

Evans Head NSW 2473

6 December 2019

The Director, Northern Region
Planning and Assessments
Department of Planning, Infrastructure and Environment
Locked Bag 9022
Grafton NSW 2460

By web email: northern@planning.nsw.gov.au

Dear Director,

Submission against draft Master Plan – Iron Gates, Evans Head

The site [Iron Gates] is a sensitive coastal location due to its proximity to the Evans River, Littoral Rainforest and wetlands. The site also contains places of Aboriginal cultural heritage.
(NSW Department of Planning, Industry and Environment, draft Master Plan advertisement, Richmond River Express Examiner, 6 November 2019, p. 28).

Following the non-acceptance of the original draft Master Plan for Iron Gates after its 2016 exhibition by the then Department of Planning and Environment, I note that a revised draft Master Plan is now on public exhibition until 6 December 2019.

One fundamental difference between the old and new draft Master Plans is the inclusion in the new of the clearing and upgrading of the site access road, Iron Gates Drive, by the developer. However, Richmond Valley Council has received legal opinion confirming that Iron Gates Drive is a public road owned by them and therefore they are responsible for its upkeep. Why then should the developer be involved? I return to this significant issue in latter pages.

I also note that the consent authority for the proposed development is the Northern Regional Planning Panel (NRPP), although a prerequisite is acceptance of a Master Plan by the now Department of Planning, Infrastructure and Environment (the Department) pursuant to State Environmental Planning Policy 71 – Coastal Protection (SEPP 71).

This submission is in two parts. Part 1 covers administrative and legal matters. Part 2 articulates my concerns about the proposed subdivision and revised draft Master Plan, adjunct to my previous draft Master Plan submission dated 7 March 2016. The thesis for Part 2 is that Iron Gates is an inappropriate development, in an inappropriate location, by an inappropriate developer.

PART 1

DEPARTMENTAL PROCESSES

Development entity confusion

The name of the development entity is in error. It is Goldcoral Pty Ltd, not Gold Coral Pty Ltd, the latter occurring in the Richmond River Express Examiner advertisement (6 November

2019, page 28), the Departmental letter to previous submitters dated 5 November 2019, and the Departmental website. Such carelessness at this relatively basic level does not reflect well on the Department. What else has it not checked or got wrong?

SEPP 71 clause 20(2): GOL Revised Master Plan Report October 2019

I note that clause 20(2) of SEPP 71, Preparation of master plans, states:

A draft master plan is to **illustrate and demonstrate**, where relevant, proposals for the following: [A list (a) to (q) follows in the SEPP] [emphasis added].

I further note that the developer's planning consultant, DAC Planning Pty Ltd, consolidated the 17 master plan criteria (a) to (q) into Table 1 of their *GOL Revised Master Plan Report October 2019*. However, Table 1 simply refers to accompanying specialist reports by their annexure number without making *any* attempt to "**illustrate and demonstrate**" how the SEPP 71 criteria are proposed to be met, assuming that is the case. This is both intellectually lazy and unprofessional in my view.

Readers, be they planning assessment officers of the Department, the public or submitters, including the writer, have nothing at all to go on here. We are all severely disadvantaged. General referral to around 1,200 pages of technical reports is all but contemptuous. Therefore, I cannot comment or critique any of the subject criteria in the absence of any substantive responses by the planning consultant.

The situation also raises the disturbing possibility of over-familiarity between the parties, to the extent that 'close enough is good enough'. Or deals done?

Plainly, the Department should not have accepted the *GOL Revised Master Plan Report October 2019* in its present form. The report's treatment of SEPP 71 clause 20(2) statutory requirements is demonstrably inadequate.

I have raised this issue with Hon Rob Stokes MP, Minister for Planning (my email and letter attachment dated 22 November 2019 refers). However, I have not received a response at the time of writing of this submission so am unable to comment further.

Number of lots vs number of houses

The Departmental letter to previous submitters dated 5 November 2019 refers to "175 new homes". This is incorrect.

There will in fact be a lot more houses and therefore a lot more people. Why? Because 40% of the lots are to be dual occupancy. This means that there will be at least 245 houses not 175 if the developer chooses to stay at 40% dual occupancy (*Annexure 5-Revised ESCIR 23 July 2019*: Table 9-2 page 26; Table 9-4 page 28 and elsewhere) and not go the 55% allowed.

Inconsistency between lots and houses is more than academic. It translates into a much higher population density of 563.5 people (*Annexure 5-Revised ESCIR 23 July 2019*: Table 9-4 page 28) in the proposed Iron Gates satellite development and will put more pressure on the Evans River and riverbank.

So, two things. First, a false and misleading impression has been created by the Departmental letter to previous submitters. Two, the developers' planning consultant disingenuously failed to mention the intended house and people numbers in their *GOL Revised Master Plan Report October 2019*, but instead left this important information secreted away in an annexure.

Exhibition or re-exhibition?

The Richmond River Express Examiner advertisement (6 November 2019, page 28) and the Departmental website both omit the fact that the Iron Gates draft Master Plan is a *re*-exhibition. Therefore, it would appear *prima facie*, to members of the public not familiar with the previous draft Master Plan process, to be 'new'. A small point perhaps, but it is all about impression and perception. It would have been better if the Department had been open and upfront rather than meddle with reality.

Partiality: Departmental letter promotes Iron Gates

The draft Master Plan sets out to deliver a new housing opportunity within the established and growing coastal community of Evans Head in a way that is mindful of the important environmental and cultural value of the area.
(Departmental letter to previous submitters dated 5 November 2019).

Does it indeed? I disagree. The general tenor of the above extract leaves the reader with the distinct impression that it was first, written by the developer, and second, the draft Master Plan has already been approved by the Department. Has it? Again, it is all about perception. I think that that it is unbecoming and plainly wrong for the Department to engage in marketing spin. They are the assessors here not the marketeers.

LEGAL IMPEDIMENTS

Outstanding Land and Environment Court orders

After DA2015/096 was lodged on 27 October 2014, Richmond Valley Council sought legal opinion from its solicitors Hannigans regarding prior Land and Environment Court cases resulting from the previous failed development attempt of Iron Gates by the Ingles Group company, Iron Gates Pty Ltd. I note however, that the council had already been made aware in June 2014¹ of unfulfilled remediation orders over the site following breaches of consent.

By their letter dated 11 November 2014, Hannigans confirmed that four Land and Environment Court orders and declarations stood, including the remediation orders and orders in favour of the NSW Environmental Protection Authority. A brief summary of these cases follow:

1. Wilson v. Iron Gates Pty Ltd (first respondent) and Richmond River Shire Council (now Richmond Valley Council) (second respondent), number 40172 of 1996. Stein J. delivered judgement on 2 December 1996.
A summary of orders was: "Order restraining the first respondent from constructing or using the road [Iron Gates Drive] on the deviated route and consequent declarations".
2. Al Oshlack v. Iron Gates Pty Ltd (first respondent) and Richmond River Shire Council (now Richmond Valley Council) (second respondent), number 40152 of 1996.
Judgement was delivered by Stein J. on 6 March 1997.
A summary of orders was: "[1] Subdivision consent - order restraining first respondent from undertaking further works pursuant to consent. Orders for remediation deferred.
[2] Road consent - orders restraining the first respondent from constructing or using the road [Iron Gates Drive] on the deviated route."
3. Al Oshlack v. Iron Gates Pty Ltd (first respondent) and Richmond River Shire Council (now Richmond Valley Council) (second respondent), number 40152 of 1996 [1997]

¹ *Iron Gates Development – Evans Head* report prepared by Gary Murphy (then RVC Executive Manager Infrastructure and Environment), Ordinary Meeting of Council 24 June 2014 (Item 15.2 pp 50-56).

