

## SUPPLEMENTARY COUNCIL ASSESSMENT REPORT

### NORTHERN REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSNTH-209 – DA2200364
<b>PROPOSAL</b>	Proposed Macleay Valley Adventure Recreation Park
<b>ADDRESS</b>	Lot 1 and Lot 2 DP1144474 - 20 Airport Road, Aldavilla
<b>APPLICANT</b>	Kempsey Shire Council
<b>OWNER</b>	Kempsey Shire Council
<b>DA LODGEMENT DATE</b>	17 March 2022
<b>APPLICATION TYPE</b>	Integrated Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 2.19(1) and Clause 3 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Council related development over \$5 million
<b>CIV</b>	\$15,385,519 (excluding GST)
<b>SCHEDULED MEETING DATE</b>	12 July 2023
<b>PLAN VERSION</b>	AR-0001 to AR-1203 Version 3 dated 24/02/22 AR-1103 Version 4 dated 16/06/23 LD-000 to LD-0101 Version B dated 18/02/22
<b>PREPARED BY</b>	Chris Pratt Consultant Town Planner Planning Resolutions
<b>DATE OF REPORT</b>	10 July 2023

I have been asked to address the following matters by one of the Panel members. I have provided my response below each item.

#### Consideration of Applicable EPIs:

The report does not appear to address in any detail any jurisdictional pre-requisites for the issue of consent under the applicable EPIs as is customary and required.

- Kempsey LEP 2013

While the Kempsey LEP 2013 clauses are briefly summarised at pp.14 and 15 and then at p.17 is the statement that the author considers the proposal to be 'generally' consistent with the LEP. Cl. 5.21 of the LEP for example (Flood Planning) is not addressed dealing with

each issue in detail as is customary, which has required the Panel to search in the text to try and piece together the relevant matters.

Response:

The detailed review of each of the relevant Kempsey LEP clauses is contained in the attached schedule.

The report suggests any movable dwellings below 14.9m AHD must be able to be moved but the flood evacuation plan condition (9) does not appear to deal with the moving of such dwellings? At p.15 it indicates the main building has a floor level of only 14.0m AHD which is well below the 1% flood with Climate Change factored in. While condition 10 dealing with structural integrity appears to apply to this building, consideration is to be given to a more detailed assessment of the proposed work against the relevant matters listed in LEP clause 5.21 in the Assessment Report (AR).

Response:

Part d. of Condition 9 refers to the caravan park.

The flooding and structural integrity of the movable dwellings (vans or cabins) in the caravan park is regulated by the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*. Condition 3 sets the broad parameters for the subsequent Section 68 approval for the operation of the caravan park.

Moreover, if as seems clear the building is going to be subject to frequent inundation, what will be the impact on flood behaviour, and the manner of construction etc, as well as the issue of flood impacts on parked aircraft, related fuel on board etc etc. Proposed condition 8 references two flood reports which are on the portal (though not 'published') but, with respect, (a) Panel members should not have to look in detail there to find the relevant information which should be part of the assessment and (b) I cannot find where these talk about 'flood proofing measures' anyway?

Response:

The current 1% AEP Flood Event is 3.3 m AHD with a Flood Planning Level of 3.8 AHD. Therefore, the proposed building floor level is currently above the 1% AEP Flood Event. The building is a new building, and it is likely to still exist in 2100. As such the 2100 climate change flood level is the appropriate level. It will not be frequently flooded.

It is a large open building and there is sufficient space within the building to store items above the flood planning level. The only area of significant impact would be the café but with a flood level of only 400mm it can easily be made to be flood compatible with hard surfaces and areas of high storage. There is also a clear escape route to the north to move items to the flood free parts of the airport. Planes etc can be easily moved.

Council's undertaking to evacuate early, and at times unnecessarily, at the 20% AEP Flood Event is an important aspect to minimising the potential flood impact.

Condition 8 simply ensures the reference back to the flood data, Conditions 9 and 10 are the key flood controls.

