



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

12th September 2006

DSDS3	SALTWATER CREEK AND LAGOON ESTUARY MANAGEMENT PLAN
	FILE: 385 RFK

SUMMARY:

Reporting that the Final Report - Saltwater Creek and Lagoon (June 2006) Estuary Management Study & Plan has been prepared for Council's endorsement.

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Description

The Final Report – Saltwater Creek and Lagoon Estuary Management Study and Plan has been prepared in accordance with the NSW State Governments Estuary Management Manual (Oct 1992). The aim of the Estuary Management Plan (EMP) is to ensure ecological sustainability of the estuary, whilst balancing the demands on the system by human uses.

The EMP was ratified by the Coast and Estuary Management Committee (June 2006) which recommended that a 'letter of support' for the adoption by Council of the Management Plans from the relevant state agencies be sought and that upon receipt of the state agency replies, that the report be presented to Council for adoption. Letters of support have been received from Martine Authority and the Department of Primary Industries (Fisheries) ([Appendix A](#)). No reply has been received from Department of Natural Resources.

The Saltwater Creek and Lagoon Estuary Management Study and Plan has been developed in close consultation with Councils Coast and Estuary Management Committee, the Saltwater Creek Working Groups, the Department of Natural Resource (formally DIPNR) and other relevant state agencies.

The report follows the development of the Saltwater Creek and Lagoon Estuary Process Study (Nov 2002) and is underpinned by social, environmental and economic considerations.

Funding for the report has been on a dollar for dollar basis between Kempsey Shire Council and Department of Natural Resources.

A summary of the main recommendations is provided [\(Appendix B\)](#) along with a summary of the financial requirements for implementation of the EMP [\(Appendix C\)](#).

Summary of Changes to Exhibited Draft EMP

(a) Environmental Protection Zones

The draft EMP recommended extensive environmental protection zones to be applied. This included existing developed land and existing cleared residential zoned land. Following representations from land owners, the consultant revised the extent of these recommendations to generally land not currently developed or zoned for residential purposes. This was on the basis that the process for determining appropriate zonings is determined by a detailed process that considers a much wider range of considerations as set down under the Environmental Planning and Assessment Act.

(b) Wildlife Corridors

The draft EMP proposed 2 wildlife corridors.

The first was a north south connection across the former oil terminal site and through the Saltwater Developments land. The land is generally cleared. Following representations from land owners and reassessment of the practicality of implementing this corridor and the potential connections across other land, such as the golf course, the consultant removed this recommendation from the final EMP. Again, the need for any wildlife corridors will be dealt with through the rezoning process.

The second corridor recommended in the draft EMP was a north south connection from the Saltwater Lagoon SEPP 14 wetlands area to the wetlands to the south of Arakoon Road, in Hat Head National Park. Following representations from land owners and reassessment of the level of knowledge of the need for this connection, the difficulties in achieving an effective corridor, the opportunities for other locations for a similar connection, the consultant modified this recommendation to an investigation of the opportunities for providing a wildlife corridor between the 2 areas.

(c) Lagoon Buffer

The draft EMP recommended a buffer to the lagoon based on the 3.5mAHD contour, plus a 50m lateral buffer towards higher ground as a means to protect water quality in the lagoon and the fringing ecotone vegetation. This recommendation was referred to the

consultant preparing the LES for Saltwater to provide advice based on the more detailed studies being undertaken for the land. Their advice was that a buffer based on the 3.0m AHD contour plus 50m lateral buffer would be sufficient. However, there may be additional land, based on other factors of habitat or connectivity, which may need to be protected.

Based on the flood study, development is to be setback from the lagoon based on the 3.1m AHD contour, as it represents the 1 in 100yr flood level. In most instances, the 3.0m AHD plus 50m buffer would extend beyond the 3.1m AHD contour.

Again, the EMP is not based on sufficient investigations to be able to set an appropriate buffer. The overriding intention to protect water quality is a matter that is being addressed in the LES for the Saltwater Development.