NSWLEC 89 (4 July 1997). Pearlman J. delivered judgement on 4 July 1997. A summary of orders was: "Orders for remediation of the land." (see Attachment 1).

4. Environment Protection Authority (prosecutor) v. Iron Gates Pty Ltd (defendant), number 50083 of 1997 [1998] NSWLEC 123 (12 June 1998). Sheahan J. delivered judgement on 12 June 1998.
A summary of orders was: "[1] The defendant company is convicted of the offence. [2] The defendant is ordered to pay a fine of \$50,000. [3] The defendant is ordered to pay the Prosecutor's costs. [4] Defendant is ordered to block all drains conveying polluted stormwater and groundwater to the Evans River."

I am not aware of the above orders being fulfilled. Contempt of court is a possible result here?

Personal liability of directors G A Ingles and P A Strawbridge

The "Orders for remediation of the land" referred to in case 3 above (Al Oshlack vs. Iron Gates Pty Ltd and Richmond River Shire Council (now Richmond Valley Council)) carried with it the personal liability of the directors of Iron Gates Pty Ltd, namely Graeme Angus Ingles and Patricia Ann Strawbridge, should the order be disobeyed (Attachment 1), to wit:

IF IRON GATES PTY LTD disobeys this Order then
IRON GATES PTY LTD and its directors
GRAEME ANGUS INGLES and PATRICIA ANN STRAWBRIDGE
will be liable to fine or sequestration
of property or both, and the said directors to
imprisonment.

Did the said company directors take responsibility? I very much doubt it.

Order of court on Lots 276 and 277 DP755624

Land title searches of Lots 276 and 277 DP755624 (part of the Iron Gates development site) in 2015 and 2019 reveal an "Order of court" on the subject lots, transaction number 2913551. An extract of this transaction states:

The applicant [Alan Oshlack] requests the Registrar General to prohibit the registration of any linen plan over the title of the property shown in paragraph (B) above which would allow subdivision to take place in breach of Order 4 of the Orders dated 6 March 1997 in the Land and Environment Court proceedings No. 40152 of 1996.

Paragraph (B) is Lots 276 and 277 DP755624 and Order 4 of the Orders states:

THE COURT ORDERS THAT:

4. The First Respondent, by itself, its servants, agents and assigns be restrained from carrying out any development pursuant to Development Consent No. 149/92.

I note that the subject Order of Court has remained on the title of the two subject lots since 1997. I further note that the "servants, agents and assigns" referred to may well include Goldcoral Pty Ltd given the commonality of Mr Ingles as director of that company and Iron Gates Pty Ltd, and as the successor Ingles Group company.

RICHMOND VALLEY COUNCIL PROCESSES

I do not believe Richmond Valley Council has properly applied the correct method for calculating when the Iron Gates development assessment clock has stopped, and when it

has restarted or have maintained adequate records for the purpose. Therefore, the council does not know what the current status of the Iron Gates development application (DA) is re these provisions. At some point or points between when the Iron Gates DA 2015/0096 was lodged on 27 October 2014, and now, a deemed refusal was obligatory and should have been declared by the council in my opinion.

Furthermore, a senior council planning staffer revealed that they do not seem to be very interested, this person suggesting that the Land and Environment Court would not rate the passing of any deemed refusal date highly should Iron Gates end up in that court. This raises a red flag to me.

I was concerned, so submitted a Government Information (Public Access) request in the public interest for a stop the clock timeline for the Iron Gates DA. Richmond Valley Council advised me that it will take 18 hours of staff time to provide at an exorbitant cost to me. This is nought but a calculated attempt to thwart due process and penalise enquirers. It also confirms a secretive nature and a vindictive attitude. Moreover, it proves what I suspected all along – Richmond Valley Council are not up to speed with stop the clock because they do not have what should be at their fingertips. If they did, they could have just printed it off and sent it to me.

I respectfully suggest that the Department be very careful in dealing any further with the draft Master Plan due to the possibility of the Iron Gates DA being a deemed refusal.

A CONTEMPORARY CONFOUNDING: IRON GATES DRIVE

In summary, DoPE is not prepared to approve the SEPP71 Master Plan until approval for the upgrading of Iron Gates Drive can be assured.
(*GOL Revised Master Plan Report October 2019*, page 5).

Well, so says the planning consultant. As to the upgrading of Iron Gates Drive being "assured", the situation is far from clear as signalled in the introduction to this submission.

There has been legal advices from the developer's solicitors Mills Oakley, made available recently as part of Richmond Valley Council's third time re-advertisement of the Iron Gates DA, as Appendix 9, "Letters of Advice". These letters are not included in the draft Master Plan annexures.

Richmond Valley Council sought peer review of the "Letters of Advice" from its solicitors Moray and Agnew, this provided by their letter dated 22 July 2019.

I note that the advices and the peer review indicate that Iron Gates Drive is a public road and that the owner of and responsibility for the upkeep of Iron Gates Drive is Richmond Valley Council, such responsibility applying since 2003.

This situation then, raises a number of questions including why the development entity Goldcoral Pty Ltd needs to apply for planning consent to clear and upgrade Iron Gates Drive and also to pay for it. Of particular concern is whether a *quid pro quo* may be involved here?

I have written to the Richmond Valley Council General Manager, Mr Vaughan Macdonald in the matter (my email and letter attachment dated 25 November 2019 refers). However I have not received a response at the time of writing of this submission so am unable to comment further.

But Iron Gates Drive has always been problematic. It has been the subject of a number of court cases (see above, for example) to the extent that Richmond Valley Council believed its

use to be proscribed (see my previous draft Master Plan submission to the Department dated 7 March 2016). But this latest situation has turned it into a linchpin upon which the draft Master Plan process, the Richmond Valley Council DA process, and indeed, the proposed development itself, revolves. I believe it is incumbent upon the parties, including the developer, to now direct their attention to sorting out just who is going to do what and why in regard to the clearing and upgrading of Iron Gates Drive.

In the meantime, Richmond Valley Council confusingly remain of the view that Iron Gates Drive is not one of theirs, as their sign attests (Plate 1).



Plate 1: Sign of confusion - Iron Gates Drive, Evans Head – despite legal opinion, Richmond Valley Council claim that they do not own it, at least on 28 November 2019.

PART 2

In my view Iron Gates is an inappropriate development, in an inappropriate location, by an inappropriate developer. These three aspects will now be dealt with in turn.

IRON GATES: AN INAPPROPRIATE DEVELOPMENT

ESD

I note that Aim 2(j) of SEPP 71 is:

- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the *Protection of the Environment Administration Act 1991*).

I also note that the *GOL Revised Master Plan Report October 2019* (page 13) states this in response:

Comment: As discussed above the proposed subdivision provides for population growth and economic development without putting the natural, cultural and heritage values of the coastal environment at risk. The proposal is in accordance with the principles of sustainable development.

No, the proposal is not in accordance with the principles of *ecologically* sustainable development pursuant to the *Protection of the Environment Administration Act 1991*, s. 6(2). This section clearly states the four principles as: (a) the precautionary principle; (b) inter-generational equity; (c) conservation of biological diversity and ecological integrity; and, (d) improved valuation, pricing and incentive mechanisms.

In the absence of substantive evidence, the draft Master Plan cannot be construed as being an ecologically sustainable development because the definitional criteria have not been met.