Critically too, the report does not appear to mention clause 7.7 of the LEP as follows:

## **7.7 Airspace operations**

**(1) The objectives of this clause are as follows—**  
**(a) to provide for the effective and ongoing operation of the Kempsey Airport by ensuring that its operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,**  
**(b) to protect the community from undue risk from that operation.**  
**(2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.**  
**(3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that—**  
**(a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or**  
**(b) the development will not penetrate the Limitation or Operations Surface.**  
**(4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be carried out.**  
**(5) In this clause—**  
**Limitation or Operations Surface means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Kempsey Airport.**  
**relevant Commonwealth body means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Kempsey Airport.**

- CASA Agreement

While there is a plethora of materials on the portal list of documents for this DA, I could not readily locate correspondence from CASA referenced at pp.25/26 and note from the AR pp. 21/25 that CASA has **not** provided written agreement nor can I find where it has addressed the issues in LEP cl.7.7 above. Proposed condition 17 only requires CASA approval post consent for the 'Method of Works' on site ?

I then found the attached (not published) document on the portal in which a CASA letter of June 2022 is annotated by Council in January 2023. I can't find anything further from CASA, and in the circumstances that appears to fail the 7.7(3) test as well as being of general concern given the proposed development within the existing airport where Council is the operator and proponent.

**Response:**

The initial response by CASA was:

*The Airport Operator should confirm that proposed infrastructure including the buildings and fence do not infringe the Obstacle Limitation Surfaces (Transitional Surface). CASA is prepared to assess potential obstacles, including construction cranes, if required.*

The applicant has provided a report from an aviation consultant that the buildings are below the *Obstacle Limitation Surfaces*. There is no suggestion by CASA that the buildings do not comply. They reference the ability to approve any construction cranes if required.

Clause 7.7 of the KLEP was written to regulate buildings outside the airport. The critical difference here is that the applicant must gain final approval for structures within the airport. Condition 17 is sufficient to ensure that CASA is satisfied regarding the final design of any structures proposed by the development.

## Proposed Conditions and Unresolved Matters

- Deferral of consideration of matters

Proposal to defer matters about airport operations in proposed condition 16 and neighbour impacts in proposed condition 18 - concerned that it would appear premature to make a decision. As well as the CASA advice required under 7.7, what for example if agreement cannot be reached on these unresolved matters, how is a final agreed position to be established and approved? Are these proposed conditions not deferring matters which are essential pre-requisites to granting consent?

### Response:

The airport operators are commercial tenants of the airport and as such cannot dictate the layout of the airport. However, they are regular users and therefore the condition merely directs Council to at least consult with them to try to find a solution to their issues.

The neighbour impacts have been extensively considered and assessed in the submitted LUCRA. The LUCRA was reviewed by the Department of Primary Industries who found that it was generally adequate. There were no potential significant neighbour impacts found. The neighbourhood plan reinforces the recommendations of the LUCRA and the Department of Primary Industries. It is designed to ensure the potential neighbourhood issues are monitored over time and responses to issues are adapted to changing circumstances (e.g. biosecurity).

- Assessment report noting Conditions – reference to Conditions required

Throughout the report there are general references to matters being addressed by conditions and it is left to the reader to navigate back to source documents to try to find which ones they are and how they have been derived.

### Response:

I can provide further clarification in this regard at the meeting where these haven't been clarified in this supplementary report.

- Conditions 13 (traffic/speed limits) may require consideration by the Local Traffic Committee

### Response:

Yes, it is recognised that the change may require the approval of another authority. The traffic assessment concluded that the development *triggers less than 10% of Sherwood Road peak hour traffic and therefore the development does not trigger an upgrade as such*. Therefore, the speed limit adjustment is seen as a potentially worthwhile additional measure but should only be implemented if the relevant authority considers it is a worthwhile change for the local traffic control network generally.

- Conditions 21 and 22 depend on a Contributions Plans not yet finalised (even if done by next week can they apply retrospectively to a DA lodged before they came into effect?);

Response:

The *Kempsey Local Infrastructure Contributions Plan* was adopted at the Ordinary Council meeting of 27 June 2023. The plan advertised as commencing 6 July 2023. Clause 4.2 of the plan provides in part:

*This plan applies to a development application or application for a CDC that was submitted but not yet determined on the date on which this plan took effect.*

Therefore, the plan applies at the time of determination of this application by the Planning Panel.

Regarding the condition concerning water and sewerage contributions. Council was not able to, due to sick leave, provide the required conditions and ET calculations prior to finalisation of the report.

The conditions and contributions are now included in the recommendation below.

- Conditions such as 9 (flood evacuation plan), 16 (airport use), 18 (neighbour management), and 44 (Neighbour Management Plan) do not appear to require any independent oversight before acceptance, except in some cases presumably by a certifier? Is this intended?

