



**A SUBMISSION TO THE
HUNTER AND CENTRAL COAST REGION
JOINT REGIONAL PLANNING COMMITTEE
FROM
TOMAREE RATEPAYERS AND RESIDENTS ASSOCIATION**

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

JRPP 2010HCC003 – Port Stephens DA 16-2009-811-1 – Eight (8) Lot Subdivision – Torrens Title, 155 Salamander Way, Salamander Bay

28 July 2010

PORT STEPHENS COUNCILS PROPOSED DEVELOPMENT OF THE SALAMANDER SHOPPING CENTRE

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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. It will lead to an isolated bunker style development surrounded by 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.

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 and it will come at significant environmental cost.

Both the Statement of Environmental Effects (SEE) and the Assessment Report have 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 have not, so far, been adequately questioned or scrutinised by the assessment process. They 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 last weekend 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. When it was put on public exhibition last year it was only for two weeks and only a sketchy one page map was made readily available. Most people had no idea what Council was proposing and we have struggled over the last six months to find out more. We submit that there are still significant gaps in the information provided to both yourselves 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 this 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 commercial precinct, involving extensive community consultation, before resubmitting.

- 1. We totally reject the need to clear, drain and fill all the vegetation 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.**
- 3. We ask that lots 4 and 5 be excluded from the subdivision, and the Stormwater Reserve be relocated away from the wetland.**
- 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 reject the assertion that there are grounds for a waiver of the Port Stephens Comprehensive Koala Plan of Management (PSCKPoM) requirements. The Assessment Report has not adequately questioned the justifications given in relation to the failure to meet the objectives or criteria of the PSCKPoM.**
- 6. We believe that planting koala feed trees along the roads will INCREASE koala mortality, by luring koalas into contact with increased traffic and dogs.**
- 7. 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.**
- 8. 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 impacts are considered. An SIS should be prepared.**
- 9. SEPP 71 has not been adequately considered and this development fails to meet the criteria.**

- 10. We believe that the proposed environmental offset will not be effective or secure in perpetuity, and is an untested approach to offsetting. It should be totally disregarded as a mitigation or compensation measure.**
- 11. We question whether the applicant has met the statutory requirements in relation to Aboriginal Heritage issues.**

This submission comprises 4 separate Parts authored by relevant members of the TRRA Committee, as follows:

Part A – Technical Assessment against EPA Act s.79C(1) ‘Matters for consideration’ page 6

Part B – Introduction to TRRA’s involvement in this issue page 27

Part C – Overview page 31

Part D – Chronology and process issues Page 34

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TRRA SUBMISSION:

Part A: Technical Assessment against 'Matters for Consideration' in section 79C(1) of the Environmental Planning and Assessment Act

Presented by: Mrs. Anna Glasby, TRRA Research

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. The Assessment Report has acknowledged some of these failures but has missed many of them. The Assessment Report has also failed to scrutinise assertions made by the developer and consequently has not accurately assessed the real impacts of the development or the real shortcomings of the commercial area that would result.

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

Environmental Planning Instruments (EPA Act s.79C(1)(a))

1. Assessment of environmental values is inadequate

The SEE has failed to adequately assess the environmental values for the site, and this has not been adequately considered in the Assessment Report. 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.
- 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 assessment has used out of date maps to assess the local extent of the SEPP 14 wetland, EEC and Preferred Koala Habitat.
- The flora and fauna study did not assess seed bank in degraded areas.
- The flora and fauna study and Assessment Report has underestimated the extent of the EEC and is inconsistent in the assessment of the EEC
- They have not considered the CSA of this wetland complex, or community from *Port Stephens Wetland Identification and Management Study*, funded by the CMA.

2. Underestimated Environmental Impacts

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

The proposal will lead to the eventual removal of virtually all swamp forest (Approximately 4.2 ha) within the site. This will result in the incremental reduction of swamp forest in the local area. Taking

(From pg 26 of Appendix 2 of SEE)

The road along the western edge of the site will create an 'edge effect' impacting on the adjacent SEPP 14 wetland. It will facilitate increased weed and feral animal incursion and it is likely to also facilitate illegal dumping and arson. The impacts of the development on adjacent land have not been assessed accurately (if at all) in the SEE and again this has not been addressed in the Assessment Report.

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. SEPP 14 – Coastal Wetlands

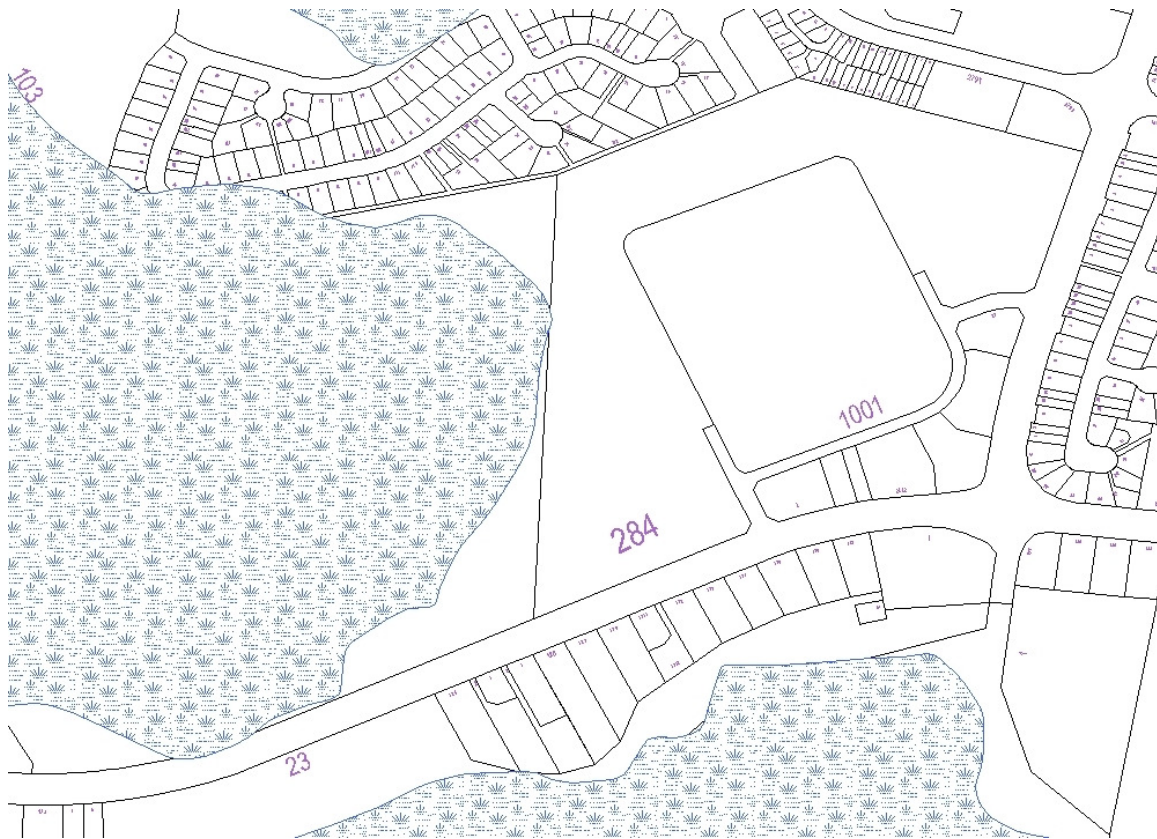
The site is immediately adjacent and contiguous with a SEPP 14 wetland. A map provided to TRRA by the Department of Planning (*see figure 1*) shows the SEPP 14 boundary is on, AND within the development site. The proposal and the assessment report states that there is no wetland on the site (Assessment 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 wetland.