(d) Berm Management

The draft EMP recommended berm management to be progressively increased in height as a means to move the lagoon to a fully natural system. Following representations from land owners and reassessment of the historical records of water levels in the creek at which natural break-outs occurred, including the impacts of elevated water levels on existing development in the catchment (Trial Bay Holiday Village), the consultant modified the recommendation in the final EMP. The recommendation is to manage the berm at the 2.0m contour between the end of the Easter school holidays to 2 weeks before the September school holidays, with the remainder of the year to allow the entrance to be artificially opened if water levels exceed 1.8m AHD at the entrance. This is predicted to be a rare occasion, and natural breakout is usually in the range of 1.5m to 1.8m AHD in any case. This strategy is expected to have minimal impact on the natural regime of the estuary but recognises the economic interests of the Trial Bay Tourist Park.

(e) Single Planning Control

The draft EMP recommended combining into a single planning tool management measures for protecting native vegetation on urban and rural land, prevention of rezoning unless net positive benefit on water quality, best practice stormwater management for new development, and zoning a buffer area between future development and the wetland and estuarine environments.

The EMP is not considered to be the appropriate tool to implement these recommendations, which need to be implemented in different ways. Vegetation protection on rural land is the responsibility of the DNR and CMA under the Native Vegetation Act. On urban land, Council's TPO is the relevant control. The net positive benefit test

will need to be applied through the LES process and probably implemented through either section 94 plans or planning agreements. Best practice stormwater management is best implemented through a DCP and the zoning buffer will be implemented through the LES and draft LEP process.

(f) Climate Change

The draft EMP included some comments in relation to potential sea level rise and the impacts on the estuary. Following land owner submissions, and after the issue being raised by the Department of Natural Resources, the consultant was requested to more fully document the issue.

A new section (Section 7.10) has been added that provides some recommendations for managing this issue. One recommendation is that the flood planing level for determining floor levels of future residential development be increased by adding a further 300mm to the 500mm freeboard applied to the 1 in 100 year flood level. This will need to be considered in the LES for the rezoning of land, and also by Council in determining what floor level should be applied across the catchment.

Public Consultation

The Saltwater Creek and Lagoon Estuary Management Plan was placed on public exhibition between March 21 and April 28 2006. A public meeting was held at the South West Rocks Surf Club on Thursday April 6 2006. Approximately 30 members of the public attended. A further meeting was conducted with representatives of land developers and tourism interests, DNR and Council Officers on May 12 to further clarify specific concerns raised by attending representatives.

Responses to Public Submissions ([Appendix D, part 1, part 2, part 3, part 4, part 5, part 6, part 7, part 8, part 9, part 10, part 11, part 12, part 13, part 14](#)).

Submitter	Comments	Response
Chrisbeck Pty Ltd (developer)	1. Concerned over proposed rezoning of his land to Environmental Protection	1. WBM reviewed the submission and after further consideration of issues, amended the Final EMP by removing this recommendation. The EMP is not the appropriate means for determining land use zoning which is determined through a planning process, including preparation of

		a detailed Local Environmental Study.
	2. Concerns over implementing a flooding regime based on a lack of empirical scientific information	2. This is the subject of a detailed Flood Study which is reported separately.
	3. Concern over a perceived lack consultation with affected landholders	3. Extensive community consultation was held during the course of preparation and exhibition of EMP, including a public meeting and a meeting with landholders which was attended by the objector.
	4. Considered the document too heavily reliant on academic theory and desk top analysis	4. The adopted methodology follows state government guidelines and the consultant is acknowledged as a leader in the field of ICOLL management
	5. Concerns over comments on contaminated ground water plume	5. The EMP identifies the potential impacts from the plume. The details of the impacts of this plume are documented elsewhere. Investigations indicate that there has been no record of the plume affecting water quality in the creek.
ERM (Consultants – Malbec Properties) (landholder)	6. The EMP has no regard for future expansion of Kempsey's population	6. The EMP is designed to provide environmental information for use in planning design. The EMP will be taken into account, along with other considerations when rezonings to permit residential

		development within the catchment are being considered.
	7. Concerns over perceived lack of communication with major landholders.	7. Extensive community consultation was held during the course of preparation and exhibition of EMP, including a public meeting and a meeting with landholders.
	8. Prepared essentially as a desktop exercise	8. The adopted methodology follows state government guidelines and the consultant is acknowledged as a leader in the field of ICOLL management.
	9. The EMP was developed in isolation from social and economic factors	9. The EMP includes social and economic factors, however, the process does essentially approach estuary management for ecologically outcomes, tempered by social and economic considerations.
	10. Vegetation buffer zone boundaries should be deferred until the detailed LES is completed	10. Recommendations from the EMP will be considered in the preparation of the LES that will determine zone boundaries.
	11. Concerns over proposed wildlife corridors	11. Maps identifying a possible wildlife corridor in the Draft EMP have been removed and replaced with a strategy to investigate opportunities to establish corridors through the LES process.

