wetland.

- By totally surrounding the SEPP 14 wetland with urban development, there will be no available refuge for these species or ecosystem when sea level and the water table rise as a result of climate change.
- There will also be no refuge from bushfires.

Again an excellent explanation of 'edge effect' and scientific justification for buffers is provided in Appendix 9 page 87 of the Port Stephens Comprehensive Koala Plan of Management <http://www.portstephens.local-e.nsw.gov.au/files/1790/File/CKPoM.pdf>

3.3 SEPP 44 and Port Stephens Comprehensive Koala Plan of Management

The assessment of this development in the SEE, against the requirements and performance criteria of the Port Stephens Comprehensive Koala Plan of Management (PSCKPoM), correctly acknowledges that this development **does not comply** with the PSCKPoM.

We call on Council, to fulfil its obligation as set out in the PSCKPoM.

v) Council demonstrates best-practice management of koala habitat by incorporating the principles and standards of the PSCKPoM into all Council developments and activities. (Port Stephens PSCKPoM pg 11)

If this development is approved and a waiver given to avoid compliance with the PSCKPoM, then it will set a precedent for all developments in the LGA. It will effectively signal to developers and landowners that the PSCKPoM is not being enforced and there is no need to comply with it. This **will** cause the local extinction of koalas in this area.

For this Council to meet its obligations under the PSCKPoM it must:

1. **Mimimise impacts** on koala habitat by protecting a viable patch of the Preferred Koala Habitat vegetation **within** the subdivision. This could be achieved by reconfiguring the western road around the wetland and making lots 4 and 5 into a natural reserve.

The documentation is inconsistent in the assessment of impacts on koalas and koala habitat, but Council consistently has perpetrated a myth in the SEE and the two addendums that only 6 feed trees will be destroyed. Almost all the vegetation on site was found to be either Preferred or Supplementary Koala Habitat and more than 45 individual feed trees (*Eucalyptus Robustus*) were found on the site in both the east and western section of the site, as show in Figure 2. A comparison of the vegetation map in Figure 2 and Councils concept plans (see Figures 3 and 4) clearly shows that **all** the vegetation and all the feed trees except the few in the Library carpark (marked in red in Figure 2) **will be destroyed** either by the clearing of lots1, 2, 3, 4, 5 and 7, the road construction, or the inundation of the storm water retention pond in the 'reserve' .

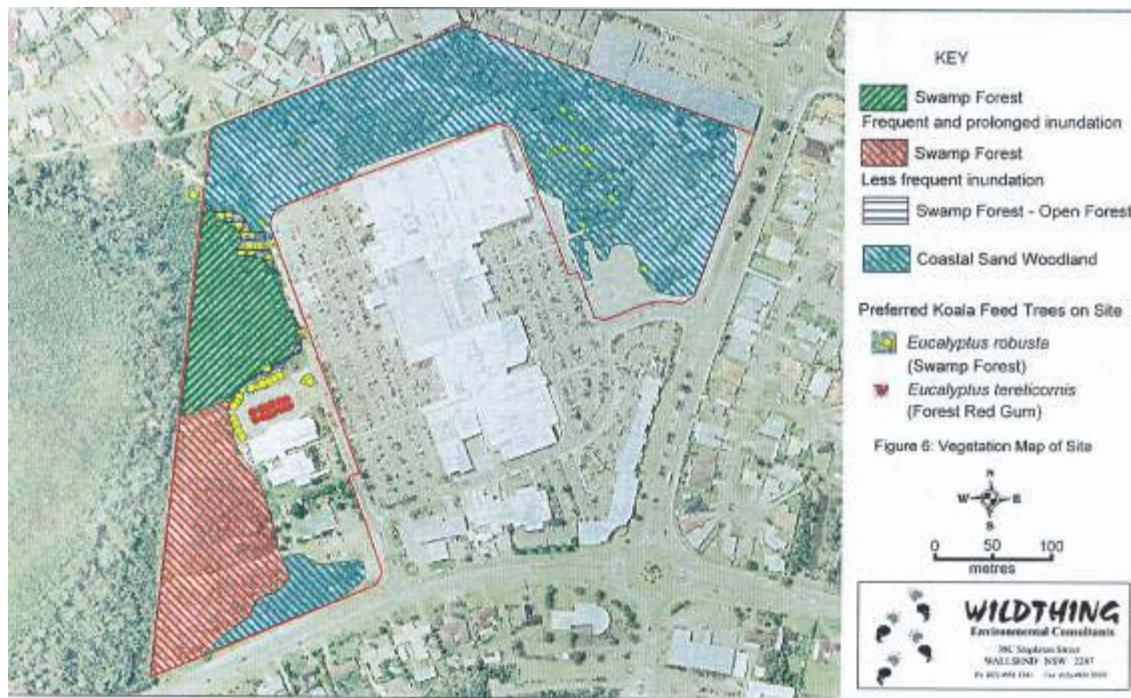


Figure 2. Vegetation Assessment from pg 19 of Appendix of the Flora and Fauna assessment in the SEE

2. **Provide a 50m buffer** around the Preferred Koala Habitat within the site and the Preferred Koala Habitat adjacent to the site; again by moving the western road and changing the lot configuration.

Appendix 9 of the PSCKPOM (pg 87 <http://www.portstephens.local-e.nsw.gov.au/files/1790/File/CKPoM.pdf>) clearly sets out a requirement for a buffer to be provided between any development and Preferred Koala Habitat. *“A minimum buffer of 50m is to be applied to all patches of Preferred Koala Habitat to help protect against detrimental edge effects.”*

This has not been done for this development. Even if Council does grant itself a waiver for other provisions of the PSCKPOM (see below), a buffer of 50m is still required to protect the Preferred Koala Habitat in the adjacent SEPP 14 Mambo Wetland. This requirement is clearly set out in Appendix 9, but is not addressed in the SEE.

3. **Not grant a waiver**, to make itself except from its own requirements.

TRRA does not believe it appropriate or proper process for the Council as Applicant, to request a waiver from compliance with the PSCKPoM from itself, as there is a clear conflict of interest. Procedural justice required that any consideration of an application for a waiver should be considered by a third party not associated with Council. Any waiver granted by Council to itself will be considered suspiciously by TRRA and should be carefully scrutinised by a third party. We are currently seeking legal advice on this issue.

TRRA believe the SEE is inaccurate and misleading in the way it has considered the performance criteria for development as set out in Appendix 4 of PSCKPOM. This development does not meet the performance criteria or the objectives as set out below.

The objectives and performance criteria set out below are taken from *Appendix 4 pages 66-70 of the PSCKPoM* <http://www.portstephens.local-e.nsw.gov.au/files/1790/File/CKPoM.pdf>

The general aims and objectives of these performance criteria are as follows:

- i) To ensure that the koala population in the Port Stephens LGA is sustainable over the long-term.*

Planting 300 feed trees along the road will **increase** the risk of local extinction because:

- There will be a net loss in habitat and in feed trees (especially as they only propose to plant seedlings which will take 5-10 years to be useful to koalas)
- The new trees will lure koalas out of the protected reserve and into contact with traffic, dogs and foxes.
- This proposal will also reduce connectivity and eliminate refuges for koalas.