An isolated, satellite subdivision

Creation of a densely packed satellite village of 560 people (563.5; *Annexure 5-Revised ESCIR 23 July 2019*: Table 9-4 page 28) 2km distant from the Oak Street shopping centre of Evans Head will fragment and divide the town. The small block sizes all squeezed in will see residents living cheek by jowl. Combine that with flat, sandy terrain, the density requested is totally inappropriate. It does not take too much imagination to foresee the distinct possibility of creating a future urban ghetto with concomitant social problems expected in such an isolated location.

Indeed, this has already been forecast:

Further, with the distance of the proposed development from the substantive existing town of Evans Head and the areas projected older population, there is a risk of isolation for residents who may not have access to a private vehicle. (*Annexure 11 – SEIA*; page 62).

The relatively isolated location of the proposal from the township itself also poses risks to the future population .. monitoring of future residents' needs is recommended. (*Annexure 11 – SEIA*; page 67).

55% dual occupancy

Should 55% dual occupancy (above) be realised, then there would be 271 houses and 624 people (based on 2.3 persons per dwelling as per the tables in *Annexure 5-Revised ESCIR 23 July 2019*, page 28). This would exacerbate the potential social problems above. It would also put extra pressure on other aspects of Iron Gates, including the Richmond Valley Council sewage system, the planned Riverfront Park at Iron Gates, and therefore in the latter case, the Evans River.

No affordable housing

I note that delivery and maintenance of affordable housing is an object of the *Environmental Planning and Assessment Act 1979* (section 1.3 (d)). This is not covered and is a real failing in today's society particularly given the low socio-economic status of the Richmond Valley local government area. Prices are yet to be released by the developer but they would be expected to be pitched to gain the highest price possible *i.e.* what the market will bear. With the site being flood and fire prone, higher insurance premiums would also be expected, adding to the cost of purchase making it prohibitive for a lot of people.

IRON GATES: AN INAPPROPRIATE LOCATION

Scenic quality

I note that Aim 2(k) of SEPP 71 is:

(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area

I also note that the *GOL Revised Master Plan Report October 2019* (page 13) states this in response:

Comment: Any future dwellings onsite will be designed in accordance with the general housing guidelines prescribed by Richmond Valley Council's LEP & DCP. These controls include provisions for building setbacks, height and bulk as well as landscaping and infrastructure provision. These controls have been prepared specific to the Richmond Valley LGA and will ensure any future building works are consistent with the natural scenic quality of the area.

Without any form of building covenant, the planning consultant has no way of predicting the future regardless of LEPs and DCPs upon which this comment relies. Scale is not mentioned, it will be huge. And nothing is said that gives one any confidence that the proposal is “appropriate for the location and protects and improves the natural scenic quality of the surrounding area”.

Animals and plants: ecology

The SEPP 71 clause 8 Matters for consideration to be considered include, at 8(g), the following:

(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

The *GOL Revised Master Plan Report October 2019* (page 14) states this in response:

Comment: A Flora and Fauna Assessment has been undertaken for the site. This report confirms that by limiting the development footprint to the already cleared /low ecological value areas of the site, the proposed development will not create any significant adverse impact on terrestrial biodiversity in the locality. Proposed landscaping and revegetation works consistent with the regrowth vegetation on site will assist in maintaining and regenerating natural habitat in the area. The proposal will have minimal impact on animals and their environments.

However, stating that the proposal “will not create any significant adverse impact on terrestrial biodiversity” means that there will be *some* impact, but it will not be “significant”, whatever that means. Likewise, “minimal impact on animals and their environments” means that there will be *some* impact, but it is as yet undetermined. Of course there will be impacts! The construction phase of the project followed by the building of 245 houses at least, and the presence of 560 people, is going to severely disrupt terrestrial biodiversity on this sensitive site. How could it not?

Disruption is confirmed though. According to *Annexure 8-Terrestrial Flora and Fauna Assessment* (pages 145-146) the Endangered Ecological Community (Littoral Rainforest) will be impacted, 6.83 ha of Acacia will be removed, areas of the vulnerable Open Dry Heath and

Open Dry Heath with mixed Eucalypt community will be removed (1,175 m² and 1.16 ha, respectively), and 1,195 m² of Heathy Scribbly Gum will be removed. Enough said, I think.

I have engaged Dr Steve Phillips (Biolink Pty Ltd) to review the ecological assessment of the Iron Gates proposal. His review is attached for the information of the Department and represents an independent assessment (Attachment 2).

Fish and marine vegetation

SEPP 71 clause 8 Matters for consideration to be accounted for also include, at 8(h), this:

(h) measures to conserve fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Part), and their habitats

The *GOL Revised Master Plan Report October 2019* (page 14) states this in response:

Comment: The proposal will have minimal impact on fish and marine vegetation (see Annexures 7 and 8).

Again, there is going to be an impact, this time on fish and marine vegetation, but the impact will be “minimal”. This means that there will be *some* impact. And exactly what *measures* will be taken to *conserve* fish and marine vegetation as required by clause 8(h)? General referral to the draft Master Plan documentation, particularly in the absence of page numbers, is a real and calculated ‘cop out’ by the planning consultant. It means that the said documentation does not say anything substantive on the topic, which is the case.

Negative impacts of sedimentation and turbidity on the Evans River during the construction phase of the proposal, and subsequent ocean impacts, are of real concern particularly resultant water quality impacts on mangroves, fish stocks and other riverine and marine organisms including dolphins (dolphins are regular visitors in the Evans River and have been seen up as far as the Iron Gates narrows).

I am also concerned about the impacts of the planned riverfront park for public recreation and the likelihood of localised (over) fishing and boat ramps, even informal ones. Proposed walking tracks in the riparian zone will add to environmental pressures. Who is going to monitor all of this, especially fish habitats? Certainly not the developer.

Stormwater 1

I note that clause 16 of SEPP 71 states:

16 Stormwater

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, **or an estuary**, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform. (Emphasis added).

Stormwater runoff is not adequately covered in the application. It warrants an independent study on the effects of this large-scale development on the Evans River estuary, especially the efficacy of erosion and sediment controls during proposed site works, because:

During the construction phase of the development, the required earthworks have the potential to increase sediment loads entering downstream vegetation communities/watercourses.
(*Annexure 7-Amended Ecological Assessment*, page 25).

Due to the size and scale of the proposed subdivision, an Environmental Management Plan for the Evans River should be submitted as recommended by the *Evans River Estuary Management Study and Plan*, Final Report (WBM Oceanics Australia, 2002: section 6-6).

Stormwater 2

The very fact that huge drains were constructed by the same developer last time around – albeit illegally (above) – confirms that the volume of stormwater the site generates is a serious problem (Plate 2; see also Plate 3). The quantum of water is part of the natural drainage regime for the local area. It will not be ‘solved’ by artificially creating freeboard because hydrologic processes will continue regardless. Where will the water go?



Plate 2: Does size matter? This one does. It shows just how massive the stormwater problem is, so much so that this illegal drain (above) on the eastern side of the Iron Gates site was inflicted upon the landscape last time around by the same developer as is now. It drains to the Evans River.

Mosquitos and midges

Mosquitos and midges are a real problem at Iron Gates – ask the locals! So where is the *Biting Insect Impact Assessment* that was included as part of the Richmond Valley Council DA process?