The SEE suggests that the road will act as a buffer and the Assessment Report has not questioned this assumption. We reject this because the road which is right on the SEPP 14 boundary will create an 'edge effect' which will facilitate degradation.

No buffer or set back is proposed to protect the adjoining wetland complex. We understand that a buffer of approximately 40-80 meters would usually be required in situations such as this.

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

- Increase weeds and feral animals – 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.



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

4. SEPP 44 and Port Stephens Comprehensive Koala Plan of Management

The assessment of this development 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 PSCKMP. Where the Assessment Report falls short is that it fails to scrutinise or question the justification provided by the applicant for this, or the reasons proposed as to why a waiver might be granted.

We call on Council, as the developer, 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 for 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.

As set out below we believe the Assessment Report 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 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 it 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 and will lead to degradation of adjacent habitat. 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 approximately 8ha of koala habitat, including approximately 3ha of Preferred Habitat. It will destroy over 90% of the koala feed trees on the site. It will create an 'edge effect' which will increase degradation of the adjacent koala habitat.

No landscaping plan has been provided so the Assessment Report should not conclude that there will be 'environmentally sensitive landscaping'. The 300 feed trees to be planted will endanger the local koala population, 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 Assessment Report or supporting documents fail to show any evidence as to which (if any) alternative outcomes were considered by the applicant. For the Assessment Report to suggest that this proposal represent the 'best outcome in terms of vegetation removal' is offensive. This proposal **removes all** the vegetation on the site except a few trees in an existing car park.

- v) To encourage koala habitat rehabilitation and restoration.*

The Assessment Report is totally inaccurate to consider roadside tree planting a rehabilitation or restoration activity. This is landscaping not habitat enhancement or habitat creation. These trees would take up to 10 years before being of any benefit to koalas. This development will result in a significant net loss of habitat.

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

The Assessment Report downplays and misrepresents the extent of feed tree and habitat loss resulting from this proposal. The corridor will be reduced in width and quality. 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 Assessment Report has failed to address the increased threats posed by this development. The Koala Recovery Plan lists amongst the current threats to koalas; habitat loss, road kill and dog attack. The Assessment Report has not addressed the likely increase in these threats, as a result of this development.

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

Other comments:

- The applicant and the Assessment Report have failed to demonstrate that this subdivision design is consistent with the above objectives.
- The Assessment Report has not adequately addressed or scrutinised the information provided by the applicant, as to whether the development can demonstrate that this subdivision and associated development has met the following 4 criteria.
- A close assessment of this development against these objectives and criteria clearly shows that it has not met the requirements.
- Therefore the consent authority CANNOT grant a waiver for specific performance measures. To do so would be outside the scope and requirements of the PSCKPoM.

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 and the Assessment Report provide no evidence that alternative scenarios cannot achieve the objectives of traffic circulation and truck access. 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 2) taken from the *Draft Salamander Bay Town Centre Urban Design Guidelines 2001* clearly shows an alternative road route that would significantly reduce the impact on koala habitat. The road options shown in (figure 2) would still allow for the road to be an asset protection zone and emergency vehicle access. A range of alternative locations for stormwater and drainage management are available but have not been considered. It is totally incorrect for the Assessment Report to accept at face value the developer's assertion that "the design cannot be undertaken in a way that would retain native vegetation..." This is not true.

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, and as outlined above the Assessment Report has failed to adequately scrutinise the position of the applicant. 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;

The Assessment Report is incorrect to state that the proposal is consistent with the objectives of the performance criteria (as outlined above). This proposal has not demonstrated any intention or desire to design the subdivision to retain or enhance koala habitat, and the justification provided in the Assessment Report is incorrect and inadequate.

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).

Neither the Applicant nor the Assessment Report can demonstrate 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. This point has not been addressed by the Assessment Report.

- **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 ‘offset’.**
- **Again, as outlined above, the proposal to use koala feed tree species to landscape the road reserve cannot be shown to be habitat restoration or rehabilitation, and is likely to increase the risk of local extinction as it they will lure the koalas to the busy roads.**

watertable in this area. The watertable is only just below the surface and the area is often saturated 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 for the Tomaree Peninsula and should receive a high quality town centre, rather than the isolated and dislocated nature 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.

(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.

1) 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, other than by including the GTAs in the conditions, which does not in itself satisfy the concerns.

6. 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). Nor will it create safe and accessible pedestrian access or minimise the reliance on private vehicles. In fact we believe it will do quite the opposite.

The Assessment against these criteria has been made difficult because of the lack of any detailed master plan or structural plan. The ‘concept plan’ provided by the applicant (Figure 3) is totally inadequate, inaccurate and misleading and in no way could be considered good urban design practice.

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

The Applicant has only made a 'Concept Plan' available in February 2010 (well after the close of the public exhibition period). This plan gives little detail, and is actively misleading. 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, 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.

The concept plan does not show all the newly proposed car parks – especially the one 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.

The concept plan does not cover:

- design principles drawn from an analysis of the site and its context,
- 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,
- heritage conservation,
- remediation of the site,
- provision of public facilities and services,
- provision of open space, its function and landscaping,
- Signage controls,
- Landscaping, street furniture, street art,
- Ongoing integrated management and upkeep plan.



(Figure 3) The Applicant's inadequate 'Concept Plan'. PSC February 2010

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.