- ii) To protect koala habitat areas from any development that would compromise habitat quality or integrity.*

This development will destroy the entire koala habitat on the site, which is over 6ha of vegetation classified as either Preferred or Supplementary Koala Habitat with over 45 individual feed trees, (not just a few trees as proposed in the SEE) and will lead to the degradation of adjacent habitat in the protected wetland. As outlined above the planting of feed trees along the roads will increase danger to koalas.

- iii) To ensure that any development within or adjacent to koala habitat areas occurs in an environmentally sensitive manner.*

This development will destroy more than 6ha of koala habitat, including approximately 4.2ha of Preferred Habitat. It will destroy over 90% of the koala feed trees on the site (see above for details).

It will create an 'edge effect' which will increase degradation of the adjacent koala habitat. No buffer has been provided to protect Preferred Koala Habitat on the adjacent land as required by the PSCKPoM.

No landscaping plan has been provided so the Assessment Report should not conclude that there will be 'environmentally sensitive landscaping'. The 300 seedlings to be planted will endanger the local koala population if they ever grow to mature trees, by luring the animals away from safe habitat and bring them into contact with traffic, dogs and foxes.

- iv) To ensure that acceptable levels of investigation are undertaken, considered and accepted prior to any development in or adjacent to koala habitat areas.*

The SEE or supporting documents fail to show any evidence as to which (if any) alternative outcomes were considered by the applicant. There is not one sentence in the SEE or the traffic assessment in Appendix 4 which suggests that any alternative road networks or lot configurations were formulated or assessed. For the documentation to suggest that this proposal represent the 'best outcome in terms of vegetation removal' is offensive. This proposal will result in the **removal of all** the vegetation on the site except a few trees in an existing car park.

No investigation has occurred to determine if an additional buffer width is required to protect koalas and koala habitat in adjacent land, as required by the PSCKPOM Appendix 9.

v) To encourage koala habitat rehabilitation and restoration.

It is totally inaccurate and grossly misleading to consider roadside planting of seedlings a rehabilitation or restoration activity. This would only constitute landscaping not habitat enhancement or habitat creation. These trees would take 5-10 years before being of any benefit to koalas. This development will result in a significant net loss of habitat and increase the threat to the koalas from traffic and dogs.

vi) Maintain interconnection between areas of Preferred and Supplementary Koala Habitat and minimise threats to safe koala movements between such areas.

The SEE and supplementary documents downplay and misrepresents the extent of feed tree and habitat loss resulting from this proposal. The corridor will be reduced in width and quality (see detailed comments above).

The experts recommend a corridor of minimum width of 100 metres. This proposal falls far short of that. The introduction of hundreds of additional cars per hour on the road immediately next to the corridor will also make movement in this area much more dangerous for the koalas.

vii) To ensure that development does not further fragment habitat areas either through the removal of habitat or habitat links or through the imposition of significant threats to koalas.

The SEE and supplementary documents have totally failed to address the increased threats to koalas posed by this development. The Koala Recovery Plan (<http://www.environment.nsw.gov.au/resources/threatenedspecies/08450krp.pdf>) lists amongst the recognised threats to koalas;

- habitat loss,
- road kill; and
- dog attack.

The SEE clearly sets out that there will be destruction of over 6ha of habitat, and we believe degradation of the adjoining habitat, and up to 2000 extra car movements per day. The new road network will also increase access for dogs and other predators to the site and the adjacent wetland. Thus it is clear that the development will increase the threats posed to koalas in the immediate and adjacent area.

viii) To provide guidelines and standards to minimise impacts on koalas during and after development, including any monitoring requirements.

The suggestion of a speed limit and a vegetation removal plan are token gestures, which are unlikely to be enforced, and will have no meaningful benefit to the koalas.

The applicant and the supplementary documents have failed to demonstrate that this subdivision design is consistent with the above objectives. A close assessment of this development against these objectives and criteria clearly shows that it has not met the requirements.

Appendix 4 of the PSCKPoM clearly states that a waiver can only be granted if certain performance criteria have been met. As set out below, we believe that the development has failed to meet these criteria. Therefore the consent authority **CANNOT** grant a waiver. To do so would be outside the scope and authority of the PSCKPoM.

*The PSCKPoM (pg 67) says “**Council may waive the provisions of a), b) and c) of these criteria only for the Purposes of establishing a building envelope and associated works, and only if the Proponent can demonstrate:***

1. That the building envelope and associated works including fire fuel reduction zones cannot be located in such a way that would avoid the removal of native vegetation within Preferred or Supplementary Koala Habitat, Habitat Buffers, or Habitat Linking Areas, or removal of preferred koala food trees;

The documentation available provides no evidence that alternative scenarios cannot achieve the developers objectives of improved traffic circulation and truck access. There is no assessment of alternative options against specified criteria, nor are the specific requirements for truck movements spelt out anywhere.

It can be clearly demonstrated that a truck transport route and traffic circulation CAN be achieved without making a road along the western boundary or through the Preferred Koala Habitat. The diagram in (Figure 3) taken from the *Draft Salamander Bay Town Centre Urban Design Guidelines 2001* clearly shows just one of a range of possible alternative road routes that would significantly reduce the impact on koala habitat. The road options shown in (figure 3) would still allow for the road to be an asset protection zone and emergency vehicle access. Claims that the 2001 preferred option for a road network are no longer viable due to development undertaken subsequent to 2001, are totally untrue. The development undertaken in 2002 does NOT reduce options for an alternative road network.

A range of alternative locations for stormwater and drainage management are available but have also not been considered.

TRRA has held discussion with Big W (the potential buyer of lot 6, and they have indicated clearly to us that they would be happy with a range of alternative road options which would protect the wetland and koala habitat.

2. That the location of the building envelope and associated works minimises the need to remove vegetation as per 1 above;

No attempt has been made to minimise the need to remove vegetation on the site. An alternative lot configuration and alternative road network could enable important parts of the native vegetation to be retained.

3. That, in the case of subdivisions, they are designed in such a way as to retain and enhance koala habitat on the site and are consistent with the objectives of this appendix;

This proposal has not demonstrated any intention or desire to design the subdivision to retain or enhance koala habitat, in fact the opposite is true.

4. That koala survey methods (as per the Guidelines for Koala Habitat Assessment in Appendix 6) have been used to determine the most appropriate location for the building

envelope and associated works (so as to minimise the impact on koala habitat and any koala populations that might occur on the site).

The Applicant has not demonstrated that koala survey methods have been used to determine the most appropriate building envelope. It is evident that results of koala habitat mapping have been totally ignored in the lot design or road design.

Other issues

- It should also be noted that there is **no provision in the PSCKPoM for habitat offsetting**. For this and other reasons outlined, the Consent Authority should ignore the suggested pseudo 'offset'.

3.4 SEPP 71 – Coastal Protection

(d) The suitability of development given its type, location and design and its relationship with the surrounding area

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for weeks after heavy rain. Sea level rise due to climate change will exacerbate this already significant problem.

The design of this development is also unsuitable for the location, given that the area is the main business centre, and functional town centre, for the Tomaree Peninsula and should receive a high quality town centre style design, rather than the isolated and dislocated bunker style complex of the proposed development.

(g) measures to conserve animals (within the meaning of the [Threatened Species Conservation Act 1995](#)) and plants (within the meaning of that Act), and their habitats

As shown elsewhere in this submission we do not believe that development is consistent with measures to conserve animals and plants, as it proposed to clear, drain and fill all the native vegetation on site.