Site unsuitable

The site is a sensitive coastal environment (as the Department confirms in the opening quotation to this submission) and vulnerable to the impacts of development. The site is also flood prone, fire prone, contains potential acid sulfate soils, and contains areas of radiation from previous sand mining operations. Accordingly a recommended reason for non-acceptance of the draft Master Plan is the unsuitability of the site for development pursuant to the provisions of section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

Biodiversity offsets

A single, official document which explains, accounts for, and summarises all the environmental management and biodiversity offsets in its final form for the development site and for Iron Gates Drive is needed. As it stands, separate datum and correspondence between the parties is found in its raw form hidden away in various appendices of annexures in the draft Master Plan documentation. However, some clarity was obtained recently from the Biodiversity and Conservation Division (formerly Office of Environment and Heritage) about what they have agreed to in relation to the development site:

Our letter dated 2 May 2018 provides agreement to the biodiversity offsets for the Iron Gates development ... this agreement provides for the appropriate rehabilitation of the foreshore area before dedicating it to the council, securing and managing the rainforest areas via a biodiversity stewardship agreement in perpetuity with the Biodiversity Conservation Trust, and retirement of any residual biodiversity credits.

(Dimitri Young, Senior Team Leader Planning, North East Branch, Biodiversity and Conservation, email dated 13 November 2019).

And for Iron Gates Drive:

Our letter dated 8 March 2019 provides agreement to the biodiversity offsets for the road reserve [Iron gates Drive] .. this agreement provides for further biodiversity credits to be retired for the proposed impacts of upgrading the road.

(Dimitri Young, Senior Team Leader Planning, North East Branch, Biodiversity and Conservation, email dated 13 November 2019).

I note that formal and signed agreements must be in place and biodiversity offset credits retired prior to the commencement of any site construction work and the clearing of Iron Gates Drive. I understand that the Biodiversity and Conservation Division have offered their services to Richmond Valley Council in drafting conditions.

Sewage Treatment Plant discharges: Broadwater National Park

Sewage Treatment Plant (STP) discharges at Evans Head have traditionally impacted Salty Lagoon in Broadwater National Park via sub-surface flow, the STP being adjacent to the park. The expected huge increase in the Evans Head population of 560 more 'bums on seats' as a result of the Iron Gates proposal is likely to put Salty Lagoon at dire risk. Salty Lagoon is right on the coast and opens to marine waters. Potential sewage flow vectors can be represented as:

Additional sewage loadings ex Iron Gates → STP → Salty Lagoon, Broadwater National Park → Pacific Ocean.

I have not seen any modelling in the draft Master Plan documentation on the impacts of increased STP loadings on Salty Lagoon over time if Iron Gates goes ahead. This failure needs to be corrected. Furthermore, no decision to accept the draft Master Plan should be taken until it can be shown that there will be **no** negative impacts whatsoever on Salty Lagoon as a result of Iron Gates.

Flora and fauna survey

The flora and fauna survey (*Annexure 8-Terrestrial Flora and Fauna Assessment*; page 38) reveals these shortcomings:

"additional undetected threatened or other native flora species may be present";

"Seasonal surveys would also be necessary to detect flora species that are dormant or inconspicuous for part of the year";
"ungerminated seed of various species may have been present within the soil seed bank";
"the entire seasonal fauna assemblage is unlikely to be recorded"; and,
"there is no absolute certainty to the absence of a species from marginal or potential habitat".

A more comprehensive and current study is required because what has been presented (circa 2014) cannot be relied upon with any degree of certainty.

Unfilled remediation order = biodiversity impact:

I note that the environmental impact of the unfulfilled Land and Environment Court remediation orders (above; see Attachment 1), is this:

In summary, lack of remediation of the site following clearing and draining in 1996, together with additional clearing in 2014 [see below], is likely to have removed and damaged the habitat of a number of Threatened fauna species and damaged an Endangered Ecological Community.
(David Milledge, Landmark Ecological Services Pty Ltd, 2014 in Planit Consulting letter 23 October 2015: Draft Master Plan Annexure 1 – Flora and Fauna Assessment [2016], unpaginated).

Environmental impact

Generally, though, it is considered that because the proposed development fails to consider likely environmental impacts on the natural environment pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the draft Master Plan should not be accepted.

Iron Gates Drive and SEPP 14: seriously threatened

Of particular concern is the planned "pruning" or "trimming" of Iron Gates Drive vegetation in the areas where it encroaches upon SEPP14 - Coastal Wetlands. However, no definition has been proposed of what these two terms might mean in practice, vitally important information to know particularly for a contractor wielding a chainsaw.

I note that SEPP 14 prohibits clearing, levee construction, draining and filling (clause 7(1)), *clearing* being defined as "the destruction or removal in any manner of native plants" (clause 7(4)). I submit that "pruning" or "trimming" *does* involve "the destruction or removal **in any manner** of native plants", by virtue of the fact that the very act of pruning or trimming has to result in the *removal* of native plants by the manner of cutting or lopping, even if only partially.

Furthermore, the impact of the planned pruning or trimming is unclear because it is unknown. Some species may in fact die depending on the quantum of branches, primary or secondary leaders or leaves removed. If plants do die as result of cutting, pruning, trimming or lopping, then destruction has occurred in contravention of SEPP 14.

There is also legal uncertainty. I note that in the SEPP 14 section of the Moray and Agnew letter to Richmond Valley Council dated 22 July 2019 (above), they do not "concur" with or say that the Mills Oakley advice (above) is "correct" (as they did in other matters). Instead, they adopt a lesser phrasing: the "advice remains *accurate*" (emphasis added). This indicates a lower order of committal – they are not entirely convinced of their (or Mills Oakley's) ground here.

Because of the practical and legal uncertainties, I strongly suggest that SEPP 14 vegetation not be touched. In addition, ground truthing needs to be undertaken to delineate the SEPP 14 areas on Iron Gates Drive by some substantial and enduring method (coloured plastic flagging by itself would not be recommended; it is just not robust enough). This would ensure SEPP 14 areas are positively identified and are therefore to be left alone.

Fire 1

In first version of the draft Master Plan, Blue Pool Road was to be the main fire escape route. Now it has faded into insignificance, at least in theory. There is no current protocol re use of this road even though it is at the backdoor of Iron Gates and will be used as an informal entry and exit point in practice, including fire events I suggest. But it would be unsuitable in fire emergencies because it is only a narrow, winding dirt road traversing forested areas. Its use needs to be formalised as to what its role is and will be rather than just simply ignoring it in the current draft Master Plan documentation. If Iron Gates' residents are trapped or feel under threat due to fire, they will want to get out any which way. Blue Pool Road is the default here. They will use it even though it could be dangerous and its intersection with the Woodburn - Evans Head Road is unsuitable for large traffic volumes.

Fire 2

I note that the width of the Iron Gates Drive carriageway is to be widened to 8m but the bridge on Iron Gates Drive is only 6.2m wide. Consequently the bridge is classified as narrow, with signs recommended in both directions. It is also a recognised "pinch point" (*Annexure 5-Revised ESCIR 23 July 2019*, Appendix I, Traffic Report, page 5) and therefore creates a real risk in fire emergencies.

Moreover, the load capacity of the bridge is unknown. This represents a further safety risk, because the bridge is expected to handle not only bushfire tenders full of water but also bulk earthworks heavy transport haulage in the form of trucks and dogs longer than the bridge.

Fire 3

The isolated position and surrounding bush of the Iron Gates satellite subdivision present a high fire risk. If the developer is serious about tackling this fire risk, he would incorporate a fire station with a dedicated fire tanker into the design layout at his expense.

Fire 4

I note with concern this qualification in regards to fire. It confirms the reality of Iron Gates, elemental in these times of increased fire risk associated with climate change:

DISCLAIMER

Despite best efforts, there is no guarantee that desirable outcomes are achievable during extreme bushfire weather episodes, which may occasion unpredictable bushfire behaviour and have detrimental consequences to life, property and the environment.

(*Annexure 3-Bushfire Assessment Additional Information Iron Gates Drive*, page ii)

Aboriginal heritage

I note that the shell midden in the south western part of the site will be impacted by the proposed development requiring an application for an Aboriginal Heritage Impact Permit under Section 90 of the *National Parks and Wildlife Act 1974*. It would be better for the Traditional Owners if the shell midden was left alone.

Some comments:

The so-called 'revised cultural heritage report' [*Annexure 9-Cultural Heritage Assessment*] does not address the concerns of the Bandjalang People about the Iron Gates, as claimed by the developer. Far from it.

(Simone Barker, traditional owner, 'Restore the land', letter to the editor, Richmond River Express Examiner, 6 November 2019, page 13).

Simone Barker is the daughter of the late Lawrence Wilson, a Traditional Custodian, and the plaintiff in the Wilson v. Iron Gates and Richmond River Shire Council (now Richmond Valley Council) Land and Environment Court case (above).

In an article headed 'We've lost enough sites' (Richmond River Express Examiner, 13 November 2019, page 10), Simone Barker tells about Iron Gates being a ceremonial place and also a massacre site, laments that only five out of eight scarred trees remain (the marks on them marking where warriors were killed), confirms the presence of the graves of two chiefs, and states that she "doesn't know how the developer of the Iron Gates site sleeps at night". Craig Gillespie, an Awabakal man, also said that the location of the scar trees is kept secret "due to the danger of them being destroyed by the developer".

I think we should be doing better here in preserving Aboriginal cultural heritage. Once it is gone, it is gone. What will be left for future generations if we do not act now?

Climate change and the public interest

Climate change is not addressed, even though it is a listed key threatening process under Schedule 3 of the *Threatened Species Conservation Act 1995* according to *Annexure 7- Amended Ecological Assessment* (page 100) This is cause for concern for not only flora and fauna on the site but also because there is the possibility or even likelihood of sea level rise (and more fires and stormwater flooding (Plate 3)) resulting in potential future litigation against planning authorities. Climate change should have been covered in the draft Master Plan to mitigate this risk. Furthermore:

The concept of the "public interest", as a factor to be taken into account under 79C(1)(e) [now 4.15(1)(e)] of the EPAAct (*sic*), has been increasingly relied upon by the courts as a gateway for climate change considerations in planning and development assessment processes. (O'Donnell and Gates, 2013: 227-228) ².



Plate 3: A routine occurrence – stormwater inundation of Iron Gates.

² O'Donnell, T. and Gates, L. 2013. 'Getting the balance right: A renewed need for the public interest test in addressing coastal climate change and sea level rise', *Environmental and Planning Law Journal*, 30, 220-235.

Exactly how the draft Master Plan meets the public interest test is not articulated. Pursuant to the provisions of section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, that in the circumstances of the case, approval of the draft Master Plan would set an undesirable precedent for similar inappropriate development. Consequently the draft Master Plan is not perceived to be in the public interest and therefore should not be accepted by the Department.

IRON GATES: AN INAPPROPRIATE DEVELOPER

Corporate veil

In light of the track record of non-compliance of the developer with Land and Environment Court orders outlined above, it may be of little surprise that Richmond Valley Council's solicitors, Hannigans, issued this cautionary advice to the council in their letter dated 11 November 2014:

As the law has developed the corporate veil has become very thin, and Council is on notice that **the Ingles group of companies is less than a solid corporate citizen, with little or no reputable corporate character. Council's attention is drawn to the fact that N.S.W. Planning authorities and the E.P.A. have long memories.** (Emphasis added).

Richmond Valley Council spends \$1M on Iron Gates legals

Iron Gates has been mired in litigation to the financial detriment of Richmond Valley Council. While some court cases have been referred to above, there are others including in the High Court, involving the Ingles Group. All of which have cost Richmond Valley Council and therefore ratepayers, over \$1M, a figure not disputed by the council. But it is at least \$944,000, witnessed by the email dated 16 February 2009 from Brian Wilkinson, a former Richmond Valley Council General Manager, to a councillor covering legal expenditure on Iron Gates between January 1999 and January 2009 only.

NSW Fair Trading complaint

The marketing of Iron Gates on the internet prior to any development approval in 2017 by the Ingles Group, Vantage at Evans, Raine & Horne, and Adenbrook Homes was the subject of a complaint to NSW Fair Trading. As a result,

Fair Trading can confirm that education has been provided in relation to potential false and misleading representations about sale etc. (*sic*) of land ...[and] ... that online marketing has been updated to indicate the development is subject to approval, or words to that affect. (NSW Fair Trading letter dated 15 June 2017).

Donations barred NSW

I note that property developers generally, along with business entities associated with the tobacco, liquor and gambling industries, are prohibited donors under the NSW *Election Funding, Expenditure and Disclosures Act 1981* and so are banned from making political donations at State or Local Government levels. Why might this be?

Alleged illegal clearing: Questionable land management practices

Iron Gates was the subject of an alleged illegal clearing complaint in 2014. While the then NSW Environmental Protection Authority and then Office of Environment and Heritage investigated the complaint, there was no prosecution. I think this was because the two year time period ran out and necessary site inspections to gather evidence were not permitted by the developer. Regardless of the outcome, the fact that the Environmental Protection Authority was involved does not reflect well on the corporate character of the developer bringing it and his land management practices into further question.

Plate 4 shows an aerial photograph of a cleared area at Iron Gates adjacent to the Evans River taken on 1 June 2014.



Plate 4: An aerial photo of a cleared area at Iron Gates adjacent to the Evans River (1 June 2014). Note the obviousness of cocks (piles of vegetation) indicating recentness (as of June 2014) of clear felling operations.

CONCLUDING REMARKS

I have argued that Iron Gates is an inappropriate development, in an inappropriate location, by an inappropriate developer.

Moreover, Iron Gates is mired. Worse, it is jinxed. It is destined to end up in court regardless of the outcomes of approval processes. I feel for the ordinary 'Mums and Dads' who get caught up in Iron Gates – they could end up buying into a problematic development should it be approved. Property speculators are also expected to feature strongly, but they are used to risk – they will have to look after themselves.

Legal opinion calls into question the need for the development entity to be involved in the clearing and upgrading of Iron Gates Drive and to bear this cost. Richmond Valley Council need to account for this situation as a matter of urgency.

I do not believe that that the proposed development should be issued a General Terms of Approval or a Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1993* by the Rural Fire Service due to the unacceptable fire risk that Iron Gates presents.

I do not believe that an Aboriginal Heritage Impact Permit should be issued under Section 90 of the *National Parks and Wildlife Act 1974* by the National Parks and Wildlife Service due to the spiritual and practical damage this would cause.

I do not believe that the Department should accept the draft Master Plan but reject it. The insufficiencies and deficiencies highlighted will cause irreversible damage to this vulnerable

and "sensitive coastal location due to its proximity to the Evans River, Littoral Rainforest and wetlands".

Please kindly note that I have engaged other scientific experts to prepare an opinion about the potential impacts arising from the proposed Iron Gates subdivision. This information crucially supports my submission and will be provided as an addendum to my submission by 20 December 2019. The outstanding responses from the Department and Richmond Valley Council crucial to my submission will also be provided as an addendum as soon as they are to hand.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P Ashley'.

Dr Peter Ashley

Attachments

1. Remediation Order NSWLEC 89
2. S Phillips advice 6 December 2019

Copy: Hon Rob Stokes MP, Minister for Planning

**IN THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

No. 40152 of 1996

AL OSHLACK

Applicant

IRON GATES PTY LIMITED

First Respondent

**RICHMOND RIVER SHIRE
COUNCIL**

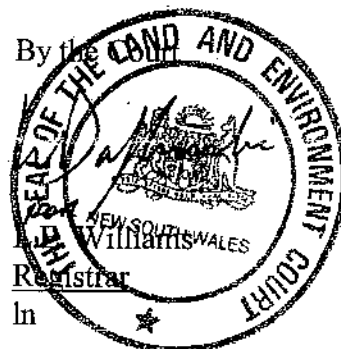
Second Respondent

Order

THE COURT ORDERS THAT:

1. The First Respondent shall remediate the land known as the Iron Gates site, being portions 276 and 277, Parish of Riley, in deposited plan 755624 ("the site") in accordance with the remediation plan annexed and marked "A".
2. The work referred to in Order 1 shall be commenced immediately, be pursued as quickly as reasonably practical and shall be completed within two (2) years of the date of this judgment.
3. Liberty granted to all parties to apply on three (3) days notice.
4. The question of costs is reserved.
5. The exhibits may be returned with the exception of Exhibit M.

ORDERED: 4 July 1997



If IRON GATES PTY LTD disobeys this Order then IRON GATES PTY LTD and its directors GRAEME ANGUS INGLES and PATRICIA ANN STRAWBRIDGE will be liable to fine or sequestration of property or both, and the said directors to imprisonment.

ANNEXURE "A"

REMEDIATION PLAN

Work to be carried out by Iron Gates Pty Ltd

1. Iron Gates Pty Ltd ("Iron Gates") must carry out the work referred to in this Remediation Plan on the Iron Gates site, being portions 276 and 277, Parish of Riley, in Deposited Plan 755624 ("the Site").
2. The "Authority" referred to in this Remediation Plan is the NSW Department of Land and Water Conservation, or its delegate which must hold written authorisation to act.
3. In the event that the NSW Department of Land and Water Conservation refuses or is unable to act as the Authority, the Authority will be an independent expert, as mutually agreed in writing between Iron Gates, the Minister for Urban Affairs and Planning and Alan Oshlack to act as the Authority. In default of agreement, the Authority shall be the person appointed by the Court.

Testing of water tables beneath littoral rainforest and wetland

4. Carry out borehole or any other testing to the satisfaction of the Authority in respect of both the littoral rainforest adjacent to the western drain and the wetland to the east of the eastern drain to determine:
 - (a) whether impermeable layers exist beneath those areas which support water table in those locations;
 - (b) if so, the nature and location of those layers; and
 - (c) whether those layers have been breached.



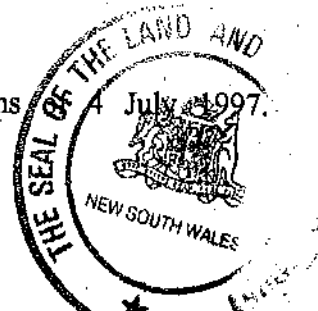
5. The testing of the water tables referred to in paragraph 4 above must be carried out and completed to the satisfaction of the Authority within two months of 4 July 1997.
6. If the impermeable layers have been breached, or if, in the Authority's opinion, there is some other reason for which it is necessary to protect those water tables, Iron Gates must undertake remedial measures to promptly restore those layers to the satisfaction of the Authority.

Backfilling of drains

7. The eastern and western drains on the Site must be backfilled.
8. Fill for both drains must be:
 - (a) the original material excavated from those drains so far as and to the extent that such material is available for the purpose, or
 - (b) fill from an appropriate source off the Site.
9. The source of the fill for the backfilling of the drains must be approved by the Authority before it is deposited in the drains.
10. The drains must be backfilled to the satisfaction of the Authority within three months of 4 July 1997.

Roads

11. The roads be scarified and the bitumous road material, or any road base contaminated with bitumous material, be removed from the Site.
12. Removal of the roads must be completed within two months of 4 July 1997.



Earthworks

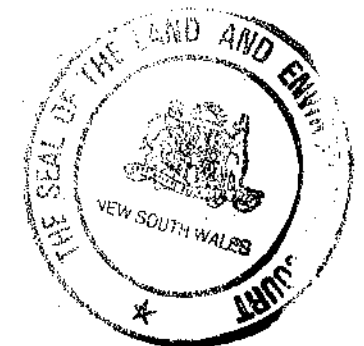
13. Earthworks be carried out to restore the Site to its original, free-draining topography. In so far as is practicable, the Site must be contoured to reflect the original site contours as indicated on the original contour plans which form annexures A and B to the affidavit of Lindsay Ian Walker sworn 8 May 1997.
14. The earthworks referred to in the paragraph above must be carried out and completed to the satisfaction of the Authority within three months of 4 July 1997.

Mitigation of soil erosion

15. Soil erosion measures are to be used at all times on the Site as directed by, and to the satisfaction of, the Authority.

Remediation of soil

16. After the roads have been removed, the drains filled and the remedial earthworks have been completed as referred to in paragraphs 7 - 14 above, the remaining soil on the allotments must be tested to determine whether it has an appropriate pH balance before the revegetation programme commences. Soil testing must be carried out to the satisfaction of the Authority.
17. If soil affected by acid-sulfate is found, the affected soil must be either removed or remediated in accordance with Environment Protection Authority and Department of Land and Water Conservation guidelines. The soil remediation must be carried out under the direction of, and to the satisfaction of, the Authority.



Revegetation

18. Within one month of 4 July 1997, Iron Gates must:
 - (a) commission a nursery approved of by the Authority to grow native plants for the purpose of revegetating the Site;
 - (b) direct that nursery to collect seed from the Site and any adjoining areas (after first obtaining any adjoining landholders' consent); and
 - (c) direct that nursery to grow the species referred to in the affidavit of Marilyn Dale Fox sworn 21 April 1997.
19. Once the soil has been remediated in accordance with paragraphs 16 and 17 above (if this is found to be necessary), the Site must be prepared using hydro-mulching and brush-matting.
20. The Site must be revegetated generally in accordance with the revegetation plan which forms part of Exhibit "M" and paragraphs 23 - 32 of the affidavit of Marilyn Dale Fox sworn 21 April 1997.
21. Replanting must be completed within nine months of 4 July 1997.

Cost of remediation work

22. All costs of complying with this Remediation Plan must be paid by Iron Gates.





EDO NSW
Level 5, 263 Clarence Street,
Sydney NSW 2000 AUSTRALIA

6th December 2019

Re: Proposed development at Iron Gates, Evans Head

I refer to your request for advice, on behalf of Peter Ashley, regarding the adequacy of ecological assessments that have been submitted in support of the proposed Iron Gates development to the west of Evans Head NSW. In preparing the advice that follows I acknowledge that I have read the Land and Environment Court Code of Conduct and agree to be bound by it.

This advice has been prepared following a review of the two ecological studies that have been submitted:

- (i) *Terrestrial Fauna and Flora Assessment Iron Gates Development* prepared by Planit Consulting Pty. Ltd. for Gold Coral Pty. Ltd. dated August 2014 (as amended July 2019 by JWA Pty. Ltd.) (Planit Report), and
- (ii) *Amended Ecological Assessment, Iron Gates Drive, Evans Head NSW 2473*. A report prepared for Gold Coral Pty. Ltd. dated April 2019.

These documents have been used in support of both “DA2015/0096 – Iron Gates Residential Subdivision, Evans Head” and the “Draft Master Plan for the Iron Gates Residential Release at Evans Head”.

In terms of the two preceding documents I note that first is focused on the overall development precinct and the envisioned outcome (*i.e.* 175 residential lots and associated infrastructure), while the second relates primarily to a proposed widening of Iron Gates Drive. Given the broader footprint being proposed I have paid particular attention to the first of the two reports, notwithstanding that they share in common the issues I have identified in the following paragraphs.

