

**Review of Part 5 assessment under the Environmental Planning and Assessment Act 1979**  
**Tree Management and Vegetation Works**  
**Terrace Reserve Holiday Park: Southern Precinct June 2018**

1. Taking into consideration clause 65(2)(d) of State Environmental Planning Policy (Infrastructure) 2007 does the approved Plan of Management provide sufficient detail to support a Part 5 application?

Clause 65(2) of *State Environmental Planning Policy (Infrastructure) 2007* provides in part:

*(2) Development for any purpose may be carried out without consent:*

*.....*

*(d) on land that is a Crown reserve—by or on behalf of a reserve trust that is constituted in respect of the reserve, the Minister administering the Crown Lands Act 1989 or the Lands Administration Ministerial Corporation,*

*if the development is for the purposes of implementing a plan of management adopted for the land under the Act referred to above in relation to the land.*

The Plan of Management only needs to have been properly prepared pursuant to the provisions *Crown Lands Act 1989* to permit the development to be carried out without development consent and therefore requiring an assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.

The essential element is that the proposed works must be completely in accordance with the Plan of Management. The advice provided to the proponents from Craig Marler Planning Manager of ADW Johnson Pty Ltd states in part:

*.....Whilst the works result in a layout that is different from that depicted in the POM, we believe that the works and resulting site layout are for the purpose of implementing the POM. The POM envisaged camping for this part of the site and camping is proposed. The POM is clear about the need to manage the existing vegetation on site and refers to a reduction of sites. Approved activities and works in the POM for the southern precinct include all of the works proposed. On this basis and having regard to SEPP Infrastructure the proposed works can and should be assessed under Part 5 of the Act.*

This advice is not correct. If the works are not in accordance with the Plan of Management, the Plan of Management must be modified and subject to the usual professional assessment and public scrutiny. Otherwise development consent is required.

Importantly Clause 65(2)(d) needs to be read in conjunction with Clause 8 of the SEPP. The advice from ADW Johnson Pty Ltd did not consider Clause 8 of the SEPP. Clause 8 provides in part:

- 8 (2) *Except as provided by subclauses (3) and (4), if there is an inconsistency between a provision of this Policy and any of the following provisions of another environmental planning instrument, the provision of the other instrument prevails to the extent of the inconsistency:*
- (a) *clauses 10, 11 and 19 of State Environmental Planning Policy (Coastal Management) 2018,*
  - (b) *all of the provisions of State Environmental Planning Policy (State Significant Precincts) 2005.*

A substantial part of the land along Simpson Creek is mapped as “coastal wetlands” under *State Environmental Planning Policy (Coastal Management) 2018*. It appears that a small area of the proposed works within the camping area are included in the mapped area of “coastal wetlands”. A large area proposed for restoration works are also mapped as such.

In terms of Clause 10 the following provisions apply:

**10 Development on certain land within coastal wetlands and littoral rainforests area**

(1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*

- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) *the carrying out of any of the following:*
  - (i) *earthworks (including the depositing of material on land),*
  - (ii) *constructing a levee,*
  - (iii) *draining the land,*
  - (iv) *environmental protection works,*
- (d) *any other development.*

*Note. Clause 17 provides that, for the avoidance of doubt, nothing in this Part:*

- (a) *permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
  - (b) *permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*
- (2) *Development for which consent is required by subclause (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.*
- (3) *Despite subclause (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map may be carried out by or on behalf of a public authority without development consent if the development is identified in:*
- (a) *the relevant certified coastal management program, or*
  - (b) *a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993, or*
  - (c) *a plan of management approved and in force under Division 6 of Part 5 of the Crown Lands Act 1989.*

Therefore, development consent would be required for works within the mapped area and the development application would be designated development unless the works can be defined as *environmental protection works*. *Environmental protection works* are defined under the Standard Instrument as follows:

***environmental protection works*** means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.

The tree removal and trimming within the camping area is likely to be described as *environmental protection works*. Provided these works are carried out in accordance with the *plan of management* development consent is not required.

The laying of the load cells under the trees could be considered to be *work to protect land from environmental degradation* but really have a purpose of avoiding establishing Tree Protection Zones around the trees and continuation of the camping rather than restoration as such.