(i) existing wildlife corridors and the impact of development on these corridors

This vegetated area of the proposed development site is an important and well documented wildlife corridor, especially for animals moving around the Mambo wetland. Many animals cannot move through the wetland and are dependent on the now narrow area of tall trees to facilitate movement all the way around the wetland. This development will greatly reduce this function as well as greatly reduce the movement north and south.

(p) Only in cases in which a development application in relation to proposed development is determined:

- (i) The cumulative impacts of the proposed development on the environment, and*
- (ii) Measures to ensure that water and energy usage by the proposed development is efficient.*

The SEE and Assessment report have not considered the cumulative impacts of this development. We believe that the cumulative impacts of this development on the local environment are significant. This development will destroy a wildlife corridor, facilitate weed, feral animal and dumping into a SEPP 14 Wetland, it will destroy all the vegetation (including EEC), Preferred Koala Habitat and habitat for up to 30 threatened species. The long term impacts will be to cause local extinction as there will be no area for these species and habitats to move to as the watertable and sea level rises in the wetland and surrounding area.

l) Aboriginal issues.

The Assessment Report asserts merely that “there are no known cultural places on the site” We submit that this does not adequately address the full range of issues that are required to be considered under clause 8(l). The Report also asserts in proposed condition 5 that “The development has been granted an approval from DECCW dated 4 December 2009 under their relevant legislation.” We submit that this is an inaccurate characterisation of the DECCW letter, which in fact raises a number of questions about the adequacy of consultation, and lack of documentary evidence of consultations, in relation to the requirements of the National Parks and Wildlife Act 1974 concerning Aboriginal Heritage, and concludes that ‘Subject to resolution of the above issues, it is recommended that the enclosed GTAs (General Terms of Approval) are reflected in any approval conditions ...”

We can see no evidence that the Applicant has addressed the concerns expressed by DECCW in their 4 December letter.

4 Port Stephens Local Environment Plan (2000)

We believe that the Applicant has failed to demonstrate that they have designed a development, which will meet the following two objectives for zone 3a as set out in the LEPs

- (c) To maintain and enhance the character and amenity of major commercial centres, to promote good urban design and retain heritage values where appropriate, and*
- (d) to provide commercial areas that are safe and accessible for pedestrians, and which encourage public transport patronage and bicycle use and minimise the reliance on private motor vehicles, and*

We believe that the development will not enhance the character and amenity of the commercial centre, nor will it promote good urban design as required by clause (c). It will not create safe and accessible pedestrian access or minimise the reliance on private vehicles. In fact we believe it will do quite the opposite.

The TRRA laments the lack of an “appropriate underlying structure plan” or a “detailed Masterplan or site specific DCP” which “the Applicant has not provided”.

The ‘Concept Plan’ (Figure 4) and Urban Design Addendum contained in the supplementary gives very little practical detail, and is actively misleading, inconsistent and inaccurate on a number of significant issues. In no way could be considered good urban design practice or best practice town planning.

This concept plan and design is **misleading** in that in that it:

- Perpetrates the myth that the Salamander Bay area in question is not the Town Centre of the Tomaree Peninsular but is just a stand alone commercial precinct. This is not true. The most recent drafts of the Port Stephens Settlement Strategy has identified this area as the functional town centre because of the location of the library, community centre, 2 schools, churches, childcare centre, community radio station, medical and dental services and well as being the base for major banks and retail outlets. (not sure that this is so – our submission on the CSS criticises the draft CSS

for not acknowledging this and for simply designating the area as a stand alone shopping centre)The 'fictitious' illustrations show lot 5 as green open space. There is no mention of this in any of the documentation and Council has made many public comments about the future sale of this lot.

- Suggests that the truck access problems for Kmart can only be solved by a road on the western boundary of the site. Kmart is on the eastern side of the precinct and their problems could be solved by a small circular road around the eastern and northern sections of the site, avoiding the west altogether. A circular road could easily take a range of other route avoiding the significant vegetation and proximity to the SEPP 14 wetland.
- Suggest a pedestrian mall between lot 6 and the existing shopping centre, yet there is no requirement for this in any of the documentation and would be totally dependent on the good will of the current and future owners to implement and maintain.
- Almost all the photomontages provided are for the hypothetical developments for the lots where there are currently no buyers. No drawings or montages where provided of the Aldi site, the Big W or the Medical Centre.

This concept plan (figure 4) and design is **inaccurate** in that it:

- Does not accurately show existing facilities, especially around the Child Care centre (located on proposed Lot 3). The plan only shows the brick line of the building, and not the verandas, covered play spaces, walkways or entrances and it is totally misleading as to how close the road will be to the children, and the impact on the car parking and access.
- Says that it has adhered to specific design principles, yet clearly does not. We assert that these 'design principles' have been thought up after the event in order to make this look like a professional planning exercise.
- States that only 6 koala feed trees will be lost, which is totally false (see comments above).
- The documentation suggests that this land is the only available 3a Zoned land in the area. This is totally untrue. There are 3 large vacant blocks within the Nelson Bay town centre and a large new release area on Port Stephens Drive only a few kilometres away which would be suitable for either a stand alone Aldi store.
- The documentation also fails to address the fact that there are a large number of vacant shop and office in both the Salamander Bay and Nelson Bay areas. The demand for commercial space is seriously exaggerated and based of inaccurate figures from draft reports which have clearly been shown to be incorrect in the past.
- The design fails to acknowledge that the DCP allows for significantly taller buildings, up to 4 stories or 15 m. If the buildings were higher, then the same level of

commercial development could be achieved using considerably less land area.
Greater density of built form would enable;

- A financial return to ratepayers while also protecting the environmentally significant land on the west and north west of the site.
- Car parking to be accommodated on roof tops or in basements, thus avoiding the sea of individual car parks surrounding each individual lot.
- Two different pedestrian networks are presented in the documents in the Urban Design Addendum. In the 'concept' Plan footpaths are provided for along the proposed western ring road, on the western side of the road as far as the southern end of lot 5. In the Pedestrian Connections Diagram in the same document, this footpath only goes to the end of lot 6 and misses the proposed bus stop altogether.
- The 'Concept Plan' does not show all the newly proposed car parks – especially the one proposed for behind the Child Care Centre and the library. It doesn't show if the road next to the Child Care centre will be an entry point for proposed Lots 2 and 3.

This concept plan and design is **inadequate** because it does not cover:

- design principles drawn from an analysis of the site and its context, (rather than off the shelf principles with no real relevance to the proposal)
- desired future locality character,
- the scale of any development and its integration with the existing landscape,
- phasing of development,
- public access , taxi ranks, bus stops,
- infrastructure provision,
- building envelopes and built form controls for all lots,
- remediation of the site,
- provision of public facilities and services,
- provision of open space, with details on its function and landscaping,
- Signage controls,
- Landscaping, street furniture, street art,
- Ongoing integrated management and upkeep plan.