The section of the 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 Assessment Report states that 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 Assessment Report refers to a Pedestrian Linkage Plan dated 7 June 2010. This has only been publicly available since posting on the JRPP website on 16 July, but is in fact little different from the 'Pedestrian Connections' plan dated December 2009 also on the JRPP website, and neither of these plans show much more detail than the February 2010 'concept plan'. What is clear from all three plans is that there will be a number of pedestrian routes (apparently unshaded) across large open surface car parks.

We draw the Panel's 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 Assessment Report for this DA, makes reference to this valuable report, which we find inexplicable.

We also draw the Panel's 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, or that even if the Panel imposes conditions, they will be enforced.

Our specific concerns about the impact this development will have on traffic volume and flows are set out below. I would however particularly draw your attention 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. These three groups make up a significant part of the local population. This separation of uses reinforces barriers to social interactions.

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.

7. Port Stephens Development Control Plan 2007

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 on Lot 3, which the Assessment Report cites in support of the subdivision being consistent with controls in this chapter (B1.7).

DCP Chapter B3 - Parking, Traffic and Transport

There is no real assessment of these issues in the Assessment Report, which makes the unsupported assertion that "the development is considered to be consistent with the requirements...". There is a wholly inadequate assessment against these DCP requirements in the SEE (Section 8)

We submit that the proposal in fact 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

The traffic study (in SEE Appendix 4) 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 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.

This style of development will dramatically increase the volume of car trips as visitors will be forced to drive between lots (e.g. from Lot 2 (offered to Aldi) to Lot 6 (offered to Big W). 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 DCP recommends parking should be at the rear of buildings not on the street front, as seen in the applicants 'concept plan'.

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.

DCP Chapter B4 – Commercial and Mixed Use Development

The Assessment Report essentially ‘puts off’ consideration of compliance with this chapter of the DCP to subsequent DAs from users of the proposed lots. We submit that this is an inadequate response. 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 previous intentions, as expressed in the DCP.

8. 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).

In particular the assessment has failed the following three parts:

The guidelines states that age or condition is not a factor to be considered (pg7)

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 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.

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.

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 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.
- 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. This row of trees will in fact increase the danger of road kill and dog attack.

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

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 this species.

9. 'Pseudo Offset' should be totally disregarded

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 the 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.

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 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.

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 one 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.

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

The Assessment Report includes a table summarising a total of 21 submissions received from the public during the consultation period up to 19 November 2009. We assume that the column headed 'Unknown address' includes TRRA's submission dated 18 November, which we understand has been provided to the Panel. We would have expected the Report to have acknowledged significant

submissions made after the 18 November – we have progressively obtained, under *S12 of the Local Government Act*, several other letters and comments about the Subdivision, which we hope have also been provided to the Panel. These should include letters sent by concerned residents to Council, with copies to the Panel, following the public meeting organised by TRRA on 17 July and attended by more than 100 people. Nearly all of the submissions we have seen are opposed to the subdivision on a wide range of grounds, covered elsewhere in our submission. We submit that the Assessment Report does not adequately summarise the full range of public concerns – particularly in the single sentence “Concerns about the lack of master plan.”

One of the documents we have obtained is an email dated 26 February from the Colonial First State Global Asset Management (the owners of the existing Salamander shopping centre) to Council, questioning why they had not been notified of the DA. We have not been supplied with a Council response to this complaint, or with any subsequent submission from Colonial, which is surprising given that it is clearly covered by the terms of our S.12 request. We question whether the apparent failure to notify Colonial is a significant procedural breach by Council.

We also question whether the Assessment Report accurately describes a letter dated 4 December 2009 from the Department of Environment, Climate Change and Water (DECCW). This is referred to in propose Condition 5 as an ‘approval ... under their relevant legislation’. This is misleading in two respects. Firstly, the letter concerns only Aboriginal Heritage issues, and secondly, it is far from an ‘approval’ even in relation to these issues – it highlights a number of concerns about consultation and concludes “Subject to resolution of the above issues ...” .

11. Other ‘public interest’ issues to consider (EPA Act s.79C(1)(e))

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.

No landscape plan

Despite numerous references to a Landscape Plan in the SEE and Assessment Report, no such plan has been included in any documentation available to the public. It is not on the JRPP website.

Economics and costing

The costing provided has been either 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). The community can have no confidence in the anticipated return and value for money.

Commercially, this would not get past the first application for financial approvals to proceed.

12. Key unresolved questions

- Is the area of EEC to be destroyed 4.2ha or 3ha?
- What is the total number of ha of koala habitat (all types) and number of koala feed trees to be destroyed by the development?
- What evidence or studies show that planting feed trees along roads will not lead to increase koala deaths?
- Has adequate consultation with the local Aboriginal Community occurred in relation to the destruction of Aboriginal artefacts on the site?
- Has the impact assessments on the flora, fauna and the EEC considered the long term impacts in a 'climate change' future with significant sea level rise and associated changes to the water table in this coastal environment?
- Has the traffic study considered the impacts of peak visitation periods (summer and Easter) in calculating increased traffic volumes and movements?
- Has the traffic study considered intra site vehicle movements that will result from the disbursed lots and isolated building?

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)

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.



SUBMISSION TO THE JOINT REGIONAL PLANNING COMMITTEE

JRPP 2010HCC003 – Port Stephens DA 16-2009-811-1 – Eight (8) Lot Subdivision – Torrens Title, 155 Salamander Way, Salamander Bay

Part B: Introduction to TRRA's involvement in this issue

28 July 2010

Mr. Dick Appleby, Secretary, TRRA

Good Afternoon!

My name is Dick Appleby; I am Secretary / Coordinator of the Tomaree Ratepayers and Residents Association. I want to thank the panel for giving us the opportunity to address it, on a matter that is very important to our community and our organization, the Port Stephens Council's proposed development of the Salamander Shopping Centre.

My role today is to inform the panel of who we are; why we are here and briefly introduce the people who will be making the presentations on behalf of our organization.

Tomaree Ratepayers and Residents Association

TRRA was formed after the council did away with Community Precincts, partially funded by Council to represent rate payers in the past, 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 generate a lot of feedback from our membership which is growing rapidly.

Committee

We have a full time 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.

Salamander Commercial Centre

Public Meeting

We held a very successful public meeting on this issue on Saturday 17 July that I chaired. It was attended by over 100 concerned residents, prompted some lively discussion, and although all Councilors and planning officials and senior Council Officers were invited, only one Councilor turned up on the day.

The following resolutions were carried unanimously with the exception of the lone Councilor.

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.

The Council was formally advised of what occurred at the meeting and the resolutions taken, has acknowledged receipt but is yet to respond.

The reason so many people are here today is because they have had no opportunity to express their views on this development. This development that hardly anybody knew about was only on exhibition for 14 days with one, out of scale, A4 size concept plan with no detail on it. The planners report was not released on the website until July 13.

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

We think today's submissions are really all about **PROCESS**.

The actions of one branch of Council, its **Commercial Property**

Development Unit....

Making an application to another branch of Council, the **Planning and**

Assessment Group....

To subdivide and **sell parcels of land** here in the Salamander Commercial Centre and so expand the scale and scope of this precinct.

State laws require that when Council is to act as both the **Applicant** for a **Development** and the **Consent Authority**, it must process that application in the same way as if **a private applicant was applying for a similar development proposal**.

We do not consider that Council has followed due process on this application or acted in a proper transparent manner with its stakeholders.

We are aware that the members of the JRPP can only really consider matters listed in **Section 79C of the Environmental Planning and Assessment Act** when making their decision. We have tried to make sure all our comments can be linked back to these '**matters of consideration**' and the specific legislation or planning instruments which are relevant.

The most relevant of these being the:

- State Environmental Planning Policies (SEPPS), 14, 71, 44
- Local Environment Plan – especially the objectives of Zone 3a
- The Threatened Species Conservation Act
- Part 5 of the Environmental Planning and Assessment Act.

You will see Council press statements in today's submissions that indicate the matter is concluded and that **land has been sold** ... but of course that is not factual and sales can only be settled when the matter is approved and work is implemented.

A very large amount of physical work is required to achieve this current Council idea, big changes are proposed to the bush land behind the Library and along the Mambo Swamp, and a major road built through land that is of environmental importance, home to koalas and other fauna and flora and very significant to indigenous people...

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

The companies interested in moving to this site will be welcomed because **we need more competition** to keep prices down. We need the service and employment opportunities they bring but we do not believe the scale of work and overall design proposed is at all necessary.

As the community most affected by the proposal we also see no direct local benefit from the funds raised from these land sales and Council's lack of transparency regarding costings and process concern us greatly.

I need to explain that although we have been working on this matter for some time we were only formally advised last Tuesday that this panel was meeting today and that did not give us a lot of time to prepare our submissions.

We will outline our concerns to you now with the assistance of three other committee members from TRRA, who will give their perspective to separate aspects of this issue. We hope that when this panel concludes its deliberations it will agree with us that Council should **withdraw its application in this form and re-design the Centre more in line with the principles that thinking people support...**

I would now like to introduce our other presenters

Robert Young: *is the current Chairman of TRRA, and, during his professional career he was the Retail Director of Knight Frank, Property Director of Grocon Properties, and Asset Manager for Grocon Developments, until his retirement in 2008.*

Anna Glasby: *is a member of the TRRA Committee and a local resident, and the mother of two children. She is Vice President of the Child Care Centre Management Committee and although that role made her aware of this issue, she is not acting in that capacity today.*

She has worked in a range of capacities for Government and commercial interests as an environmental planner. She has a Masters Degree in Environmental Planning from Macquarie University and also studied at the University of British Columbia in Vancouver Canada.

*She was assisted in preparing this submission by **Nigel Waters who** is also a TRRA committee member and a local resident. Nigel worked in urban and regional planning in the UK. He has a Masters Degree in City and Regional Planning.*

Peter Quirk: *has now retired from full time work. He served on the Council of the City of Blue Mountains for 20 years and was Mayor of the city between 1981 and 1987. During his period he was also Chairman of the Western Sydney Regional Organisation of Councils, and an appointed Member of the NSW Government's Western Sydney Planning & Development Committee.*

I trust you will find these presentations interesting, informative and helpful in your deliberations on this development.

Thank you.



SUBMISSION TO THE JOINT REGIONAL PLANNING COMMITTEE

JRPP 2010HCC003 – Port Stephens DA 16-2009-811-1 – Eight (8) Lot Subdivision – Torrens Title, 155 Salamander Way, Salamander Bay

Part C: Overview

28 July 2010

Mr. Robert Young, TRRA Chairman

Panel Members, Thank you.

Allow me to introduce myself.

My name is Robert Young, I am the current Chairman of TRRA, and, during my professional career I was the Retail Director of Knight Frank, Property Director of Grocon Properties, and Asset Manager for Grocon Developments, until my retirement in 2008.

I have been involved in the property industry for over 30 years.

I was a committee member on the Australian Council of Shopping Centres and the Property Council of Australia for some 10 years, the President of the Business Council of Sydney and an original member of the NSW Retail Disputes Committee. I have been involved in the planning, development, construction, leasing and management of some 60 Shopping Centres in city, suburban and country areas ranging from, for example, the Strand Arcade and No 1 Martin Place in Sydney to Carlingford Court, Forestway, Wagga, Kiama, Broken Hill and Moree.

If my company was the owner of this land and had lodged a DA as currently proposed by council, I doubt whether there would be any chance of approval. There would also have been a significant requirement for us to 'jump through hoops' to satisfy State and local planning policies as well as meeting and involvement with the community. We would need to demonstrate good urban design.

On this proposal before you, none of this has happened.

The proposal fails to satisfy: -

- State Environmental Planning Policies (SEPPS), 14, 71, 44

- Local Environment Plan – especially the objectives of zone 3a
- Threatened Species Conservation Act
- Part 5 of the Environmental Planning and Assessment Act.

There has certainly been no community involvement or discussion, in fact the community has been totally locked out by council and this organisation had to seek information through Freedom of Information to ensure that we could make a fair and unbiased assessment.

Peter Quirk and Anna Glasby will certainly cover the technical aspects of these failures, but let me say this: -

This organisation and the community at large do not object to the development of lands within the commercial precinct of Salamander.

We do have however, one chance and one chance only to get it right.

There is not even a fully costed feasibility analysis as to council's development requirements to deliver the land to the proposed purchasers. A 'seat of the pants' assessment that the sales will deliver some \$50m and a development cost of some \$5.5m. No details, no timeframe and nothing to support either the end sale, what is required in expenditure for roads, drains, services and land remedial works and hence the end profit (and or loss).

Commercially, this would not get past the first application for financial approvals to proceed.

From my experience, I fail to see where a continual subdivision of individual allotments meets with modern and future commercial activities.

We already have in this precinct 5 separate developments, 5 separate car parks and a poorly co-coordinated pedestrian and traffic management plan.

There is firstly a need to develop an overall Masterplan for the precinct.

A Masterplan that will enable full and proper integration of all development, free flow of vehicles and pedestrians, a parking area that is convenient and accessible throughout the site, streetscape, signage and landscaping policies, provision for public spaces and amenity and finally a properly instigated management plan for its future upkeep, presentation and maintenance.

Communities have grown to expect the 'one stop' shopping experience. This community's expectations are no different. Nobody wants a mish mash of individual freestanding retail outlets. Today's shopping precincts are linked, integrated and accessible. They provide access routes for public transport with delineation for service delivery. They are professionally managed and marketed, with maintenance and presentation to a high and consistent standard. From my business experience, for example, I could guarantee that 'big box' retailers would prefer to be part of the existing Centre but by this current proposal - they, and probably the owners of Salamander Centre - have been denied that opportunity.

Also, there is no guarantee that, if sold as individual allotments and without a Masterplan or DCP in place, that Developers or end investors will comply and meet the standards and expectations consistent with such retail and commercial localities.

We are seeking a forward thinking and appropriate 'Heart' for Tomaree.

We are seeking a properly integrated and forward thinking Masterplan and we are seeking a proposal that is environmentally and ecologically sound complying with both state and local government policies. We are seeking definitive confirmation that facilities, amenities and open space, conducive to such a precinct is also delivered to the community.

Panel members, this matter is in your hands. We sincerely hope that you can understand and appreciate our concerns and frustrations. Please consider our technical report carefully, we put a lot of work into the detail, and Peter's submission will take will take you through the chronology and future implications.



SUBMISSION TO THE JOINT REGIONAL PLANNING COMMITTEE

**JRPP 2010HCC003 – Port Stephens DA 16-2009-811-1 – Eight (8) Lot Subdivision –
Torrens Title, 155 Salamander Way, Salamander Bay**

Part D: Chronology and process issues

28 July 2010

Mr. Peter Quirk, TRRA Strategy

Good afternoon panel members

As a resident of Nelson Bay, and a TRRA (Tomaree Ratepayers and Residents Association) member I hope to convince you that there is strong public interest in the determination of this matter, tied to community confidence in the integrity of our council's planning process

The recommendation before you to approve this application follows acceptance in the Council Planners Report of a number of requests for waivers or exemptions from compliance with issues relating to environmental and endangered wetland communities protection.

TRRA does not believe it appropriate or proper process for the Council as Applicant, to request and gain such waivers from itself. The possibility of approval rests on these waivers that are sought to bypass action specifically required in Council's own Comprehensive Koala Plan of Management and the intent of the SEPP14 Legislation; refusal of the waivers means rejection of the application.

By rejected I do not mean that the purpose of the DA should be stopped or not approved but that the matter should be returned to the Applicant, our Council, via the Sustainable Planning Group and the process that was initiated, by Council itself in 2002 in the Koala Plan of Management, be followed to its logical conclusion.

By doing this the DA could be re-designed to comply with what would then be a variation to the LEP, as it affects this commercial precinct and is in accord with a site specific DCP, developed and endorsed by Council following community consultation.

The work leading to this DA, was initially an attempt to have it passed quickly by Council with a work value stated as \$0. Thankfully that was rejected but this referral to you, our Regional

Planning Panel, has been a long time in the coming.

It is the culmination of over twenty years of planning and development of the Salamander Lands transferred to Council when the Commonwealth Government saw no need to retain them.

We can but hope Mr. Fielding that you and your fellow members of the panel understand the depth of feeling that exists in regard to this land and its use. We trust that you have already had opportunity for inspections that would have pointed out the great cumulative modifications and change to the landform that have already taken place in and around this Salamander Shopping Centre.

The Council Planner's Report states that because there are no SEPP14 lands on the subject Lot 284, there is no requirement, as an Integrated Development, to refer this matter to the Dept of Planning. Comments were sought from DECCW in regard to Aboriginal Heritage but not regarding protection of the adjoining endangered wetlands, known locally as the Mambo Wetlands Reserve.

It must be remembered and appreciated that literally all of the Salamander commercial land including the adjacent Rigby Centre, the Pacific Blue Resort and much of the road works were all, 20 years ago, contiguous wetland with what we now know as the Mambo Swamp. The distinct landform shaping of the top layers of sand into sculptured small hills left the troughs between as wet and swampy land. Firstly this was of great use as a source of fresh water to the indigenous Worimi People but then with development, it was filled with imported sand breaking up the contiguous connection of the wet areas into the remaining ponds and overlaid thoroughfares; i.e. Salamander Way.

These 1993 photographs of the clearing of Acid Sulphate soils and the filling of the Woolworths car park extension to the Centre, illustrate this conversion of wetlands and the underlying acid sulphate soils into a compacted sand, building platform.

Earthworks in progress on Woolworth's site adjacent to Mambo Wetlands at Salamander Bay – Mid November 1993



Earthworks in progress on Woolworth's site adjacent to Mambo Wetlands at Salamander Bay – Mid November 1993

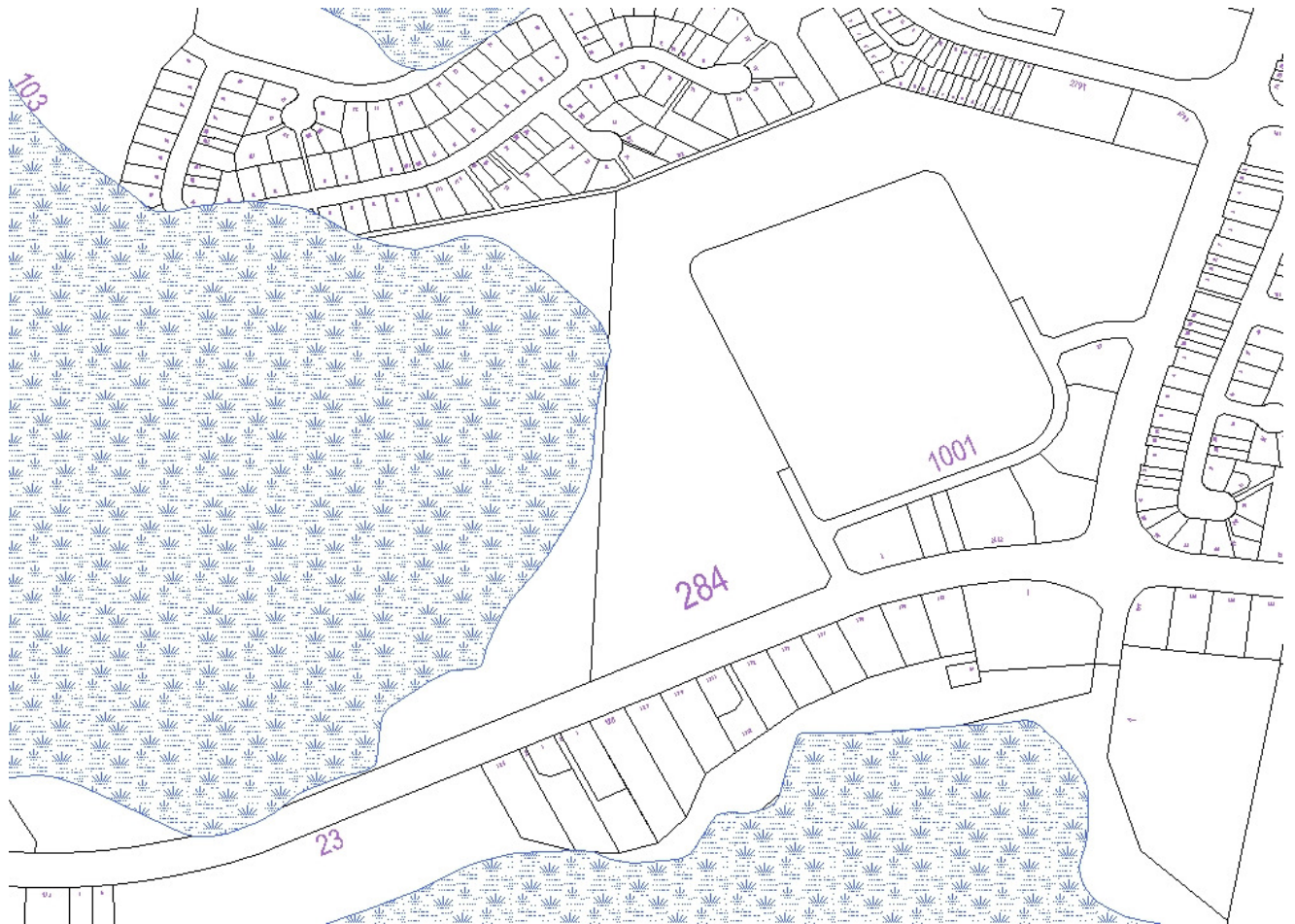


At the time of this major work at Salamander Centre, the Mambo Swamp boundary was apparently restrained by a swale or bund left against the eastern end of the main water body and against which, right along the boundary, it is proposed to construct the new major access roadway.

However in considering the now formalized Mambo Wetlands, if one downloads and prints from the State Government system, as I did, a current version of the wetlands overlaid on the subdivision layout for Lot 284, the boundary of the wetlands clearly crosses the adjoining boundary, if only for a short distance, onto the Council land.

So is it a question of “Why didn’t the Council seek Dept of Planning advice on appropriate protection of the wetland?” Or more sensibly; “Should the Council have sought Dept. of Planning advice and determined an appropriate setback for development?” We as a Community Association believe that a setback from the wetlands of some 40 to 80 meters would have resulted, and should have been the consequence of an adequate assessment of this current proposal by the Council’s Planner

Salamander Wetlands Plan



This feature of an apparent lack of care for the protection of the wetlands is even more apparent when one considers that current NSW Planning requirements rate Coastal Estuarine wetlands high on the priority list for protective action by all relevant authorities. If one looks for a reason behind Council Officers attitudes to current public concerns regarding the integrity of Councils “planning process” one has to consider the ‘time line’ of actions leading to this DA.

In 2001 Council commissioned a report on ‘the possible comprehensive plan for the integrated expansion of the Salamander Centre’. The report was done, it is innovative and appears to respond to all council policies and the DCP in place at the time ... but it does not appear to have received any attention either by Councilors or Officers of Council.

In 2002 the Comprehensive Koala Plan of Management was adopted by Council, it was well publicized, verbally supported by many at Council and across the community.

It contained the following commitments to action by Council:

Chapter 4 of the Plan contained actions listed as being required by relevant authorities to implement the Koala Plan of Management , now a legal component of our Council's Planning Legislation.

Amongst the many actions listed on Page 51 of the Plan Document, for Council to complete were:

- Prepare amending clauses to the LEP to implement the Koala Plan of Management.
- Implement performance criteria for development applications.
- PSC was to incorporate provisions of the Koala Plan of Management into Plans of Management for Lands under Council's control.
- PSC was to illustrate best practice management of koala habitat in all developments.

In simple, everyday terms our Council adopted policies that committed it to a three stage process:

Stage 1: Map the Koala habitat lands.

Stage 2: Develop plans and control measures for Koala Habitat on Council land. Stage 3: Use best practice management to prevent habitat loss.

The Council only did Stage 1, the mapping. It totally neglected to develop any control mechanism for its own lands, and then, seven years later, said: "there are NO plans to save this Koala Habitat, so we will let you remove ALL of it!"

The community asks, "Where is the integrity in this process?"

PSC was to illustrate best practice management of koala habitat in all developments.

Now, after all of the work involved in developing such appropriate policies for wildlife management, NO actions have been taken on the Salamander land, either wetlands or the commercial land, to implement the policy that Council itself had prepared and adopted.

Chronology of Council proposals for this site

A number of confidential matters regarding possible Salamander commercial land sales are shown in Council Meeting Minutes from 2002 to 2006 and in that year, 2006, Council adopted a Plan of Management for Mambo Wetland. Although this POM directed attention to the problems of "intrusion" into the now defined Wetland area, no action was taken to amend the zoning boundary or develop a relevant DCP for the Salamander Centre Lands.

2007 April 10 Council Meeting, report on agreement to the sale of land within Salamander Centre, no details.

2007 May 27 Council Meeting, report on decision to require concept plan allowing for expansion of community facility "north of the Library" and sale of land for two commercial operations.

2007 Nov 27 Meeting, confidential minutes record "sale of land at Salamander"

Council Meetings of Nov 27 and then Dec 11 refer to discussions on sale of Salamander Land and approve of a "relevant plan of subdivision".

2009 September 28, following controversy in local newspaper regarding possible sale of lands involving child care centre and library, TRRA wrote to Council to raise issue of need to develop a Master Plan, in some form, for the overall Salamander Centre.

In 2009 Oct 13 Meeting report in Council minutes refers to Child Friendly Built Environment Report, using Salamander centre as a Case Study.

2009 November 5 , DA by Council (Commercial development section as developer) to Council for an 8 Lot Subdivision of Lot 155 Salamander Way, advertised stating value of application \$0, with only a single page sketch plan of subdivision layout with no additional information. Closing date for “submissions” 19 November and Statement of Environmental Effects (SEE) folder became available at Tomaree Library only a few days before closing date.

2009 Nov 9, Response to TRRA letter of September advising that DA now submitted ... and advising that ‘Previous draft master plans and concept plans are no longer relevant.’

2009 Nov 10 Meeting of council considers Notice of Motion by Councilor Nell calling for a Master Plan for the Salamander Centre. In consideration or response, a report is tabled from the Commercial Section describing publicly for the first time, what is now understood as the DA under consideration by the Regional Planning Panel process.

ORDINARY COUNCIL – 10 NOVEMBER 2009

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217 PSC 2009-02408

MASTER PLAN FOR SALAMANDER SHOPPING CENTRE

COUNCILLOR: JOHN NELL

THAT COUNCIL:

- 1) Develop a Master Plan for its land surrounding Salamander Shopping Centre, in consultation with the community, to facilitate a successful mix of retailers, service providers and community services.

BACKGROUND REPORT OF: CARMEL FOSTER – MANAGER, COMMERCIAL PROPERTY

BACKGROUND

The land surrounding the Salamander Bay shopping centre known as 155 Salamander Way is zoned 3 a) – Business General "A " Zone. There is limited business zoned land on the Peninsula able to accommodate current and future growth in retail activities and little possibility of more to be rezoned due predominately to the environmental characteristics of the area.

The land is owned by Council and has been the subject of various studies and concept plans over the past six years. The majority of these reports have been commissioned by the Commercial Property Section as the asset owner and have been utilised and updated to form, in part, the current subdivision application. Further studies have been undertaken this year (2009) to finalise the documentation to enable the subdivision of the land to proceed. These reports include environmental, traffic, drainage, geotechnical, survey and engineering.

A two way conversation on the 11th August 2009 showed the proposed subdivisional layout and street network and identified three potential end users for proposed lots 1, 4 and 6. Additionally the planned development of the land has been discussed on numerous occasions with Council's Property Advisory Panel. Council's Commercial Property Section and consultants attended a Development Assessment Panel meeting on 7th August 2009. The panel required further geotechnical and drainage information to be prepared before lodgement of the DA. Those requirements have been met and the DA has now been submitted to Council. The DA will be assessed by Development and Building (guided by LEP and DCP 2007), publicly exhibited and subsequent determination and conditions of consent will be made accordingly. Public Exhibition will identify the community's views. Changes/refinements to the subdivision can be made through the DA process. This process plus review by

relevant sections across Council providing advice to Development and Building Section is expected to deliver outcomes commensurate with a "masterplan".

Currently there are two significant issues that need attention in the short term - the untreated stormwater flowing from the shopping centre car park onto Council's land, including the Mambo Wetlands, and traffic congestion around the entrance/exits of the existing shopping centre. The traffic and drainage reports have identified solutions to both these problems.

Market and economic studies undertaken by Arcadia Advisory in 2003 have identified the need for another discount department store (DDS) to be located on the Tomaree Peninsula in competition to Kmart in the existing centre. The study showed that mini majors (retail outlets between 600 and 1,500 sq mtrs) were occupying a limited amount of floor space of 1,449 sq mtrs and were generating sales in excess of six million dollars annually indicating that there is an opportunity for an additional DDS. Property is negotiating with a DDS to be located on proposed Lot 6.

Property is also negotiating with Aldi to be located on proposed Lot 1. Aldi stores market to a different demographic/socio economic group than Woolworths and Bi-Lo and provide consumer choice and mix. The Arcadia study stated a robust supermarket sales performance of some 19.3% above the industry average for performance of the Woolworths and Bi-Lo supermarkets at Salamander.

Lot 4 has been identified as a suitable location for a Medical Centre with legal agreements between a medical group and Council currently being prepared. The remaining allotments are not proposed to be developed in the short term. The community facilities are currently located on a 1.75ha site (proposed Lot 3).

A report by Integrated Planning is intended to be submitted to Council during November 2009 in response to Council's resolution of 22nd May 2007 requiring, amongst other things, the development of a concept plan to define the boundaries of a "community precinct".

Upon approval of the DA and obtaining the Construction Certificate, construction will commence on the site. Upon completion of the construction enhanced facilities such as footpaths, cycle ways, additional roads to alleviate vehicle congestion, new bus bay, roundabout, new entrance, landscaping, open space and drainage system will be provided.

This report to Council notes the number of meetings and consultations held on a "Whole of Council" basis throughout the second half of 2009. This was prior to TRRA raising issue with Council over the lack of "Chinese walls" between the development and assessment processes within Council.

TRRA remains of the view that pressure to achieve sub-division and land sales was the prime purpose of the rush to process rapidly and seek waivers and the like for failed environmental assessments ... The total removal of koala habitat on Council land and likely damage to the Mambo Wetlands during road construction is the result.

2009 November 12th, the first of Council's Press releases is printed in The Examiner, indicating sales of over \$30 million are expected as a result of the subdivision.

12/11/09 EXAMINER ARTICLE



2009 November 19th, a week later, the second of Council's Press releases stating that Council has confirmed two sales for about \$6 million, and was considering a third, arising from the subdivision appears in the Examiner.

\$6mill land deals

Aldi, new medical centre on way for Salamander

By **NIKKI TAYLOR**

AN ALDI supermarket, medical centre and Big W are on the way for Salamander shopping centre. This follows confirmation that Port Stephens Council has sealed deals on at least two land sales around the centre worth about \$6 million.

Confirmation of a third sale, understood to be for a Big W store, is expected soon. The sales were okayed at the last council meeting after the failure of an 11th hour

move by Councillor John Nell to hold the sales until a master plan for the council's Salamander land was developed.

Already the Tomaree Ratepayers and Residents Association has criticised the rejection of a master plan - see story page 14.

The council's commercial property manager, Carmel Foster, this week said the sales of the two lots would require the council to complete a series of infrastructure

Continued Page 2

\$6m Salamander land deal

From Page 1

works. She said the works, expected to cost about \$4.7 million, would include drainage, roads, cycleways and a roundabout.

"We expect to enter into a formal contract with the proponents by the end of the year and to complete infrastructure works by the end of 2010," she said.

The sales mark the first of seven sites set to be developed.

"Lots one, four and six will be sold but we are not looking at selling anything else until the infrastructure is in place," Ms Foster said.