	12. Concerns over proposed prohibiting of vegetation removal	12. Retention of vegetation is important for protecting water quality and habitat values of the estuary. The EMP is not a statutory document and such prohibitions can only be implemented through the planning process.
	13. Cost estimates of several actions/strategies are questionable.	13. Costs have been included as indicative only
South West Rocks Unit Trust(Landholder)	14. Concerns with comments on ground water contamination from oil terminal sites	14. The EMP identifies the potential impacts from the plume. The details of the impacts of this plume are documented elsewhere. Investigations indicate that there has been no record of the plume affecting water quality in the creek.
	15. Concerns over suggested wildlife corridor adjacent to land parcel DP 445196	15. See Point 11
Planit Consulting (on behalf of landholder)	16. Raised concerns over the lack of availability of the document pre-exhibition phase	16. It was appropriate that the working draft document not be released until after it was endorsed by Council on the recommendation of the Coastal and Estuary Committee for the purposes of public exhibition.
	17. Concerns over proposed wildlife corridors	17. See Point 11
	18. Concerns over	18. See Point 10

	proposed vegetation buffer and prescribed width	
Mr P Osborne (Resident SWR)	19. Suggest that the surrounding heath land should be protected	19. The EMP has recommended Environmental Protection Zoning for fringing heath landscapes and the rehabilitation of disturbed fringing heath landscapes.
	20. Suggests that the creek should not be opened for bad water quality management	20. Public health issues are required to be addressed when considering when to open the entrance
Karen Gribbin (Resident SWR)	21. Suggest that complete remediation of the oil terminal sites to EPA standards are undertaken before rezoning the sites are considered	21. This is a decision to be determined as part of the LES for the oil terminal site.
	22. Suggests there should be prevention or further loss or damage of important habitats around the lagoon and that rehabilitation of existing disturbed important habitats be undertaken	22. The EMP has recommended Environmental Protection Zoning for fringing heath landscapes and the rehabilitation of disturbed fringing heath landscapes. Development proposals within the catchment are likely to provide the opportunity for rehabilitation of important habitats.
	23. Would like to see some strategy described for protecting current and future private assets affected by high water levels that could be	23. A strategy to accommodate future climate change is included in the EMP.

	undertaken in tandem with the EMP.	
Mr M Hinchey (Resident SWR)	24. Supports the recommendations of the EMP	24. Noted
	25. Suggests a new instrument prohibiting native vegetation removal should be implemented immediately	25. Native Vegetation Act protects vegetation on rural land. Draft changes to the TPO have been exhibited to increase protection on urban land.
	26. The LES process should be fully consistent with the findings of the EMP	26. Noted. LES will include more comprehensive research and the EMP will be a prime consideration
	27. Support the recommendation for rezoning of land between creek and Phillip Dr to Environmental Protection	27. See Point 1
	28. Supports the recommendation of the EMP that single new planning control instrument for the catchment be considered	28. This recommendation has been removed from the EMP. See Point 1. Whilst seen as an ideal, the resources required would be considerable and the same outcomes can be achieved in considering proposed developments within the catchment.
Friends of SWR	29. Raised concerns that the EMP will be adopted but not acted upon.	29. Report recommends funding be allocated for priority actions. The principles identified in the EMP will be incorporated in controls on proposed development in the

		catchment under a separate planning process.
	30. Recommends that the EMP be adopted	30. Noted
Ms S Adam	31. Raised concerns over perceived water quality in creek adjacent to SLC.	31. Water quality is a fundamental issue being addressed in the EMP
Ms. P Harrison (Resident SWR)	32. Has issues with proposed rezoning of land where there is currently existing use been addressed?	32. See Point 1
K Hognno (Resident SWR)	33. Supports prohibiting development in flood prone areas	33. Noted
	34. Supports the recommendation of the vegetation buffer zone and wildlife corridors	34. See Point 11
	35. Suggest entrance management to address fish kill events be included in EMP	35. The EMP has identified this issue.
	36. Raised issues in regard to the sewerage treatment plant	36. Assessment of the capacity of the sewer system is a recommendation of the EMP
Malbec Properties	37. EMP has no regard for Kempsey Shire Council's Land Release Strategy (1990)	37. The Strategy identifies land for investigation. The EMP is part of investigation that will contribute to the review of the Strategy currently being undertaken.
	38. EMP has no regards to the rezoning process (June 2002)	38. See Point 1