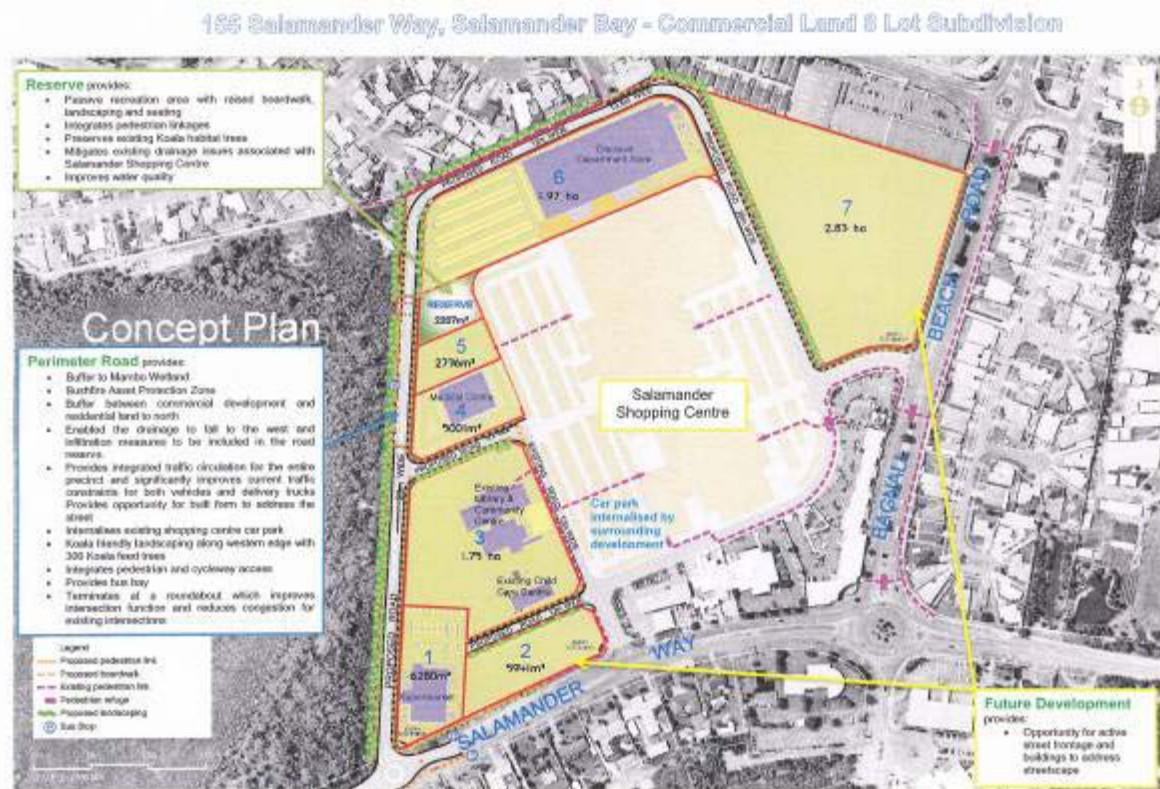


Figure 4 The Applicant's inadequate 'Concept Plan'.

No intelligible elevation diagrams or transect drawings have been provided – especially important in relation to the excavation and road works on the northern side of the site. There is no indication of the size and location of retaining walls and how access will be achieved from the streets on the northern side of the site.

It is **poor town planning** because:

- The “Fictional Plan Illustrating Development Potential” (Figure 5) from the Urban Design Addendum clearly shows the poor outcomes that this proposal will result in. The result is a sea of car parks, surrounding isolated buildings, with no public spaces (Note Lot 5 is shown in this diagram as green space which is false. This space located on the western periphery is inaccessible to the main concentration of clients and will contribute nothing to the general ambience of the centre. It will be sold and developed too as there is no provision to protect it). In total the Salamander Bay town precinct will result in 14 individual and separated car parks, which when combined with the road network will take up more than 68 percent of the available land.



Figure 5. Fictional Plan from Urban Design Addendum 2010

- There is no scope or potential for active streets or a 'main street' despite the rhetoric in the documentation because there is no place in the entire precinct where footpaths or shop front will be on both sides of the street. Every street will have at least one side fronting a car park. Neither Aldi, Big W or the proposed medical centre are providing opportunities for active streets.
- As state above the pedestrian access plan is inconsistent in the DA, and in most parts of the subdivision footpaths are only provided on one side of the road. There has been no attempt to link pedestrian access to public transport or community services, or to integrated or neighbouring high density residential areas. Glaring omissions include no pedestrian access from the northern lots and northern end of the existing shopping centre to the library and community centre. This is already a goat track and should be a formal footpath. There is no direct pedestrian route from the community centre to lot 6, without crossing the road 3 times. There is no footpath to get to the bus stop on the western boundary road.
- Public transport is barely considered in this plan. The few bus stops are poorly located with no proximity to the main community services. No bus interchange has been provided for on public land and no bus pullovers are allowed for on the roads. No bus shelters are provided. At present effective bus access to the area is dependent on the good will of one private landowner and this will not improve with this current proposal.

- The plan totally ignores the town's major industry, tourism, and fails to capitalise on the areas potential to support and enhance the tourist experience. The proposed development is ugly and will reduce, rather than augment, the area's tourism qualities.
- The plan provides NO open public spaces or public places, as would normally be provided for in a major town centre.
- The plan provides for no open green space, parks or play grounds despite its proximity to a range of natural assets and the potential role the area could play as a year round visitor attraction for tourists.
- It states that there is scope for residential use in the future, yet the design of isolated bunker style development surrounded by carpark will be wholly unattractive to future residents, who come to the area primarily for a 'sea change' nature based lifestyle. There is no specific designation of sites for this use which suggests a low priority for a residential component which can help to inject vitality to the business and entertainment functions of any town centre.

The earlier Assessment Report addressing the LEP clearly indicates that the application is in effect a third rate approach to planning - we submit that this means that the application cannot be considered to meet zone objectives (c) and (d)

Specifically, the report states that "in this case, stand alone, disconnected and disjointed buildings surrounded by car parks, are one such scenario" (of a poor quality urban design outcome).

We draw the Panel's attention to the *2001 Draft Salamander Bay Town Centre Urban Design Guidelines*, commissioned by Council. These Guidelines (by Peter Robinson Associates) set out principles that should underlie a good outcome for an expansion of the Centre, as an integrated mixed-use development. They consider options and recommend a preferred option, that TRRA considers would provide a good foundation for an updated Master Plan. This option, which we have included in this submission as (*Figure 2*), addresses many of the concerns of the community, including protection of the environmental values of the north west section of the site, and a more 'people friendly' traffic and pedestrian access arrangements.

The Applicant has rejected key elements of the 2001 Guidelines as being incompatible with its own proposals, and in our view underplays the differences between the two 'visions'. We submit that it is not the case that "Elements [of the 2001 Guidelines] were unable to be acted upon due the expansion of the shopping centre in the period since ..." – in fact the Guidelines expressly took account of the then DA for the second stage expansion. We also reject the Applicant's assertion that the (in our view preferable) road network in the 2001 Guidelines cannot be adopted due to the needs for traffic management of large vehicles – the 2001 report clearly addressed this issue.

The Pedestrian Plan is inadequate and show even less detail than the February 2010 'concept plan'. There is no clear indication of where formal pedestrian crossing will. In large sections of the road network they propose to have footpaths on only one side of the road. This is not conducive to either 'active streets' or a 'main street'. We believe the lot layout

and proposed uses by bunker style developments will be wholly uncondusive to safe or pleasant walking, and will therefore lead to an increase in car use within the site.

We draw attention to a *Child Friendly Built Environment Report*, commissioned by Council in 2009, which took the Salamander Centre as a case study, and made many sensible recommendations in relation to traffic. Neither the SEE nor the supplementary Urban Design Addendum, makes use of the findings of this valuable report, which we find inexplicable.