Response:

The flood evacuation plan is required to be prepared by a *suitably experienced and qualified consultant*. It was intended that this be prepared in consultation with the SES as was indicated in Section 5.7 of the report. It is recommended that the condition be adjusted to include consultation with the SES.

See my response above regarding the operators and neighbourhood management plan. These are required to be in accordance with the development consent. It is reasonable that Council simply is expected to act reasonably as the Local Government authority. There is statutory remedy if necessary.

- Proposed condition 1 references no documents as suggested, only plans

Response:

This was intended. The plans fully describe the proposed development. Adopting documents such as the SEE may have unknown consequences. The recommended conditions rely on adopting the plans and modifying them via conditions, subsequent approvals (caravan park) and management plans.

- Condition 3 does not specify a 3 month maximum occupation period as suggested on p.14 of the AR.

Response:

The matter of the maximum occupancy is dealt with under the *Division 2 Approvals and exemptions, Subdivision 1 Operation of caravan parks and camping grounds of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*. The fact that the consent would limit the caravan sites to short term sites only is sufficient to ensure the sites are only used for short term tourist accommodation.

Recommendation:

That the following replacement conditions be imposed.

- 9 A flood evacuation plan is to be developed and certified as adequate by a suitably experienced and qualified consultant **and is to be prepared in consultation with the SES**. Such a plan is to include the following components:
- Flood Characteristics - A brief description of how a flood event occurs in the area and its impact on the proposed development. This detail must give any user of the venue an understanding of what to expect during a flood event.
  - Flood Warnings - Provide details as to the warnings users can expect in relation to flooding and how they are received. These warnings include expected flood peak, road closures, long term weather forecasts and emergency advice.
  - Preparations - Users of the development must have clear direction on the various activities that need to be undertaken when preparing for an expected flood event.
  - Evacuation - Programming the evacuation process must ensure all activities are undertaken in a safe timely manner providing safe unassisted evacuation from the buildings and the caravan park for 20% AEP flood events and greater.
  - Responsible persons - Nominate by position title, those persons responsible for implementation actions for individual plan elements. Identify a hierarchy of alternate controllers with the persons potentially responsible identified by position title, not their individual names. Useful contact numbers for flood advice must be included in any flood contingency plan.
  - A single A3 summary page that can be publicly displayed display in the various buildings. This should include a simple diagram to explain expected flood levels and likely warning intervals.
- 21 The contributions set out in the following Schedule must be paid to Council prior to the issue of any Construction Certificate. The particulars of the contributions levied pursuant to Section 7.12 of the Act are set out in the following table:

The contributions plan under which the condition is imposed	Date of contributions plan
Kempsey Local Infrastructure Contributions Plan	6 July 2023

The above plans may be viewed during office hours at the Council Offices located at **22 Tozer Street West Kempsey**.

Contributions set out in the following Schedule are to be paid to Council prior to the issue of a Construction Certificate for the subject development. The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of**



**payment.** The contribution rates for specific dates are available from Council offices during office hours.

**Schedule of Contributions pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979**

The Contribution plans under which the condition is imposed	Levy (%)	Value of Works	Contribution Levied	Date until which Contribution rate is applicable
Kempsey Local Infrastructure Contributions Plan	1%	\$15,385,519.00	\$153,855.19	30 June 2024
<b>TOTAL</b>			<b>\$153,855.19</b>	

- 22 This consent requires a Certificate of Compliance under the *Water Management Act 2000* to be obtained.

A person may apply to Kempsey Shire Council, as the water supply authority, for a Certificate of Compliance pursuant to section 305 of the *Water Management Act 2000*. An application form is available from Council's website [www.kempsey.nsw.gov.au](http://www.kempsey.nsw.gov.au) or at Council Offices located at 22 Tozer Street, West Kempsey.

Please be advised that as a precondition to the granting of a Compliance Certificate, all infrastructure works to serve the development as listed in the Schedule of Works below must be completed to the satisfaction of Council, and a monetary contribution in accordance with the following Schedule of Contributions must be paid in full or Council has confirmed in writing that satisfactory arrangements have been made for the payment of contributions.

Schedule of Contributions

Public Amenity or Service	Type	Units	Rate per unit	Contribution	Applicable until	Codes
Water	ET	28.9215	\$11,450.17	\$331,156.09	30 June 2024	AW
Sewer	ET	34.0415	\$9,659.63	\$328,828.29	30 June 2024	AS
			TOTAL	\$659,984.38	30 June 2024	

**PLEASE NOTE:** The amount to be paid will be adjusted at the time of actual payment, and if applicable any relevant Council Procedures. The amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. The applicable contribution rates for specific dates can be obtained by contacting Council during office hours.