In terms of Clause 11 much of the remainder of the Southern Precinct of the Holiday Park is mapped as “proximity area for coastal wetlands”. This clause doesn’t require development consent but sets out matters of consideration that would apply where development consent is still required under the Infrastructure SEPP.

Clause 19 applies to coastal protection works and does not apply in this case. Though it is also necessary to consider Clause 21 of the *State Environmental Planning Policy (Coastal Management) 2018* as follows:

**21 Savings and transitional provisions**

(2) *Clause 10 of this Policy does not apply to the following activities (to the extent that they would otherwise comprise development to which that clause would apply):*

- (a) *the carrying out of an activity for which an approval was granted by a determining authority under Part 5 of the Act before the commencement of this Policy,*
- (b) *the carrying out of an activity after the commencement of this Policy, but only if:*
  - (i) *any approval that is required for carrying out the activity is granted by the determining authority under Part 5 of the Act within 12 months after that commencement, and*
  - (ii) *any environmental impact assessment of that activity under Part 5 of the Act that is required had commenced before the commencement of this Policy.*

*State Environmental Planning Policy (Coastal Management) 2018* commenced on 3 April 2018. The Part 5 was not determined until 30 June 2018 in terms of subclause (a).

In terms of subclause (b) while it appears that the arborist report and vegetation assessment were commenced before 3 April 2018 it appears that the *environmental impact assessment* was not commenced until sometime after 3 April which is evidenced by the approval path advice from ADW Johnson Pty Ltd on 7 June 2018. Therefore, these savings and transitional provisions do not apply.

Though it is noted that the land was also mapped under the previous *State Environmental Planning Policy No 14—Coastal Wetlands*; though the mapped area was different. The planning controls also varied in terms of the approval path for restoration works.

## Planning Resolutions

2. Does the proposed Part 5 application adequately address the requirements of a review of environmental factors, including the requirements listed in clause 228(2) of the Environmental Planning and Assessment Regulation 2000?

The review of environmental factors is inadequate in that it fails to provide sufficient evidence establishing that proposed development indeed doesn't require development consent. There are two significant aspects that are lacking in this regard:

- A. There is not consideration of Clause 8 of *State Environmental Planning Policy (Infrastructure) 2007*. Specifically, there has been no assessment of the provisions of *State Environmental Planning Policy (Coastal Management) 2018*, and
- B. It has not been established that the proposed works are in accordance with the adopted Plan of Management so that it is clear that Clause 65(2)(d) of *State Environmental Planning Policy (Infrastructure) 2007* applies. There should have been;
  - a. A comparison of the plans of the proposed vegetation works with those in the Plan of Management,
  - b. A review of the proposed works in terms of the measures outlined in section 6 (PLAN, OBJECTIVES, STRATEGIES AND ACTIONS) in the Plan of Management, and
  - c. Given the works involved impacts on the vegetation on the site, a review of compliance with each of the relevant points in section 3.4. (Action Plan for vegetation communities in Terrace Reserve) of the appended *Vegetation Management Plan for Terrace Reserve Holiday Park* by Idyll Spaces Environmental Consultants. There are an extensive number of recommended actions yet there is no detail assessment of compliance with these actions.

As a matter of process, it would have been appropriate for the key plans from the ArborSafe Report of May 2018 to be appended to the review of environmental factors to remove any doubt as to the works approved.

3. Has the proponent satisfied all steps of the Part 5 process?

The proponents have failed to fully establish that the proposed works do not require development consent and therefore appropriately assessed under Part 5 of the Act.

4. Are there any other planning instruments or provisions that must be addressed in the proposed Part 5 application, including but not limited to *State Environmental Planning Policy (Coastal Management) 2018*? If so has the proponent adequately addressed such provisions?

I have outlined these matters in answer to question No.2 above.

5. Do you consider the impacts of the proposal on the EEC has been adequately assessed under relevant legislation?

This is outside my area of expertise and defer to the advice from Dr Robert Kooyman regarding the adequacy of the assessment impacts of the proposal on the EEC.