We also draw attention to Port Stephens Council's vote at its 13 July meeting to reject two of the recommended conditions of approval in the Assessment Report aimed at improving urban design outcomes – *Condition 54* attempting to 'lock in' pedestrian linkages and *Condition 55* securing a public park. Given that Council will be responsible for enforcing any conditions, its rejection of these two cannot give the community any confidence that it has any real commitment to best practice urban design. TRRA therefore believes that the Joint Regional Panel should impose conditions on any approval to ensure an acceptable design concept.

Our specific concerns about the impact this development will have on traffic volume and flows are set out below. However, the Panel's attention is particularly drawn to the fact that the isolated and disconnected nature of this development will make vehicle trips BETWEEN lots almost essential for all users. It provides no convenience or ease of movement between shops. For people with young children, a disability or the elderly who make up a significant part of the local population, the challenge will be daunting. . This separation of uses reinforces barriers to social interactions e.g. between the schools, churches, Rigby Centre, and Pacific Blue Resort and the various retail and community facilities in the area.

There is no evidence that the Applicant has considered or assessed alternative proposals, or numbers and configurations of lots – it has only sought to justify its predetermined preference, which appears to have been motivated more by short term revenue considerations than the long term planning that should be essential for such an important site.

5 Port Stephens Development Control Plan 2007

5.1 DCP Chapter B1 – Subdivision and Streets

We submit that the application is inconsistent with several of the controls in this chapter of the DCP – including B1.P23 (water sensitive design/water quality); B1.P25 (smaller lots along street frontages); B1.C44-C45, and B1.C48 (infrastructure).

See under the LEP 2000 above for our comment on Council's vote on 13 July to reject the proposed condition securing a public park.

The street to go in front of the Child Care Centre is narrower than allowed for in the current DCP. Considering this road will be so close to the very young children it will have even more impact than normal.

5.2 DCP Chapter B3 - Parking, Traffic and Transport

We submit that the proposal fails to meet many of the criteria in Chapter B3 – particularly those concerning access; loading and unloading facilities; parking and turning and internal road widths. Note: Also see comments re poor town planning above.

The traffic study totally fails to address seasonal peak traffic, and the fact that this is a tourist town, where the population grows almost 300% during peak season in summer and Easter. The existing shopping centre overflows at this time of year, causing significant inconvenience to neighbouring residents and businesses, and frustration to users of the Salamander Centre. We submit that the proposed lots, building envelopes and associated car parks are not conducive to a reduction in car trips, and will in fact aggravate the traffic and parking issues, particularly at peak periods.

There is also no mention of the increase in large trucks using the area and surrounding streets. The areas road network is already under great stress with considerable potholing and subsidence issues. These will be greatly increased by the increase trucks visiting the site.

We submit that a Masterplan process would almost certainly favour centralised car parks – possibly multi-level which could encourage people to walk between sites rather than drive.

The Traffic study gives no indication as to whether the one site assessment was undertaken during school holidays, or outside of peak season.

The DCP recommends parking should be at the rear of buildings not on the street front, as seen in the applicants 'concept plan'.

Traffic calming devices should be require to reduce late night antisocial driving behaviour and to ensure the 40km speed limit is adhered to.

The proposed new roundabout on Salamander Way at Town Centre Circuit would increase the current difficulty of pedestrians crossing from the southern side of Salamander Way. We submit that the substantial cost of a roundabout may not be justified and that a proper Master Plan process could well result in less costly traffic solutions which are also friendlier to pedestrians and cyclists.

We have already mentioned, in relation to compliance with the LEP 2000, the *Child Friendly Built Environment Report*, commissioned by Council in 2009, which took the Salamander Centre as a case study, and made many sensible recommendations in relation to traffic.

5.3 DCP Chapter B4 – Commercial and Mixed Use Development

Compliance with many of the requirements of Chapter B4 can only be ensured through a comprehensive Masterplan process. In particular, Council's proposed development of isolated retail premises and community facilities offends against almost all of the principles and development controls in this chapter.

We note that the site specific control B4.C20 provides for up to **4 stories and 15 metres** for this land, but the Council's proposals show no sign of taking full advantage of this to create a more integrated mixed use centre.

We submit that a mixed use development of commercial, retail, residential and community facilities (as suggested in the 2001 Guidelines already cited) is not only suitable, but preferable for this site, and is more consistent with Council's intentions, as expressed in the DCP.

TRRA believes the current proposal will in fact be a major deterrent to mix use, particularly future residential uses, as it is unlikely that anyone will want to live in an area surrounded by multiple carparks and ringed by bunker buildings.

6 Threatened Species Conservation Act (1997) and Part 5A EP&A Act

These 7 Part Tests have not been undertaken in accordance with **Threatened Species Assessment Guidelines** (DECC August 2007). These Guidelines (DECC 2007) states:

*"Proposed measures that mitigate, improve or compensate for the action, development or activity, **should not be considered** in determining the degree of the effect on threatened species, populations or ecological communities, **unless the measure has been used successfully for that species in a similar situation.***

In many cases where complex mitigating, ameliorative or compensatory measures are required, such as translocation, bush restoration or purchase of land, further assessment through the species impact statement process is likely to be required". Pg 12

The Seven Part Test for this proposal **has considered an untested measure** because they consider the pseudo offset in the Seven Part Test for both the koalas and the EEC (see comments on pseudo offset in section 6. 4). They also propose to put feed trees for koalas in and around the car parks. This is not a mitigation measure which has been tested or considered successful anywhere else in NSW.

Also the assessments (7 part tests) have focused on whether the proposal will 'lead to local extinction'. The 7 part test is supposed to help assess whether the proposal will **'increase the risk of extinction'**. If there is an **increased risk**, then further assessment through an SIS is required. We believe the 7 part tests, if done correctly, should show that there is an *increased risk* of local extinction for both the EEC and the koalas.

6.1 EEC – Swamp Sclerophyll Forest

For the following reasons, and those set out above in relation to the inadequacy of the survey effort, we believe that the assessment of impacts undertaken as part of the Part 5 EP&A Act has been inadequate.

- Should use updated local extent mapping - which shows extensive loss of this EEC in recent years through legal and illegal clearing.

- 4.2ha not 3ha of EEC will be destroyed by the development and more will be degraded in the surrounding area.
- No reference is provided for the figures used to determine what percentage of the local area of this EEC will be affected. Nor is any information provided as to how this was calculated.
- Does not take account of the need for refuge areas for the EEC from sea level rise
- Should not use 'pseudo offset' in determining significance of impact
- Does not consider impacts on adjacent EEC from increased weed and feral animal invasion and increased dumping, caused by the road on the western boundary creating an edge effect.
- Has not taken account of the increased risk of long term extinction.

This proposal is not consistent with the Recovery Plan or Priority Action Plan for this species. The proposal does in fact constitute at least one key threatening process, and is likely to facilitate the increase in three other key threatening processes.

6.2 Koalas

For the following reasons, and those set out above in relation to the failure to comply with the SEPP 44 / PSCKPOM (see section above), we believe that the assessment of impacts undertaken as part of the Part 5 EP&A Act has been inadequate.

