

ADDENDUM ASSESSMENT MEMORANDUM – ACID SULFATE SOILS

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-168 – (DA2022/00086)
PROPOSAL	Affordable housing project comprising 23 x 1 bedroom units in four separate but linked 2 storey buildings with one level of basement carparking comprising 24 parking spaces
ADDRESS	Lot 1 DP 863743 15 Watson Street, Bellingen
APPLICANT	Geolink Consulting Pty Ltd
OWNER	Royal Freemasons Benevolent Institution of NSW
DA LODGEMENT DATE	21 June 2022
APPLICATION TYPE (DA, Concept DA, CROWN DA, INTEGRATED, DESIGNATED)	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2.19, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Clause 2.19 provides that development specified in Schedule 6 is declared to be regionally significant development for the purposes of the Act. Schedule 6 includes development for the purpose of affordable housing that has a capital investment value of more than \$5m. The Act defines affordable housing as meaning housing for very low income households, low income households or moderate income households. Clause 4.5 of the Act designates the Northern Regional Planning Panel as the consent authority for regionally significant development.
CIV	\$5,996,515 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 4.3 Height of buildings – the highest point of the proposed building is 11.01m above natural ground level, which exceeds the 10m maximum building height.
KEY SEPP/LEP	State Environmental Planning Policy (Housing) 2021; State Environmental Planning Policy (Planning Systems) 2021; State Environmental Planning Policy (Resilience and Hazards) 2021; State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; Bellingen Local Environmental Plan 2010.
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	Statement of Environmental Effects including Appendices A – N; Contamination Assessment; Geotechnical Assessment

SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Conditional Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	31 August 2022
PLAN VERSION	8 August 2022 Revision 2
PREPARED BY	Benson McCormack Architecture
DATE OF MEMORANDUM	30 August 2022

1. ACID SULFATE SOILS QUERY

The following query has been raised by a Panel member through the Chair:

The LEP, which is standard, requires that a preliminary assessment of the proposed works [is] prepared in accordance with the Acid Sulfate Soils Manual (their emphasis).

This Manual is defined in the LEP, as follows:

The addendum report states inter alia (again with their emphasis):

“Section 5 (page 4) of the report by Regional Geotechnical Solutions addresses the potential for ASS on the site and for the purposes of the Bellingen Local Environmental Plan 2010 notes as follows:

“An assessment regarding the presence of ASS at the site and the need for an ASS Management Plan has been undertaken based on the procedures outlined within the “National Acid Sulfate Soils Guidance: National acid sulfate soils sampling and identification methods manual” (June 2018).”

I don't have any knowledge of this 2018 Manual, but just wanted to check this vs the NSW 1998 Manual. No doubt a national guideline prepared 20 years later might be considered superior, but from the relevant national website for the 2018 document it states:

“It is essential that the reader consult relevant jurisdictional guidance and regulations and contact the relevant state of territory government department for specific local and regional information and advice....”

ACID SULFATE SOILS RESPONSE

It is agreed that the report by Regional Geotechnical Solutions references the June 2018 manual which is a current and national standard for the purposes of providing technical and practical advice on the identification and sampling of acid sulfate soil (ASS) materials prior to field investigations and when in the field. It provides guidance on the sampling requirements necessary to define the extent of ASS materials in the landscape.

Clause 7.1 (3) of the Bellingen Local Environmental Plan 2010 references the requirement for a preliminary assessment of the proposed works to be undertaken in terms of the Acid

Sulfate Soils Manual being the manual published by the Acid Sulfate Soils Management Advisory Committee. This Manual is a 1998 publication.

A check of the NSW EPA website indicates that the laboratory methods in the 1998 Manual have in any event been replaced by the Laboratory Methods Guidelines 2004 so at least that aspect of the 1998 Manual is no longer current.

It is unclear why the NSW EPA website continues to reference the 1998 manual given there are national guidelines issued in 2018. It is noted that the National ASS Sampling and Identification Methods Manual advises it is essential for readers to consult relevant jurisdictional guidance and regulations and to contact the relevant state or territory government department for specific local and regional information and advice.

The question does pose the legal drafting issue of LEP's referring to specific publications which will date and potentially be superseded.

The report author is satisfied that the report by Regional Geotechnical Solutions is a satisfactory preliminary assessment of the proposed works which demonstrates that an acid sulfate soils management plan is not required for the works.

The weight to be given to the unresolved legal question is a matter for the Panel.

2. FLOODING QUERIES

The following queries have been raised by a Panel member through the Chair:

"1 – What (why) does the assessment report quote LEP Clause numbers in the table at p. 14 which do not accord with the LEP in force as shown on the legislation web site? – eg the flood clause is given as 6.3 (should be 5.21?); and the cited cl.6.4 regarding stormwater does not appear to be in the LEP at all?"

*2 – In regards to flood, the flood study accompanying the DA states at Appendix D p. 6 "**Section 2.3** of this report identifies a conceded flood planning level ranging from 12.4m to 13.3m. The car park level is below the conceded Flood Planning Level (FPL) in some areas at 12.5m. Therefore, the car park must have adequate warning systems, signage, exits, and drainage pumping systems in case water enters in a flood event in accordance with section 8.10.3 of the Bellingen Shire Council DCP".*

At p.19 of the Assessment report is the following statement: "The conceded flood planning level for the carpark is a minimum of 12.4m which is achieved by the basement level being 12.5m AHD".