If the works are staged, contributions must be levied at the amount proportionate to the works within the scope of the relevant Construction Certificate

## **Schedule A**

### **Detailed assessment of relevant clauses of Kempsey Local Environmental Plan 2103.**

#### **5.21 Flood planning**

(1) *The objectives of this clause are as follows—*

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

(4) *A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.*

(5) *In this clause—*

*Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.*

*flood planning area has the same meaning as it has in the Floodplain Development Manual.*

*Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.*



Response:

The key provisions are in parts (2) and (3). I advise as follows:

(2)

*(a) is compatible with the flood function and behaviour on the land, and*

The proposed development is on the fringe of the flood impact land with direct access to higher land.

*(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*

The development is away from neighbouring developments. As such it doesn't impact any adjoining land from increasing flood impacts or directing flows onto that land

*(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*

Early action at the 20% AEP Flood Event will ensure that evacuation is unlikely to exceed the capacity of existing evacuation routes for the surrounding area.

*(d) incorporates appropriate measures to manage risk to life in the event of a flood, and*

The flood evacuation is relatively simple as it involves early action at the 20% AEP Flood Event and there is immediately adjacent land above the required flood level. Any permanent accommodation is to be set above the flood planning level.

*(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The proposed development is on relatively flat high modified land and is remote from any riparian areas or waterways.

(3)

*(a) the impact of the development on projected changes to flood behaviour as a result of climate change,*

The applicant was asked to provide a revised assessment to address climate change. As the building is likely to be in existence in 2100 it is appropriate that the predicted 1% AEP flood level in 2100 be applied.

*(b) the intended design and scale of buildings resulting from the development,*

The main buildings are generally open buildings which can be easily flood proofed.

*(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*

The key measures are early action at the 20% AEP Flood Event and the access to the immediately adjacent land to the north above the required flood level.

*(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

The caravan park is an appropriate form of development in the location proposed as the structures can be relocated either in the short term or longer term as required.

### **7.1 Acid sulfate soils**

- (1) *The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*
- (2) *Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.*

<b>Class of land</b>	<b>Works</b>
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

(3) *Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*

(4) *Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*

*(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*

*(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

(5) *Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—*

*(a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,*

*(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),*

*(c) minor work, being work that costs less than \$20,000 (other than drainage work).*

(6) *Despite subclause (2), development consent is not required under this clause to carry out any works if—*

*(a) the works involve the disturbance of less than 1 tonne of soil, and*

*(b) the works are not likely to lower the watertable.*

(7) Despite subclause (2), development consent is not required under this clause for the carrying out of works for the purpose of agriculture if—

- (a) a production area entitlement is in force in respect of the land when the works are carried out, and
- (b) the works are carried out in accordance with a drainage management plan, and
- (c) the works are not carried out in respect of a major drain identified on the Acid Sulfate Soils Map, and
- (d) the works are not carried out on land in Zone C2 Environmental Conservation or on land identified as “coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map, within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2.

(8) In this clause—

*drainage management plan* means an irrigation and drainage management plan that—

- (a) is prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and
- (b) is endorsed by the Sugar Milling Co-operative as being appropriate for the land.

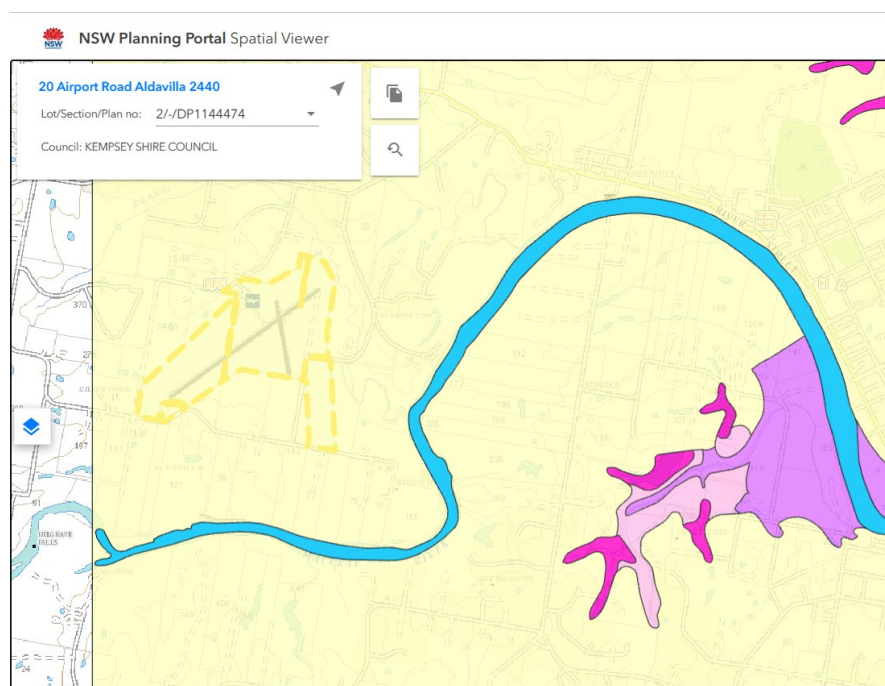
*NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005)* means the guidelines approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources on 25 May 2005.

*production area entitlement* means a contractual arrangement between the Sugar Milling Co-operative and a grower member of that co-operative for the production of sugar cane for milling.

*Sugar Milling Co-operative* means the New South Wales Sugar Milling Co-operative Limited or its successor.

#### Response:

Even though the land is mapped as Class 5 the clause does not apply to the development as development site is not within 500 metres of any other Class of Acid Sulphate Soil and is above 5 metres AHD. The site low point is along the entrance road at 12.4 metres



## **7.2 Earthworks**

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*
- (2) *Development consent is required for earthworks unless—*
  - (a) *the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
  - (b) *the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*
- (3) *Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*
  - (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
  - (b) *the effect of the development on the likely future use or redevelopment of the land,*
  - (c) *the quality of the fill or the soil to be excavated, or both,*
  - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
  - (e) *the source of any fill material and the destination of any excavated material,*
  - (f) *the likelihood of disturbing relics,*
  - (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
  - (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

### **Note—**

*The [National Parks and Wildlife Act 1974](#), particularly section 86, deals with harming Aboriginal objects.*

### **Response:**

The applicant has now provided cut and fill plans. Earthworks are generally limited to those required for the building pad and car park. The maximum excavation is for the swoop pond with cuts at around 1.8 metres. Recommended Condition 25 requires a sediment and erosion control plan be prepared by a qualified practicing Civil Engineer.

Recommended Condition 32 deals with the unexpected disturbing of aboriginal relics.

## **7.4 Koala habitat**

- (1) *The objective of this clause is to effectively manage koala habitat, including—*
  - (a) *minimising the potential for adverse impacts within current and future areas of core koala habitat, and*
  - (b) *ensuring that preferred koala food trees are effectively managed and conserved across all land where possible.*

- (2) *This clause applies to land identified as “Area Subject to Koala Management Plan” on the Koala Management Plan Map.*
- (3) *Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development is in accordance with the Comprehensive Koala Plan of Management for Eastern Portion of Kempsey Shire LGA Volume I—The CKPoM (Working Provisions), published in April 2011.*

Response:

Council's *Comprehensive Koala Plan of Management for Eastern Portion of Kempsey Shire LGA* applies to the site. The land is not mapped Potential Koala Habitat and no trees are to be removed. As such no further assessment under the plan is required.

## 7.7 Airspace operations

- (1) The objectives of this clause are as follows—
  - (a) to provide for the effective and ongoing operation of the Kempsey Airport by ensuring that its operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,
  - (b) to protect the community from undue risk from that operation.
- (2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.
- (3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that—
  - (a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or
  - (b) the development will not penetrate the Limitation or Operations Surface.
- (4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be carried out.
- (5) In this clause—
 

**Limitation or Operations Surface** means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Kempsey Airport.

**relevant Commonwealth body** means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Kempsey Airport.

Response:

The application documentation includes the *Macleay Valley Adventure Recreation Park, Kempsey Aviation Feasibility Report* prepared by aviation consultants Stantec Australia Pty Ltd. Stantec in Section 7 and Appendix A of their report provide evidence that the buildings are below Limitation or Operations Surface. As such in subclause (2) the Planning Panel can be satisfied. Recommended Condition 25 ensures that the final design is approved by CASA.

## 7.9 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

### Response:

Adequate services can be provided to service the development. The applicant was asked to provide further details, and these have been assessed by the consultant civil engineer as adequate. The applicant will be required to pay water and sewer headworks contributions.