- It appears they used outdated habitat and vegetation mapping – which does not show extensive loss of koala habitat across the Tomaree Peninsular in recent years.
- They should not consider the 'pseudo offset' in determining significance of impact as this is an untested and unconventional compensatory mechanism which does not comply with the DECC guidelines for biodiversity offsets.
- Does not consider impacts on adjacent habitat of increased weed and feral animal invasion, and the increased access and exposure to dogs.
- The proposal to plant 300 feed trees along the road will lure animals to the roads where they will become more vulnerable to cars and dog attack. This proposal will further endanger koalas and has not been proven to be an effective migration measure.
- Increased road network will increase threats especially cars and dog access (as per the specific threats identified in the koala recovery plan). There will be no policing of the 40km speed zone at night and the area is highly likely to be used for drag racing (especially given the long straight non traffic calmed road alignments).
- This proposal will result in a net LOSS of habitat
- They do not provide any information as to how they propose to 'not encourage koalas to come onto the site'. Where the planting of feed trees will in fact encourage them onto the sites.

This proposal is not consistent with the *Threat Abatement Plan* or *Priority Action Plan* for this species. This action is a key threatening process and will facilitate other key threatening processes.

Preferred koala habitat will be isolated by this proposal. Habitat in the Mambo Wetland area and east to Corlette will be increasingly isolated from habitat in the south. This is because the so-called movement corridor in the west will be a row of young trees on the road. They will not be safe habitat for more than 10 years.

These impact assessments have not taken account of the increased risk of long term extinction in a climate change world.

6.3 Other threatened species

Similar concerns exist for other species such as:

- Wollam Froglet
- 2 orchid species
- Glider

This proposal is not consistent with *Threat abatement plan* or *priority action plan* for these species.

6.4 'Pseudo Offset'

The habitat offset proposed is not a true offset nor is it a true mitigation measure for the impacts of this development. It has simply been proposed, without following any proper process in an attempt to avoid a proper assessment of impacts through a Species Impact Statement. Council business papers (13 July 2010) clearly state that the intention of the proposed 'offset' is to "avoid the need for a species impact statement" (Item No. 6 pg.65)

This offsetting proposal **does not comply** with five of the "*Principle of the use of biodiversity offsetting in NSW*". (DECCW, 2010).

<http://www.environment.nsw.gov.au/biocertification/offsets.htm>)

These are:

1. *Clearly state the impacts must be avoided first by using prevention and mitigation measure on site –*

Absolutely no effort has been made to avoid or mitigate impacts on the EEC, koalas or any other threatened species on site. All the habitat and environmental values will be destroyed, despite the fact that alternative road and lot designs could protect much of the important habitat.

2. *All regulatory requirements must be met? -*

As set out elsewhere in this document we believe that the regulatory requirements have not been met in relation to the SEPPs, the Comprehensive Koala Plan of Management, or part 5A of the EP&A Act.

6. *Aim for net improvement in biodiversity overtime –*

This development will result in a net loss. The area proposed for the pseudo offset is already zoned 7a and protected by its SEPP 14 status.

7. Offsetting must be enduring –

A Plan of Management under the Local Government Act is not recognised by DECCW as an enduring mechanism, secure tenure, or a compensatory measure that will last in perpetuity. It can easily be amended or revoked by Council without giving any public notice.

12. Offsets must be supplementary –

The proposed offset is current managed/owned by the Port Stephens Council as Environmentally Sensitive Land. It is all SEPP 14 land and is zoned 7a. This land is not suitable for development and the Department of Planning has previously indicated that it would not allow this land to be rezoned for development. 'Protecting' this land does not add to the land protected for conservation as it is already unable to be developed.

If this offset is to be considered as a mitigation or compensation measure it must be considered an untested and unconventional one, as it does not comply with DECCW process, ratios, procedure, or protection mechanisms, and therefore additional assessment is warranted according to the *Threatened Species Assessment Guidelines* (DECCW 2007) and a Species Impact Statement should be undertaken for the koalas and the EEC.

7 Community consultation (EPA Act s.79C(1)(d))

7.1 Notice and Public Exhibition - Process issues

We have serious concerns about the process of notice and public exhibition for the re-submitted DA, as follows (note that we have already put most of these points to Council officers on 23 and 25 November, seeking an extension of the exhibition period, but have yet to receive a substantive reply).

- It would appear that not all of the individuals and organisations which made submissions to Council on this DA in November 2009, and/or to the JRPP in July 2010, received notice of the 're-submitted' DA. We question whether this meets the statutory consultation requirements.
- Notices were dated 16 November but were not received by post until 19th and 22nd November respectively – in both cases giving less than the required 14 days notice.
- While the individual letter notices and the Examiner 18 November public notice seek submissions by 5pm on 1 December, the entry in the Council DA tracker 'Currently advertised DAs' for 811/2009 says: "Advertised from: 18/11/2010 Expires 02/12/2010". As a result, some interested parties would either be confused.
- The notices are almost exact copies of the original notice sent out in October 2009. There is no indication that this is in effect a re-submission, and no explanation that additional material has been made available.
- The DA was advertised in the Examiner dated 18 November only by reference to the DA number (811/2009) and street address (155 Salamander Way), with the generic

description 'Eight (8) lot subdivision' (excluding even the additional word 'commercial' in the original DA). It also (as before) shows the applicant as your consultants, with no mention of Council as the actual applicant. Given the amount of controversy this DA has already generated, surely Council should have clearly advertised this DA as being by Council itself and relating to the future development of Salamander Centre?

- Only one copy of the original SEE and new supplementary material appeared to be available at the Tomaree library. No web or electronic material was available.
- There is no explanation accompanying the additional material – how is the public to know that the two documents are the only additional material, or whether there are other changes, including to the SEE?
- On the Council's DA Tracker website, no extra information is available.
- Further to all of the points above, we, and the community, remain unclear about the exact status of the DA i.e. whether it has been re-submitted, continued after a pause in processing, or reached some other formal stage. This uncertainty makes it difficult for interested parties to understand the process and opportunities for input, and to respond accordingly.

7.2 Public Consultation prior to re-advertisement

In the Social and Economic Assessment dated October 2010, the applicant devotes a whole section (Section 7) to Consultation

7.1 explains a so-called 'survey' conducted by the applicant in September 2010, based on a 'fact sheet' mailed to more than 15,000 residential addresses on the Tomaree Peninsula and emailed to the Council's resident panel (some 300 individuals across the LGA).

They report on the 69 responses received – 36 on-line and 33 in written form. The report claims (p.46) that this was a 'representative sample'. There is no basis for this claim, particularly in light of the bias in both the 'fact sheet' and the survey design and implementation. TRRA wrote to the Council on 23 September 2010 complaining about this bias (Appendix 3).

We also contrast the small response to the survey with the attendance at a public meeting organised by TRRA on 17 July 2010, where the 100+ attendees unanimously passed two resolutions, (Appendix 2).

We are disappointed, although not surprised, that Council does not even refer to the TRRA public meeting, to which it was invited and the outcome of which (the resolutions) were communicated to Council. This clear expression of community opposition to the current concept plan should be acknowledged, alongside other inputs.

There has not been adequate consultation with the bus company that services the area to ensure an effective public transport system into the future.

We question how Council can honestly suggest that the survey results show community support for the subdivision proposal. Due to the wording of the questions **all it reveals is general support for more retail on the peninsula as a whole and for more retail and better infrastructure at the Salamander Centre – hardly surprising finding.**

The conclusion on page 46 that 'while some respondents may disagree with the design or other matters relating to the future development of the area, the survey clearly illustrates the community desire for further retail services for the Tomaree Peninsula' is accurate but can in no way be taken as support for the specific subdivision concept plan.