Site number six is earmarked for a Big W department store. She said the council was in the process of identifying what businesses were needed at both Salamander and Nelson Bays.

2 PORT STEPHENS EXAMINER Thursday, November 19, 2009

2009 December 17th the third of council's Press releases appears in Examiner detailing problems surrounding rejection of a bid to purchase land from Council within Salamander precinct.

SALAMANDER KNOCKBACK ARTICLE 17/12/09



In January 2010 coverage given in Examiner to both Council, (indicating Regional Planning Panel would consider DA) and TRRA ,(critical of process and stating many residents upset by Council Planning and Approval process.)

SALAMANDER TO PANEL ARTICLE Jan 2010



2010 February 25th, Press release by Council's Development section stating sales were being achieved as the DA "covered all the bases, for infrastructure and community needs." Article is critical of TRRA comments regarding lack of transparency and non-competitive sales. This article also mentions issues raised by TRRA such as pedestrian links and security for Child Care Centre

EX 25/2/2010

5106/51

Salamander sales on track

Council 'maximising returns'



CONCEPTS: A council map of the future for land its owns around the shopping centre.

PORT Stephens Council rejects criticism it is failing to maximise the return from the sale of its lucrative commercial land holdings around the Salamander shopping centre writes **NIKKI TAYLOR**.

THE council's commercial property manager Carmel Foster says groups such as the Tomaree Rate Payers and Residents Association (TRRA) have been inaccurate in comments about the council's progress with the sales.

Already \$6 million has been realised from the sale of two sites at Salamander - one to the Aldi supermarket chain another to local doctors for a new medical centre.

But the TRRA says those sales should not have proceeded until a master plan for the council land holding at Salamander was prepared.

Ms Foster said the council had worked hard to create a development

application (DA) covering the future use of its 11ha land holding at Salamander.

The application covered all the bases in terms of environmental, infrastructure and community needs.

The TRRA has also questioned the council's decision to negotiate sales behind closed doors rather than go to the market and seek expressions of interest.

Ms Foster, however, refuted any accusations the sales of land had been conducted in a non-transparent way.

"We have followed the legislative process," she said.

"The only confidential

business papers relating to the land that are not available for public viewing are the reports relating to the sale prices for the lots."

Ms Foster said other concerns raised by the TRRA in regard to existing community services such as the library and childcare centre were unwarranted, as were questions regarding a lack of pedestrian links.

"There will be no changes to those facilities (library and child care) within the next 10 years," she said.

It was not viable to move them in the short to medium term.

"The development will also provide new footpaths, road network and cycleways that link all of the proposed businesses with the existing community facilities," she said.

As well, residents adjacent would not be affected by traffic moving in and out of the site.

2010 March 3rd, Press statement from Council, Mayor and Deputy, claiming third sale for \$5 million now confirmed and that prices obtained for the land sold had been "higher then expected".



During this period of three months there was sustained press coverage regarding “sales of Land” as a consequence of the apparent passage of the DA proposed by the Commercial Development Section of Council to the Sustainable Planning section of Council.

The Council Chief Planner, Mr. David Broyd, was in this period heading up the preparation of the necessary “Planners Report” for presentation to the Regional Planning Panel.

Prior to the finalization of this Report David Broyd took a period of recreational leave, following his statement to a council Meeting that “if the pressure kept up, Council could loose its planning powers.”

The final Planners Report was presented to Council for perusal at its meeting of July 13. In dealing with the recommendation for ‘noting’ the report, a motion presented by the Mayor was carried, the Motion read:

“That Council supports the Application with the exception of the 88B Instrument requirement and excluding the parkland on Lot 3.”

TRRA was later informed that this Motion as carried, and would result in the Report as prepared being submitted to the Regional Planning Panel, whilst a second Report expressing the view of Council, would be also submitted to the Panel at the Public Hearing.

TRRA is of the view that the integrity of the Planning Process at Port Stephens Council suffers from direct emotional pressure and ongoing criticism from elected members. A group of elected Councilors appears to vote as a Caucus, with a personal philosophy of 'development at any cost'. This attempt to amend the Planners Report, prepared as required for the Panel, is indicative of the attitude of the Mayor and some other Councilors to Planning matters.

The processing of this DA for 155 Salamander Road has required the preparation of a detailed report for the Regional Planning Panel.

Throughout the period of its preparation regular Press releases and statements were made by the Mayor and Deputy Mayor indicating that sales arising from approval of the DA had literally occurred. One would think that common sense would indicate that this was an overstatement of fact.

Nevertheless, the press releases were indications of an expectation of support from Council Staff, for a matter directly supported by the Mayor.

For any staff member involved in the preparation of the Planners Report to have offered criticism, or question of the validity of the subdivision, then they would surely have had to put their employment on the line.

On behalf of TRRA I submit to the Regional Planning Panel that the detailed history of the processing of this application BY the Council TO the Council for assessment has failed the "integrity test".

The Commercial Development staff promoting the subdivision proposal sought meetings with and guidance from Planning Staff during preparation of their application and they expressed necessity for Council to obtain maximum possible sale prices for its land.

We do not believe that an approval of a Council DA should be based on maximum financial return to the applicant; the matter should undergo the same necessary scrutiny as would any other applicants DA.

Any application for a waiver to apply to requirements of a DA should not be certified "in house", especially when control measures applying to those waivers have simply NOT been implemented by Council.

It would appear that the Council Development Section as the Applicant gained an understanding that Council had not proceeded with its obligations under the Comprehensive Koala Plan of Management and had not re-defined the boundaries of commercial activity on Council owner lands. Nor had they developed a site specific DCP to control development, over a lengthy seven year period.

It is NOT necessary for this DA to proceed for the existing Koala Habitat to be removed and compensated for by a non-existing offset of land.

It IS necessary for the future of Mambo Wetlands, that for any access road planned to run parallel to the north/south boundary of Council's Lot 284, should be set back from that boundary by a distance at least that, which would be required if the matter was referred to the Dept of Planning

for advice.

If such advice was obtained it would then seem obvious to upgrade the existing roadway parallel to this proposal, retain the koala habitat and re-align any subdivision required within the land remaining for commercial development

TRRA further submits that it is in the PUBLIC INTEREST that this matter should be rejected in its present form, and referred back to Council.

Any application in the future for a reassessment of an application;

- Must include full regard for the impact of the proposal on an endangered wetland classified SEPP14.
- Must define detailed boundaries to possible commercial development within the overall Commercial zoning of the land known as Lot 284 DP806310.