I am unfamiliar with the concept of a conceded flood level as appears to arise from the Bellingen DCP and the assessment report does not provide a detailed discussion of this nor of cl.5.21 in the LEP. Nor can I find any condition(s) relating to the required minimum floor levels or the warning systems etc referenced in the GEO Link Appendix D.

*3 - Re **flooding**: following on from previous comments, I am also a bit confused about the flood mitigation comments in relation to the basement carpark. According to the SEE (p12), the lot "is not identified as within the flood planning area in the Lower Bellingen/Lower Kalang Flood Study" and then on p32 "the western side of the site is identified as flood fringe". Nevertheless if there are flood mitigation requirements for the basement carpark, they should be clearly conditioned.*

FLOODING RESPONSE

1. A template final assessment report was sent to the author by the secretariat and the clauses referenced in the question are from that document. They are editing errors with the correct clause number for flood planning being 5.21 (as indicated in the question) and with no specific clause for stormwater (as indicated in the question).
2. This question has been the subject of further detailed assessment by the Council's planning staff and development engineer. The Bellingen Shire DCP 2017 provides that the buildings floor level shall be equal to or above the General Flood Planning Level (GFPL). The GFPL represents a flood planning level derived for a particular precinct based on the 1% average exceedance probability (AEP) flood plus a freeboard. Page 15 of Chapter 8 of the DCP defines the required freeboard as 0.5 metres unless noted otherwise (and the otherwise not including this site).

Page 15 of Chapter 8 of the DCP references the conceded FPL as the GFPL minus 1.0 metres.

The site itself is not identified as having any hydraulic categorisation at the 1% AEP. It is only land with frontage to Rawson Street which is categorised as flood fringe. Nevertheless, given the proposed construction of a basement carpark there has been an assessment of flood risk.

Along the western (Rawson Street) side of the site the GFPL ranges from 13.8m AHD near the Watson Street intersection to 12.9m at the north western corner of the site.

As referenced Clause 8.10.3 of the DCP provides that for basement or underground parking, carparks that will accommodate more than 3 vehicles with a floor level below the Conceded FPL shall have adequate warning systems, signage, exits and drainage pumping systems.

The level of the basement carpark is to be 12.5m AHD with the conceded FPL for the site ranging from 12.8m in the south west to 11.9m in the north west. As the "basement" carpark is above ground and free draining in the north west corner of the building as well as being above the conceded FPL of 11.9m the requirements of the DCP are met without the need for warning systems, signage, exits and drainage pumping systems.

3. As per the answer to question 2.

3. HERITAGE QUERY

The following query has been raised by a Panel member through the Chair:

"In relation to heritage, does Council have a heritage advisor and if so have their comments been sought?"

HERITAGE RESPONSE

The Council does have an external Heritage Advisor and a check of the Council's file indicates no evidence of a referral being sent. As part of the pre-lodgement meeting advice in Appendix L there was discussion about heritage conservation resulting in the lodgement of Appendix E being a Statement of Heritage Impact by Eco Logical Australia Pty Ltd. Whilst the conclusion of the report by Eco Logical Australia Pty Ltd is agreed there has been no alternative expert opinion provided on heritage impact.

At the request of the Panel a referral can be made to the Council's Heritage Advisor noting that this will result in a delay and potentially other changes to the assessment.

4. PARKING QUERY

The following query has been raised by a Panel member through the Chair:

"In relation to parking, noting the concerns of the report author of the minimum SEPP requirements, is it possible to reserve some adjacent on street parking for resident use, perhaps, or is there sufficient on-street parking locally on the site frontages to allay this concern somewhat – I note this issue appears to have been discussed pre-DA?"

PARKING RESPONSE

The Council would be reluctant to initiate and regulate an on-street parking permit scheme when one currently does not exist in the LGA. There are on-street parking opportunities in the vicinity. There will be the opportunity to require road shoulder construction in Rawson Street as part of Stage 2 to effectively increase the opportunity for on-street parking.

5. CONDITION 18 – REFERENCING RGS REPORT AND ITS FINDINGS

The following query has been raised by a Panel member through the Chair:

"While noting the report commentary re SEPP Resilience and Hazards, the RGS Report accompanying the DA, and proposed condition 18, I'd be happier if that condition referred specifically to the RGS Report and its findings."

CONDITION 18 RESPONSE

It is agreed that condition 18 can be amended to provide the following or similar:

"18. That the proponent provide the principal certifying authority with a clearance certificate from a consultant expert in contamination assessment which certifies that the site is clear of any contamination post demolition. The clearance certificate is to reference the recommendations of the report by Regional Geotechnical Solutions dated 15 July 2022 and incorporate the results of additional sampling (post demolition) of the upper soil profile within the former building footprints.

6. NOISE

The following query has been raised by a Panel member through the Chair:

“Re construction noise and vibration, the SEE states on page 37:

The following safeguards are recommended, where practicable:

- *A detailed Construction Noise Management Plan (CNMP) should be prepared and should include, but not be limited to, the following (then a long list of provisions). I note that Condition 26 address noise to a limited extent, however should there not be a CNMP prepared as part of the overall Construction Management Plan?*

NOISE RESPONSE

Particularly given the location of the school adjoining the site it is agreed that a detailed Construction Noise Management Plan as outlined in the SEE should be incorporated as a condition of consent in addition to condition 26.