In my opinion, both reports reflect little more than a minimal survey effort. Their survey design is simplistic and effort is cursory. With regard to the Planit Report, there are numerous references to

Queensland flora and fauna survey standards that have no standing in NSW. The report is also dated (it refers to *Threatened Species Conservation Act 1995* (TSC Act) not the *Biodiversity Conservation Act 2016* (BC Act)). The absence of figures illustrating important considerations such as the distribution of survey effort and the results obtained, including such things as the distribution of records of threatened species in the general area, further contributes to the generally poor standard of reporting.

The following comments are provided in response to consideration of the overall survey work and assessment standards that have been applied, the results that were (or were not) obtained and the discounting of potential impacts in so far as they relate to required statutory considerations:

1. Brush-tailed Phascogales.

The bionet Atlas of NSW Wildlife confirms the presence of this species both on the Iron Gates site and immediately adjoining lands, but it was not targeted for specific survey work; instead being reported by the Planit Report as a ‘possible’ occurrence only. Because the species has not been surveyed adequately, there is no relevant information on key considerations such as the size of the population or its distribution across the site. Because these critical field assessments have not been undertaken, the associated 7-part test cannot be relied upon because it is both poorly informed and speculative.

2. Squirrel Gliders

The Planit Report confirms the presence of Squirrel Gliders on the site by spotlighting but has provided no additional information on exactly where they were recorded (apart from an indirect reference to eucalypt forest in western portion of the site). Again, there has been no further survey / assessment work to estimate size of the population or its distribution across the site, nor the locations of any denning trees and associated food resources. Because these critical assessments have not been undertaken, the associated 7-part test cannot be relied upon because it is both poorly informed and speculative.

3. Hollow-bearing trees

The loss of hollow-bearing trees is listed as a key threatening process for purposes of the TSC Act (now replaced by Schedule 4 of BC Act), with both Brush-tailed Phascogales and Squirrel Gliders specifically listed in the final determination by the NSW Scientific Committee as species adversely impacted by loss of hollows. Despite these considerations, and aside from an indirect reference to the presence of hollow-bearing trees in the Eucalypt forest, no specific survey work on the extent of the hollow-bearing tree resource in the general area has been undertaken, nor a figure supplied to illustrate the distribution of this resource across the development site.

4. Koalas

In my opinion, the RG-bSAT Assessment undertaken by JWA Ecological Consultants (Attachment 4 of the Planit Report) has significantly understated the extent to which koalas are using the site. While the design concept outlined in their report is acceptable (and looks impressive at first glance), when it comes down to it, only 10 field sites were formally assessed. Interestingly, the report states that the assessment of these 10 sites was completed by 1 ecologist over 2 days. What this confirms to me is that the effort of physically surveying the 10 sites has been perfunctory at best. As the designer and foremost practitioner / trainer of the SAT/RG-bSAT method, I can unequivocally state that, if trained SAT practitioners were to have been undertaking this particular assessment, it would also have taken at least 2 days to do the ten sites with 3 people doing the work. Hence the 2 ecologist days of survey effort described in the report is only a third of what it should have taken (6 ecologist days) to do the site-based SAT assessments diligently. This leads me to advise with some confidence that both the distribution and extent of koala activity across the site has been significantly underestimated, and therefore cannot be relied upon.

The koala assessment also fails to recognise there are two activity thresholds to be applied across this site – alluvial soils and associated stands of Forest Red gum areas warrant ‘east coast med-high’ activity thresholds to be applied (as defined in Table 2 of Phillips and Callaghan 2011), while remainder of site (typified by Scribbly Gums and Needlebarks) clearly warrants ‘east coast low’ activity thresholds to be applied (as defined in Table 2 of Phillips and Callaghan 2011). The potential for ‘low’ koala activity to occur across the majority of the Iron Gates site could have been reliably predicted on the basis of underlying soil landscape and associated vegetation type, thus flagging the need for the assessment to have been undertaken with even greater diligence given the lower probability of finding a koala faecal pellet. This clearly did not occur.

I also note that the Planit Report (as amended by JWA in 2019) has failed to acknowledge and reference the 2014 Koala Habitat and Population Assessment that was prepared for Richmond Valley Council. Importantly, this report clearly identifies the Iron Gates site as an area of long-term generational persistence (*visive* Core Koala Habitat as defined by SEPP 44), while also providing other important conservation metrics / assessment that run contrary to the conclusions of the 7-part tests presented in the Planit Report. Because long-term generational persistence by koalas is reliant upon records for each of the preceding 3 koala generations (*i.e.* at least 1 koala record for each of the 3 consecutive 6 year periods that constitute a single koala generation), and that the records are an unbiased informer of presence, they are a more reliable indicator of the land’s importance to koalas than a cursory field assessment. Given this consideration, the Iron Gates site is clearly Core Koala Habitat as defined by *State Environmental Planning Policy No 44—Koala Habitat Protection* (SEPP

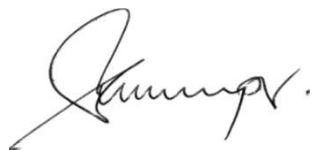
44) and this knowledge mandates that a Koala Plan of Management (KPoM) should have been prepared to accompany the development application.

I also note with some concern that the Planit Report argues that a ban on cats and dogs would be unreasonable given the location of the Iron Gates site close to Evans Head. I can do no more than disagree with this assertion in the strongest terms – the Iron Gates site is located within an important biodiversity corridor linking two national parks (Broadwater and Bundjalung), in addition to being centrally located within a bushland area with known high biodiversity values. Moreover, the impacts of cats and domestic dogs will extend well beyond boundaries of proposed subdivision. The landscape context and importance of the site has not been considered in the associated 7-part tests. Vehicle-strike will also be a significant issue over time.

In conclusion, I am of the opinion that the overall impacts of the proposed development as outlined in the Planit Report have significantly underestimated and understated the biodiversity values of the proposed Iron Gates development such that the conclusions reached by the associated 7 – part tests should be discounted as indefensible and speculative. It is also my view, supported by objective assessment, that the Iron Gates site is Core Koala Habitat for the purposes of SEPP 44 thus requiring a KPoM to have been prepared in support of the development application.

Please contact me if any of the advice contained herein requires further clarification.

Yours sincerely



Dr. Stephen Phillips

References:

Phillips, S., and Callaghan, J. (2011). The Spot Assessment Technique: a tool for determining localised levels of habitat use by koalas *Phascolarctos cinereus*. *Australian Zoologist* **35**(3), 774 – 780.

Phillips, S., and Weatherstone, C. (2014). *Koala Habitat & Population Assessment – Richmond Valley Council LGA*. Final Report to Richmond Valley Council. Biolink Ecological Consultants, Uki NSW.



environmental consultancy
'local to global – catchment to coastal'

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A.B.N. 99 607 411 256
Bank BSB 732-591
Acct No. 641179

To: Environmental Defenders Office
From: Jim Tait Senior Environmental Scientist Econcern
Subject: Advice RE: Water Management Issues @ Proposed Iron Gates Subdivision Suite Evans River
Date: 13th December 2019

Background

Jim Tait, senior environmental scientist at Econcern was engaged by the Environmental Defenders Office (EDO) on behalf of a client to review the water management issues associated with the proposed Iron Gates subdivision and residential development on the Evans River. To assess these issues literature associated with the proposal was reviewed including development documents associated with the exhibited DA: <https://richmondvalley.nsw.gov.au/exhibition/da2015-0096-iron-gates-residential-subdivision-evans-head/>

The Revised Statement of Environmental Effects DAC Planning Pty Ltd (2019) and the proposed masterplan: <https://www.planningportal.nsw.gov.au/draftplans/exhibition/iron-gates>

Site information provided by EDO's client was also considered along with Google Earth imagery of the proposed development location.

Findings

In summary the development suitability of much of the eastern portion of the proposed site has been found to be significantly constrained by water management issues associated with its low-lying topography, contributing catchment area, and its proximity to important coastal wetlands (referred to in the assessment documents and here as SEPP14 wetlands) and the Evans River estuary. These issues include a predicted inability to provide adequate flood immunity to proposed residential lots and the prospect for water quality impacts to be realised in the receiving environments of the SEPP14 wetlands and the Evans River estuary. It is also apparent that the significance of these issues will be exacerbated by the proposed infilling of existing drainage infrastructure on the site and by projected increases in sea level and rainfall intensity associated climate change. It is my professional opinion that these issues have not been adequately considered in the existing development assessment and

that the proposal in its existing form cannot be progressed without unacceptable risks to receiving aquatic habitats and the security of proposed residential lots.

Site Water Management Issues

The eastern margin of the proposed subdivision is low lying and in close proximity to SEPP14 wetlands. During large rainfall events areas of the proposed development adjoining the wetlands including proposed access roads become and remain inundated for extended periods (see image below). The propensity for the site to become inundated and retain water is also indicated by wetland vegetation communities occurring within the proposal area which include paperbark (*Melaleuca spp.*) and sedge (*Cyperus spp.*) species.



The other salient indicator of the water management challenges associated with the site is the size and extent of drains constructed previously (see image below). I am informed that the illustrated drain occurs on the eastern margin of the development



proposal and drains without constructed detention facilities directly to the lower Evans River estuary some 100m behind the photographer's position. It should be noted that even with this drainage infrastructure in place, the retention of water on the site observed in the first photo (above) still occurs, despite the drain's capacity to discharge water directly to the Evans Estuary.

Under the current development proposal these existing drains are to be filled in, north to south to the boundary of Iron Gates Drive. Some 64,500m³ of fill is also to be imported to the site to raise the Flood Floor Level (FFL) of low lying lots to 3.6m (ARCADIS 2019). The consequence of the

importation of fill to areas that currently retain water on site during high rainfall events will be that they no longer provide such a detention function. The potential for the existing large capacity drain to provide any run off detention function will also be removed once it has been filled. Under the current development proposal planned drainage infrastructure does not include any constructed on site detention (OSD) facilities and instead a traditional 'rapid disposal method' is proposed, where stormwater runoff is discharged directly into the river (ARCARDIS 2019). While ARCARDIS (2019) describe this as a merit based approach to justifying the lack of onsite detention it is apparent that the merit of this proposal has been based on a consideration of drainage immunity only and not existing ecological and catchment functions of water detained on the site. The displacement of existing site detention function by imported fill and the conveyance of run off via constructed drainage infrastructure lacking on site detention (OSD) will result in reduced recharge of shallow aquifers that support the hydrology of adjoining SEPP14 wetlands and an increased conveyance of contaminant loads (including suspended sediment and nutrients) directly into the receiving Evans River estuary. Water quality impact risks to the receiving estuarine environment will be ongoing once the catchment has been intensively developed to residential allotments but will be greatest during the development period when earth works will leave bare earth exposed to potential storm events. Other than reference to guideline standards no specific commitments to minimize water quality risks to the Evans Estuary during the construction period have been made within existing development documents.

Impact of Climate Change

Climate change is now well recognised amongst the scientific community as posing a range of threats to built infrastructure particularly that which occurs in low lying areas and within the near coastal zone. The two primary sources of potential climate change impact to the Iron Gates subdivision are sea level rise and rainfall intensity. It is my professional opinion that neither of these impacts have been adequately assessed or considered in development assessments to date. For representative concentration pathway 8.5 (RCP 8.5) which most closely represents the current global emission trajectory (IPCC 2019) a global mean sea level rise of 0.84m (range 0.61 – 1.10m) is projected by 2100. IPCC authors acknowledge that this is a conservative projection and that it is physically plausible that sea level rise will be substantially greater. The other issue of increased rainfall intensity is associated with the fact that for each degree Celsius of increased mean global temperature the atmosphere can hold approximately 7% more water vapor which results in more intense rainfall events. The longer term viability of the Iron Gates subdivision has not been adequately assessed with regard to potential sea level rise and rainfall intensity impacts in regards to:

- The use of a historical (cf predicted climate /rainfall) 100yr ARI guideline for drainage performance capacity assessments

- Use of Mean High Water Springs (MHWS) water level with no projected sea level rise buffer as the initial level for the hydraulic grade line and the calculated drainage performance of maintaining 150mm Freeboard to top of grate levels.

Given that a conservative estimate for sea level rise by 2100 is 0.84m (IPCC 2019) and that purchasers of residential lots should in good faith expect their lots to be suitable residence areas for multi decadal periods, the omission to include a sufficient drainage performance and flood immunity buffer that accommodates projected sea level rise impact on the site is a significant oversight of the existing development assessment. In short low-lying areas adjoining wetlands and the marine environment are not suited to residential development considering projected increases in sea level and rainfall intensity. Parts of the current Iron Gates subdivision proposal represent such areas and it is my professional opinion that in good faith informed by current scientific understanding of biophysical changes occurring within the coastal zone that it should not be approved.

References

ACARDIS (2019) IRON GATES RESIDENTIAL DEVELOPMENT Revised Engineering Services and Civil Infrastructure Report July 2019.

IPCC, 2019: Summary for Policymakers. In: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate

██████████
Evans Head NSW 2473

20 December 2019

The Director, Northern Region
Planning and Assessments
Department of Planning, Infrastructure and Environment
Locked Bag 9022
Grafton NSW 2460

By email: northern@planning.nsw.gov.au

Dear Director,

Addendum to submission against draft Master Plan – Iron Gates, Evans Head

I refer to my Iron Gates draft Master Plan submission dated 6 December 2019, in which I gave this undertaking, on page 17:

Please kindly note that I have engaged other scientific experts to prepare an opinion about the potential impacts arising from the proposed Iron Gates subdivision. This information crucially supports my submission and will be provided as an addendum to my submission by 20 December 2019. The outstanding responses from the Department and Richmond Valley Council crucial to my submission will also be provided as an addendum as soon as they are to hand.

This is the addendum referred to in the above undertaking, insofar as it applies to scientific opinion and Richmond Valley Council. In the first case, one additional and final expert review is attached crucially supporting my submission, for your consideration.

In terms of the second case, I confirm that I have received a response from Mr Vaughan Macdonald, General Manager, Richmond Valley Council (his email dated 16 December 2019 refers). I had raised questions about the ownership and maintenance responsibility for Iron Gates Drive with the General Manager, following legal advice the council had received (see pages 1 and 5 of my submission dated 6 December 2019). This advice clearly indicates that Richmond Valley Council is responsible for Iron Gates Drive, and not the developer.

Nevertheless, the General Manager provided no additional legal or statutory substantiation as to why this should not be the case, in apparent contradiction of the legal advice received.

So, Iron Gates Drive continues to be problematic. Thus, I think that it would be prudent for the Department to seek its own (internal) legal advice before proceeding any further with the draft Master Plan assessment.

Insofar as the outstanding response from the Department is concerned, a further addendum will be provided in due course.

Please kindly ensure this addendum and attachment is published online as adjunct to my submission dated 6 December 2019.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P Ashley'.

Dr Peter Ashley

Attachment¹:

Attachment 3 Expert Review of Water Management Issues

¹ Attachment 1 Remediation Order NSWLEC 89, and Attachment 2 S Phillips Advice 6 December 2019 (Expert Review of Ecological Assessments), were attached to my submission dated 6 December 2019.