	39. Suggests that the vegetation buffer zones are unreasonable	39. See Point 10
	40. Concerns over perceived lack of stakeholder communications	40. See Point 7
	41. Suggest that the EMP ignores finding of Flood study	41. EMP incorporated flood study findings.
	42. Indicate that the proposed wildlife corridors are not a suitable economic use of the land	42. See Point 11
	43. Suggests that the current LES should be the sole determining document for rezoning	43. See Point 1
Hadlow Design Services	44. Raised concerns over proposed gradual increase in berm AHD levels	44. This recommendation has been modified to allow for consideration of increasing berm AHD levels based on observations over a suitable period of the EMP
	45. Raised concerns over availability of water quality data held by Council	45. Information is available on request. Beachwatch program information is available on Council website.
	46. Concerns over proposed rezoning of areas to Environmental Protection. Indicating the study should not involve planning matters.	46. See Point 1
	47. Raised concerns over Council	47. Future stormwater management strategy

	maintenance program for CDS units	will include this.
King & Campbell	48. Raised concerns with proposed wildlife corridor between the two SEPP 14 areas	48. See Point 11
Trial Bay Tourist Park	49. Raised concerns over entrance opening and the possible impacts on private assets	49. Berm management recommendations modified after discussion and further investigation.
	50. Raised a concern over proposed rezoning of Tourist Park to Environmental Protection	50. See Pont 1
	51. Raised concerns over the implications of proposed vegetation buffer would have on the Tourist Park	51. See Point 10
Saltwater Development Pty Ltd	52. Raised concerns over perceived lack of stakeholder consultation	52. See Point 7
	53. Raised concerns with proposed wetland buffer recommendations	53. See Point 10
	54. Raised concerns over the comments in EMP in regard to global warming and sea level rise	54. See Point 24
	55. Raised concerns over the perceived lack of on-ground investigations	55. EMP based on processes study, and other studies, which undertook on ground investigations.

Report Implications:

- **Environmental**

The development and adoption of the Management Plan will provide guidance and assist Council in ensuring that the ecological integrity of the coastal aquatic ecosystem is sustainably managed and maintained. The Management Plan makes a series of management recommendations that will need to be considered for funding through Council's annual Management Plan.

- **Social**

The development and adoption of the Estuary Management Plan will provide guidance and assist Council in managing the social requirements of the system.

- **Economic (Financial)**

The development and adoption of the Estuary Management Plan will provide guidance and assist Council in ensuring that the economic benefits derived from the natural resource attraction of the system is sustained.

The EMP recommends priority actions requiring capital costs of \$147,000 and maintenance works of \$12,700 in the first year, and total capital works of about \$1m and total maintenance works of about \$0.2m over five (5) years. The major costs are associated with retrofitting existing stormwater flows into the lagoon. Opportunity exists to fund these works through agreements with proponents for rezoning of land within the catchment.

It is recommended that Council give consideration to allocating funds from its future budget estimates and investigate alternative funding options to implement some of the priority strategies identified within the Estuary Management Plan. In addition, external funding from such programs as the NRCMA Implementation of Estuary Management Plans Program and the NSW State Government Estuary Program can assist Council in implementing strategies described in the EMP.

- **Policy or Statutory**

The Saltwater Creek & Lagoon Estuary Management Plan has been prepared in accordance with the NSW Government's Estuary Management Program.

RECOMMENDATION:

1. That Council adopt the Saltwater Creek and Lagoon Estuary Management Plan.

2. That Council seek grant funding to assist in the implementation of the actions recommended in the Estuary Management Plan.
3. That Council pursue opportunities for private funding of stormwater quality management works in the catchment.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES