

TOWNSVILLE OCEAN TERMINAL

ENVIRONMENTAL IMPACT STATEMENT SUBMISSION RESPONSE

RESPONSE TO DEPARTMENT OF NATURAL RESOURCES AND WATER

August 2008

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DEPARTMENT OF NATURAL RESOURCES AND WATER

Note: This submission response document has been prepared by means of duplicating the individual submission received and inserting response clauses where relevant.

1.1 (A) ACID SULFATE SOILS

1.1.1 General

Two sections of the Environmental Impact Statement refer to Acid Sulfate Soils (ASS):

- Section 5 Environmental Management Plan, City Pacific and
- Appendix A08 Geotechnical and Acid Sulfate Soils investigation Report, Golder Associates

State Planning Policy 2/02 Planning and Managing Development involving Acid Sulfate Soils (SPP 2/02) applies to all land, soil or sediment at or below 5 metres AHD where the natural ground level is below 20 metres AHD. The SPP applies to development that would result in the excavation of 100m³ or more of soil or sediment or the filling of land involving 500m³ or more of material with an average depth of 0.5 of a metre or greater.

NRW provided comments on the draft Terms of Reference for the proposal in relation to Acid Sulfate and wishes to congratulate the proponent for the Acid Sulfate Soils (ASS) investigations undertaken and report prepared as part of the Environmental Impact Statement (EIS).

The Geotechnical and Acid Sulfate Soils Investigation Report provide details of sampling technique and intensity: a grid of 50 vibrocore holes (to a depth of -3m below sea bed level), 6 over water and 1 on land geotechnical boreholes (to a depth of -7m below sea bed level). Two distinct layers were encountered: 'ooze' consisting of recent marine sediments and 'below the ooze' consisting of older silt to hard clay and sandy clays.

Field pH measurements on all samples were found to be less than 7 and thus are not considered to be Actual ASS (AASS).

Low to moderate levels of Potential ASS (PASS) were found in all samples from both layers, but due to the amount of shell matter (CaCO₃) contained, the PASS is considered to be generally self-neutralizing. Laboratory testing indicated that the soils contain sufficient acid neutralising capacity to produce a calculated net acidity below the Action Criteria. The Golder Associates report notes however that stockpiles of similar quantities of activated soils still have the potential to generate acid.

NRW supports the report's recommendation that management measures be adopted to deal with 'incidental' acid generation where "the ooze materials are excavated, drained or dewatered for periods greater than 24 hours".

The City Pacific "Environmental Management Plan" (EMP) states that the environmental objectives for the Element 9 Acid Sulfate Soils are to prevent acid leachate infiltrating to groundwater resources and to prevent acidification of adjacent surface waters. Specific control measures are proposed to be undertaken by the contractor, including lime treatment during reclamation as required and a controlled method for dewatering the site to prevent acid leachate reporting to waterways. A series of monitoring activities, also to be undertaken by the contractor, includes stormwater runoff and groundwater to be monitored for pH, salinity, suspended solids, turbidity, nutrients and heavy metals. Surface marine waters will also be monitored during construction for pH, suspended solids, turbidity, heavy metals and organo-tins.

Recommended (additional) conditions

- (1) NRW recommends a condition of approval that requires an additional monitoring activity. During construction, regular monitoring (i.e. twice monthly) should be undertaken in standing water within the dewatering zone *and* on-going monitoring undertaken in zone 6 (engineering fill in the parkland area along the northern breakwater for which final elevation is not provided) for any indicators of acidification (such as iron staining, acid water or rust-like flock discharge), particularly pH, iron and aluminium, in addition to more general water quality parameters already proposed by the EMP.
- (2) The preparation of a formal ASS management plan is required as a condition for development on the site. Responsibilities of contractors need to be stipulated and should include training in field recognition of acid generating materials and responses including occupational health and safety measures. These are alluded to in the EIS (as acknowledged above) but need to be formalised in an ASS management plan. The ASS management plan should be supplied to NRW in addition to the assessment manager. Officers of NRW are happy to provide comments on drafts to assist with its development consistent with current technical knowledge and policy.

Reference to and relevance of SPP2/02 to possible future works

- (3) Future Development Area Planning Scheme

It appears that the Future Development Area Planning Scheme refers to Townsville City Council IPA Planning Scheme Works Code for filling & excavation, It is important that SPP 2/02 be referenced and addressed in respect of any works that trigger thresholds for assessment or referral to NRW.

Despite practical measures to contain PASS below the water line and/or capped by non-reactive material sourced offsite, it is conceivable that future excavation and filling could disturb sulfidic material known to be present. It is critical therefore that SPP 2/02 be referenced and used for assessment of relevant development/operational works.

RESPONSE

The Department of Natural Resources & Water (NRW) points in relation to ASS are noted and acknowledged. These specifically include:

- (1) **A monitoring programme relating to standing water as set out in item 1 of the NRW recommendations.**
- (2) **The preparation of a formal ASS management plan as part of the Construction Management Plan (CMP) and supplied to NRW as well as the assessment manager.**
- (3) **The recommendation to reference SP2/02 is acknowledged and will be actioned in the Operational Works Approvals stage. This will have the effect of triggering referral to the NRW.**

1.2 (B) TENURE

- (1) It is noted that the plan on page 3:82 (identified as the revised master plan option 16) and the section on tenure refers to the new western breakwater as parkland, and another plan Appendix A25, Map 5 (public space and access) indicates use only for pedestrians and bike use.

These 2 plans also differ in the area to be made available as public land i.e. the public space and access plan shows lesser areas. These issues need to be clarified.

- (2) Issue of tenure under the *Land Act 1994* is a discretionary power of the Governor in Council or the Minister administering that Act i.e. NRW. Another person cannot fetter a future decision regarding the issue of tenure.

Therefore, the EIS should specifically state that although the EIS identifies the proposed uses of the lands within the development, the tenure arrangements are indicative only, and are subject to the approval of the Governor in Council and/or Minister under the *Land Act 1994*.

Based on the above, and following discussions with the proponent, the indicative land tenure arrangements precinct by precinct, have been agreed "in principle" as follows:

- the car park in Entertainment Centre Precinct is to be held in freehold by the developer;
- the Marina Precinct is to be held in freehold by the developer;
- the Townsville Ocean Terminal Precinct is to be held in freehold by the State at the Practical Completion of the ocean terminal. Subsequently the ocean terminal precinct will be transferred to the Townsville Port Authority, who will amend their Port Land Use Plan to designate the ocean terminal precinct as strategic port land;
- the Public Open Space "park" is to be held in freehold by the Townsville City Council (TCC);
- both the multiple dwelling precinct and the traditional residential precinct will be freehold to City Pacific including the two pile bridges which service the residential fingers;
- the Strand Breakwater (to be constructed) is to be held in freehold by the principle body corporate, who must maintain a sinking fund for maintenance (\$100,000) and hold event insurance. The principle body corporate will grant a public thoroughfare easement over the top of the breakwater structure in favour of TCC; and
- any road required to be accessed by the general public will be a dedicated road e.g. the road through the "park" and first residential finger.

The maintenance obligations for all breakwaters not mentioned above will fall to the adjoining owner and NRW will not issue any leases for the purpose of breakwater maintenance (as depicted on Plate 3.7.1 Proposed Future Tenure Arrangement, hachured and identified as STATE LEASE AREA).

Further, these indicative tenure arrangements are also based on the understanding that all other jetties, pontoons, marina berths etc within the development area (outside of the proposed commercial marina) will be used only for private residential use, including by adjoining residential body corporate.

Subject to the considerations by the Department of Infrastructure and Planning to the above, the EIS is required to reflect these indicative tenure arrangements - the tenure arrangements presently stated in the EIS do not accord with the above.

- (3) NRW's position is that the bridge that connects the MIRVAC peninsula to the new western breakwater is to be the property and responsibility of the Townsville City Council, as the primary purpose of this bridge is to provide access to the public to that breakwater as part of a proposed public thoroughfare easement.
- (4) NRW's position is that all the waterways within the proposed development are required to be canals - see clause 68(4)(e) of the Agreement under the *Breakwater island Casino Agreement Act 1984* (BICA). i.e. the proposed waterways first need to be surrendered to the State as canals to satisfy the provisions of BICA.

It is understood though, to remove doubt, that the Agreement is to be amended to allow for an application to be made for a commercial marina within the canal.

Once BICA is amended accordingly, an application could be made to lease that State land (canal).

In considering an application, the relevant provisions of the Land Act will then apply, particularly the sections of that Act presently deemed to be satisfied in BICA (clause 72) for the lease for the TOT development i.e.

- a. section 15(2) - issues to be considered for issue of a lease below high water mark;
- b. section 16 - an assessment of the most appropriate tenure and use; and
- c. section 121 and 123 - whether the applicant would be issued a lease without competition.

For any application for a commercial marina, NRW would need to consider the views of other State government agencies, the provisions of the State Coastal Management Plan and any local coastal management plan, and consult with any other stakeholders.

Further, a canal is a public waterway. The public will not have similar access rights to an area under a commercial marina lease.

Therefore, NRW would also need to consider the possible affect on any rights of the adjoining owners and lessees including the ability to maintain revetment walls for which the State has granted leases, and the common law right of access of those parties to tidal waters.

It is mentioned however that NRW would generally not give favourable consideration to an application for the issue of a lease for a marina other than from the owner immediately adjoining the tidal area.

Accordingly, NRW has previously raised some concerns with the proposed commercial marina and any affect that the proposal may have on the rights of adjoining lessees, and the common law rights of adjoining owners to tidal waters. It is understood that these issues were highlighted when approval was being sought for the revised concept plan.

In summary, the current provisions of the *Land Act 1994* would not support the commercial marina as proposed.

It is acknowledged that if the EIS is approved with the FDA Scheme following, City Pacific will be the only person who has the lawful right to develop the FDA area under the terms of the BICA legislation, i.e. BICA would have already set up the legislative authority for the proposed commercial marina (subject to an amendment regarding the canals issue) and that the adjoining lessees/owners will have no right to develop within the FDA.

Therefore, the Coordinator General as part of the EIS approval process (and potentially the Treasurer for the FDA Scheme) will need to consider the affect of the proposed marina on any rights of the adjoining lessees/owners and be satisfied that any proposed marina does not affect these rights.

Whilst the decision to issue tenure cannot be fettered, should the EIS be approved giving consideration to the water access rights of adjoining owners, NRW will deem that the priority criteria of the Land Act has been satisfied in relation to an application for a marina lease by the proponent.

- (5) Access to the "open water" from the existing marina must always be maintained during the development of the Future Development Area (FDA)

Tenure under the Land Act may also be required for the proposed temporary bridge over Ross Creek. To date, NRW has had little or no involvement in this proposal.

RESPONSE

Points raised by the Department of Natural Resources & Water (NRW) relation to tenure are noted and acknowledged. The following specific comments are made to the issues raised by NRW.

- (1) The plans will be amended to clarify that the new western breakwater will be available for pedestrian and bicycle use and as such it is not parkland by the strict definition although the area is freely accessible to the public.
- (2) The indicative only nature of the tenure is noted. It is acknowledged that the Minister's powers in granting tenure or not, can not be fettered. This is clearly stated in the Development Agreement and in the Breakwater Island Casino Agreement.

The tenure summary by NRW is noted and is consistent with the Proponent's views of discussions held with NRW.

- (3) Noted.
- (4) Noted.

- (5)(a) Open water access for the current Breakwater Marina will be maintained during construction in a temporary channel location to the west of the new proposed western (or Strand) breakwater. Soundings of this area have been taken and the depths are similar to the existing channel. Refer Flanagan Consulting Report - Appendix A8 in Volume 2.
- (5)(b) The tenure need for the temporary bridge is noted. Further discussions have been held with NRW however detailed actions in this will not begin until a determination as to the method of haulage has been resolved.

As an alternative, a barge option to carry trucks across Ross Creek has been considered by the project Proponent, which would effectively avoid any concerns about the impact of a temporary bridge structure on creek access. It would also simplify tenure requirements.

This alternative to the temporary bridge across Ross Creek involves barging the trucks back and forth across the creek to the site. Discussions with the Port and the Regional Harbour Master have confirmed that this option is possible and two barge landing ramp locations have been identified with them and design work has been undertaken to show that the options are viable. The barging option has an advantage over the bridge in that noise on the Strand and Sir Leslie Thiess Drive is minimised.

1.3 (C) ABORIGINAL CULTURAL HERITAGE

The *Aboriginal Cultural Heritage Act 2003* requires development in Queensland to take all reasonable and practical measures to prevent harm to Aboriginal cultural heritage. As the development requires an Environmental Impact Statement (EIS), a Cultural Heritage Management Plan (CHMP) is necessary under s.87 of the *Aboriginal Cultural Heritage Act 2003*.

The department now has receipt of a registered Cultural Heritage Management Plan for the development. Compliance with this plan will ensure the development and associated works comply with the duty of care.

RESPONSE

Noted.