We note the itemised list on page 47 of consultations since the Joint Regional Panel hearing. The account of the meeting with TRRA is accurate. We note that there is no specific reference to consultation, either before or after the Panel hearing, with adjoining property owners or tenants - including in the Rigby, Oasis and Henry Centres, all of which will be significantly affected by the subdivision and subsequent developments.

8 Other 'public interest' issues to consider (EPA Act s.79C(1)(e))

8.1 Other Options

There is no **evidence** that the applicant has considered or assessed alternative proposals, lot configurations or lot numbers – they have only sort to justify this proposal. No feasibility study was ever undertaken and this lot configuration is responsive to potential buyers rather than to the community.

8.2 No landscape plan

Despite numerous references to a Landscape Plan in the SEE, no such plan has been included in any documentation available to the public.

8.3 Economics and costing

This development is listed as having a value of 0\$ in the documentation on public exhibition and on the Council's DA tracking website. The costing provided is totally wrong or grossly incomplete.

There is not even a fully costed feasibility analysis as to Council's service and infrastructure requirements prior to delivery of the land to the proposed purchasers. From press reports of Council's position, it appears to have made a 'seat of the pants' assessment that the sales will realise some \$50m as against a development cost of some \$5.5m. The Community has been provided with no details, no timeframe and nothing to support either the anticipated sales revenue or even the estimated cost of roads, drains, services and land remedial works (a table extracted from Council under FOI shows infrastructure costs of \$5.3 million but this excludes sewerage and electricity and water reticulation).

No provision has been made for ongoing maintenance and road repairs, or for the cost of watering seedlings and maintaining landscaping. The road network if build is likely to either be extremely expensive or need constant repairs as it will be built on unstable infilled land which is likely to be prone to subsidence, where the water table is rising constantly.

Commercially, this would not get past the first application for financial approvals to proceed. The community can have no confidence in the anticipated return and value for money.

8.4 Economic Analysis

Lack of justification for amount of commercial floorspace envisaged

The Social and Economic Analysis, October 2010, placed on exhibition on 18 November in support of the DA, has a section (5.4) titled Port Stephens Community Settlement and Infrastructure Strategy. We assume, although it is not clear, that this refers to the adopted 2007 Strategy (CSIS 2007), but we are surprised that there is no mention of the Draft revised Community Settlement Strategy (CSS 2010) published by Council for comment in August 2010. Oddly, and unhelpfully, neither the 2007 Strategy nor the draft 2010 Strategy appear on the 'Planning Strategies' page of the Council website at <http://portstephens.local-e.nsw.gov.au/planning/89002.html>.

The Social and Economic Analysis includes a Figure/Table (5-1) from the CSIS 2007 showing figures for zoned commercial land in different parts of the Tomaree Planning District and retail floorspace for Nelson Bay (16140m²) and Salamander Bay (22224m²). The latter figures are not explained or justified, and in any case are not followed by any argument supporting the amount of land being proposed for commercial development in the Subdivision DA.

There appears to be no reference in the Social and Economic Analysis to two other Council documents which we submit are highly relevant to this DA. They are:

- the adopted Port Stephens Economic Development Strategy (EDS) 2007
<http://portstephens.local-e.nsw.gov.au/files/64910/File/PSCEconomicDevStrategy.pdf>
and
- the July 2010 Commercial and Industrial Land Study Report (CILS 2010)
<http://www.portstephens.nsw.gov.au/planning/89002/210484.html>

The EDS has an Appendix E – Retail Data Port Stephens. Table E1 – the zoned land and retail floorspace figures for Salamander and Nelson Bay are the same as in the CSIS Table 5-1 but again there is no explanation (retail floorspace GLA?) or indication of whether this is an actual current amount or some prediction or target?

The more recent draft CSS 2010 includes on p2 a summary of proposed changes from the CSIS 2007. In relation to Commercial Land, it says

“Current and future commercial land demand and supply data indicat[es] that by 2031 there will be demand for additional commercial land of:

- 9,430 m² for Anna Bay;
- 67,393 for Nelson Bay;
- 120,037 m² for Raymond Terrace;
- 56,298m² for Salamander;
- 56,961m² for Shoal Bay;”

We believe these figures to actually be the total predicted/estimated land demands for 2031 including existing zoned areas.

Also, as we have already pointed out in a submission to Council on the Draft CSS, these figures do not match the figures given in the CILS 2010, which are themselves inconsistent – on p.63 a predicted commercial floorspace demand increase for Nelson Bay centre of 15,000 between 2009 and 2031, but in Table 8 only a 10,000 increase. There are also unexplained differences in the residential dwelling demand estimates in the Draft CSS and other Council planning documents, and persistent confusion of dwelling and employment targets from the Lower Hunter Regional Strategy for the Department of Planning's wider definition of the Nelson Bay tourism precinct with the Nelson Bay Town Centre. This confusion, inconsistency and lack of professionalism gives little confidence that Council has a sound foundation for planning commercial and retail floorspace demand.

The Draft CSS sets out (at D4) a Centres Hierarchy which we agree is a sensible approach, but by defining the Salamander Centre as a 'stand alone shopping centre' and Nelson Bay as a 'town centre' the strategy fails to acknowledge the reality that the Salamander Centre precinct has already taken on many of the characteristics of a town centre, particularly since the transfer of the only library on the peninsula from Nelson Bay to a new Community Centre complex, and the establishment of several medical and ancillary health practices in the Salamander precinct. The draft CSS sensibly recommends that "Council should manage the growth of Salamander Bay Shopping Centre by ensuring that it does not come at the expense of activity in Nelson Bay Town Centre (p.113)", but we cannot see how the current subdivision DA supports this goal.

The Social and Economic Assessment for the Subdivision DA includes a section titled Strategic Planning Social Considerations which attempts to justify the proposals on the basis of different functions for the Salamander shopping precinct from other centres on the peninsula. While we agree that the Centres can and should perform different functions, we do not accept the argument that mixed use development at the Salamander precinct, including some residential, would "result in additional competitive pressures on these existing town centres that would certainly impair the growth of their economic and social functions" (p.35).

We also fail to see how the concept plan in the DA, with its multiplicity of separate developments each with its own car parks is compatible with a sensible fossil fuel policy (p.30). We submit that the assertions about the plan being supportive of walking, cycling and public transport are simply wrong – it will result in an environment that is distinctly unfriendly to pedestrians and cyclists and discouraging to public transport use.

Our case is that a more professional social and economic assessment would instead support a higher density mixed use development of the precinct, more closely integrated, by negotiation, with the existing Shopping Centre, which could still be complementary to, not competitive with, other centres on the peninsula.

9 Conclusion

We submit that the Urban Design Addendum and the social and economic assessment has clearly been 'reverse engineered' to support Council's preference for its concept plan for decentralised and motor vehicle dominated layout.

This is a poorly conceived proposal which has been presented with poor quality SEE and inconsistent and inaccurate supporting documentation. The assertions made by the developer do not stand up to scrutiny.

Please reject this proposal because it will create a poor quality town centre, at great environmental cost.

Appendix 1. Resolutions from Public Meeting, 17 July 2010

Resolution from Public Meeting (attended by over 100 people) on 17 July 2010, at Tomaree Community Centre, Salamander Bay.

Hosted by Tomaree Ratepayers and Residents Association (TRRA)

The reason over 100 people attended our public meeting, was because it was the public meeting that the Council never had.

As an Association that is representative of local people we support further growth and improvement to this major commercial shopping area. We welcome Aldi, Big W and the new Medical Centre

Resolution 1.

This meeting calls on Port Stephens Council to:

Withdraw the current 8 lot subdivision DA for 155 Salamander Way.

Engage the community in the development of a comprehensive Masterplan for a town centre that will be attractive both to locals and visitors, will support a diverse range of businesses, community facilities and public spaces, and will protect the environmental values of the site.

Avoid committing to land sales or leases until a Masterplan is adopted.

Resolution 2.

If Council does not withdraw its DA, this meeting supports TRRA's request to the Joint Regional Planning Panel to reject the 8 lot Subdivision DA for 155 Salamander Bay, and to require Council to prepare a Masterplan before re-submitting any DA for the site.

Appendix 3 TRRA comments on Council's 'flyer/fact sheet'

Mr Peter Gesling
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace
NSW 2324

Dear Mr Gesling

Re: Publicity material on the proposed subdivision of 155 Salamander Way, Salamander Bay

Residents have this week received in their letterboxes a so-called 'factsheet' and accompanying annotated concept plan in relation to the DA for the proposed subdivision of 155 Salamander Way.

The Tomaree Ratepayers and Residents Association calls on you to direct the Commercial Property Section of Council to immediately stop distributing this glossy promotional material and issue a media release notifying the public that Council is withdrawing the 'fact sheet' on the grounds that it is misleading and inaccurate.

Most of the answers in the 'fact sheet' are inaccurate. These inaccuracies are set out below.

Q1. Sale of land to Aldi, Big W, or the Medical Centre will NOT enable these facilities to be built. No Development Application has been lodged for these developments and Council should not be prejudging the outcome of any application it may receive in the future. To do so is in breach of Council's responsibilities and legal processes.

Q5. Council has not provided any detailed budget on either the full costs of the proposed infrastructure or the anticipated proceeds from any land sale. This information should be fully disclosed to the ratepayers so that they can determine if the land sales will be profitable or not.

Q7. It may be true that the development will not encroach into the legal areas of Mambo Wetland, however it is also true that the **impacts** of the development **will** encroach into both the Mambo Wetland itself and the surrounding wetland areas not legally classified as the 'Mambo Wetland'.

This answer also fails to acknowledge that a significant part of the development site is wetland (though technically not part of Mambo) and that all this area will be destroyed, when drained and filled.

Q8. While it may be true that the proposed development might improve some drainage issues, this answer and the map are misleading as they do not clearly show that the 'reserve' will in fact be a stormwater retention area that will only provide 'passive recreation' to ducks and frogs.

Q9. The Flora and Fauna study for this DA clearly shows that most of the vegetation on the site is either 'Preferred Koala Habitat' or 'Secondary Koala Habitat' (Section 6 of the Flora and Fauna Report pages 48-53), and is more than 5ha. This includes vegetation on the eastern side of the site which is Coastal Sand Woodland, and in the west which is Swamp Mahogany Forest. All this vegetation is koala habitat. To suggest that only six habitat trees will be removed is grossly inaccurate, as is the statement that 'the majority of habitat trees are being retained on the site.' Council's answer to this question clearly shows that they do not understand the concept of 'habitat' and are actively trying to mislead the community about the impacts of the development on habitat used by koalas. Council should disclose that it plans to plant the 300 koala feed trees along the roads and around car parks, which will increase the likelihood of koalas being killed and injured by cars.

Q10. Council's own DCP supports and encourages mixed use including residences in areas zoned 3a. Council has actively encouraged mixed residential and commercial development in other areas zoned 3a, such as Nelson Bay. Best practice planning for commercial precincts supports integration of residential, commercial, community and open space – and this can enhance commercial values.

Q11. If Council believes that the 2001 draft design guidelines are out of date Council should update them and undertake a full Master Plan. The 2001 report provides a number of principles and design concepts which can **easily** be adopted with only minor changes. To suggest that development cannot adopt these principle or road network design is totally misleading. Best practice planning and urban design requires that a Master Plan be undertaken for a development of this kind and size.

Q12. The answer to this question does not inform people about the full range of opportunities to comment and is misleading about how their feedback will be used. The answer to this question should clearly state that in the near future the DA will again be placed on public exhibition, and that community members will be able to provide 'feedback' by making a formal submission

during the exhibition period, when ALL the detailed information will be available for them to assess and consider.

Most importantly we believe that the 'fact sheet' currently being distributed and the pseudo consultation process will appear to most people to be part of the formal DA assessment and public exhibition process, when it is not. We believe many people may provide feedback to Council (as suggested by the flyer) believing that their comments will be considered in a formal assessment of the development as required by the EP&A Act, when the Commercial Property Section will in fact be under no obligation to pass on comments received to the Joint Regional Planning Panel.

While TRRA welcomes the principle of Council consulting with the community about the future subdivision and development of this important piece of community land, we do not believe that the material currently being distributed is a reasonable or effective form of community engagement.

Any 'results' gained from this 'pseudo' consultation process will have no validity as the survey questionnaire form was not available at the library as at Wednesday – two full days after people started receiving the fact sheet. This means that many people are being sent away without being about to give any feedback.

TRRA also question the expense of the printing and distribution of so many 'fact sheets' at a time when Council's finances are under great pressure. In many streets on the Peninsula houses are vacant outside of the summer season, so Council has wasted thousands of dollars creating junk mail which will not be read by anyone.

If Council is genuinely interested in getting the community's feedback on the proposed subdivision of the land around the Salamander Shopping Centre (155 Salamander Way), then Council should undertake the formal public exhibition of all the documentation and call for submissions which will be considered by an independent development assessor. We would also be supportive of Council holding a public meeting or briefings on this proposal.

Providing a "fact sheet", which is clearly not factual, and failing to provide the detailed information for people to assess themselves is no way to get an accurate picture of the communities concerns or wishes. Nor will it build community confidence in Council or the development assessment process.

Yours truly,

Dick Appleby

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Appendix 3. Tomaree Ratepayers and Residents Association

TRRA was formed after the council did away with Community Precincts, and replaced them with an Electronic Residents Panel that mainly operates by way of selected email press releases, dressing up the limited feedback from them as community consultation. Some of our members are on that panel.

Membership

TRRA has been in operation for nearly three years, has its own website, **trra.com.au** and we have regular, well attended Monthly Meetings. We encourage East Ward Councilors to attend our meetings, and interact with our members, and encourage our members to regularly attend Council Meetings.

When we do a mail-out or press release we contact about 380 people directly and we are affiliated with several other groups giving us a reach to over 600 people on the peninsular, and this generates a lot of feedback from our membership which is growing rapidly.

Committee

We have a committee of 13. They are Planners, ex Councilors, ex Mayors, Developers, ex Bureaucrats and other committed and talented people. We have various sub committees working on projects like the recent rate rise issue and this one and try to produce professional submissions to represent our member's views. We try to make a difference.

Purpose

We are an **A-political** organization and we basically try to look after the interests of ALL ratepayers and residents by keeping a watching brief on how our Council deals with our funds and the decisions it makes on our behalf; like our rating bills, the decision to reduce Library hours, increases in fees and charges and these major planning decisions that affect everyone, Like the one we are discussing today.