

SARA Conditions RAL21-0138 – Applicants Response.

1. **Condition 1** requires the reconfiguring a lot to be undertaken generally in accordance with the Plan, Reference 21153-02, dated August 24, prepared by Urban Planet, Town Planning Consultants, and amended by SARA on 17 October 2024.

I have some difficulties in interpreting some component of the amended plan.

a. Wetland Buffer

AO1.1-(2) of State Code 9 (SC9) calls up a 50m buffer, in an urban area, from a defined wetland.

(Q1) -Are we correct in our interpretation that the blue on that map represents the extent of intrusion of that 50m buffer's impact, into lot 51?

b. Erosion Prone Area- In Red

There is a defined area (shaded red) which represents a portion the *Erosion Prone Area* (EPA) overlay, relevant to lot 51.

PO1 of State Code 8 (SC8) in effect prohibits the proposed development (RAL) in an EPA. This we understand and accept.

However, on 24 June 2024 in response to SARA's *Information Request* of 22 January 2022, advice was provided to SARA from International Coastal Management (ICM) that an infrastructure design (Revetment) could achieve an alternative solution provided for by SC9 - PO1 (3a), to satisfies this purpose of the Code.

(R1) While we are prepared to accept the prohibition for the EPA of Lot 51 as a condition, we also request the condition be in an alternative form.

For Example: -A condition to the effect that:

- A. The defined area shaded red remain a prohibited development area; or
- B. Construction of a revetment, on the northern boundary of lot 51 to:
 - a. the required design standard; and
 - b. in the required location

provided as advised by ICM on the 25 March 2024 - be provided.

c. Erosion Prone Area - Lots 1 and 2

We understand and accept the requirements to fill lot 1 and lot 2 to a level that is 800mm above the Highest Astronomical Tide (as advised by ICM as AHD 2.33), in order, in effect, to remove that portion of lot 51 from the EPA. However-

d. Amendment advice

The 'Amendment advice' on the bottom of Map is confusing.

Amended in red by SARA to maintain development free buffers in the

A *Erosion Prone Area and*

B *Wetland Protection Area and to*

C *ensure proposed Lots 1 and 2 are developed outside the Erosion Prone Area.*

Our interpretation of the legislation is that:

1. The area in *blue represents the area effected by the requirements of SC9; impacting on lot 51; and
2. The area in red represents the area, in lot 51, that currently remain the subject to the requirements of SC8; and
3. Lots 1 & 2 are to be developed in a way that meets the criteria for their removal from the EPA. (By raising the surface level of the land).

* Guidelines published by the *Department of Environment and Science 2022* clearly provide (p10)

“Whilst development is intended to be located outside the buffer, it is possible for low-impact elements of the development proposal to be located within the buffer...”

Further it is standard practice that the assessment manager will attach conditions to any development permit that is issued.

It is reasonable to anticipate some of those conditions will require an application for *Operational Works* (OpW) particularly in relation the filling of lots 1 and 2.

As you would be aware, it is standard practice not to seal the survey plan for an RAL until all conditions are complied with, this would include the delivery of work under an OpW permit.

The statement as drafted would preclude undertaking development works to fill the allotments, because at that stage, the land will still be within the erosion prone area (EPA)

(R2) We request SARA consider rewording the 'Amendment' note to clearly reflect these circumstances.

2. **Condition 2** refers to RAL21-0138 and as such this condition would prohibit any further future development of lot 5, even if that future development could be undertaken to satisfy all requirements currently in place, at that time.

(R3) This is an onerous condition and is considered to be not *reasonable*.

3. **Condition 4, 5 and 8**, I assume, refers to Operational Works to achieve Condition 3. We hold the view that this a DA for a Reconfiguring a Lot (RAL) not a DA for Operational Works (OpW).

(R4) These conditions, we believe, are relevant to a DA for OpW, not this current one.

PLUS, relevant to condition 8, the SWMP provided in the *Information Response* of 24 June 2024 clearly demonstrates that the topography of the regional area is such that it precludes any possibility of inundation of the Wetland by any water emanating from the 'fill areas' called up by Condition 3.

In fact, the SWMP demonstrates - from any part of lot 51.

4. **Condition 6** appears to be a copy and paste of condition 1.

While we understand that the agency is assessing the development under two separate pieces of legislation, the conditions that are attached to the development approval are for the one development application.

Further the content of the various pieces of legislation, where applied to arrive at the amendments assigned to Plan 21153-02 for RAL21-0138 and addressed in Condition 1.

(R5) We request Condition 6 be removed.

5. **Condition 7** – See No 4 Above

(R6) We request Condition 7 be removed.

6. There are many problems with Condition 9

Firstly, 9(a) is a statutory requirement under SC9. (Maintained and protecting the wetland environmental values within a buffer).

It is a long-established principle in the Planning and Environment Court that a condition, requiring a person to comply with an **existing law**, is neither *relevant* nor *reasonable*, as the condition already exists within the framework of the legal system of the State.

PLUS, the condition sets the circumstances, where an offender faces two breaches for the one circumstance. Breach of the specific law and breach of a development condition.

Next, AO1.1 of SC9 provides that a 'buffer surrounds the declared wetland'.

Some of the required 50m distance from the 'declared wetland', falls outside of lot 51.

Extrapolation, using mapping systems, indicate, the distances of the incursion of the buffer, into lot 51, is somewhere in the vicinity of 37m.

Responsibilities for complying with the provision of SC9, relevant to the 50m buffer, outside of lot 51, rests with another party and not my client.

Next, the “*Condition Timing*” for this condition is “*Prior to survey plan endorsement*”.

With the greatest of respect, the object of SC9 poses an ‘ongoing obligation’. The requirement to demonstrate compliance with this prior to the survey plan endorsement seems to serve no purpose.

Then, 9(b) cites the term “buffer elements”.

There is no definition as to what constitutes a *buffer element* thereby the applicant has no clear knowledge of what is required.

Next, the condition advises that the required *buffer elements* need to be ‘provided in locations, shown on the amended plan’.- The amended plan is vague as to the required locations.

As discussed above the notation at the bottom of the plan is confusing.

Amendment in red by SARA to maintain development free buffers

A in the erosion prone area and

B wetland protected area and ...

Only SC9 (Wetland) provides for the maintenance of “buffers. SC8 (EPA) provides, amongst other things, for the “*prohibition*” of certain developments under certain conditions.

Next, the conditions seem to infer that the **buffer elements** are required to be provided in the locations identified on the amended plan and this condition must be given effect prior to the survey plan endorsement.

The condition does not clarify whether the *buffer elements*:

- A. need to be installed on the **land**; or
- B. need to be **noted** on the survey plan itself

prior to the endorsement of the survey plan?

(R7) This needs clarification - if this condition remains

Finally, 9(c). This condition calls for written confirmation from an appropriately qualified person that these conditions have been complied with before the survey plan can be endorsed.

It must be questioned how any qualified person could provide evidence that an ‘ongoing maintenance and protection’ condition or contravention of statutory obligation, has been complied with, without including time limitation on the advice.

Given this circumstance, it would be reasonable to question the usefulness of such evidence, given that the lawful requirement under SC8 and SC9 are ongoing.

(R8) This needs clarification - if this condition remains.

I would welcome further consideration by SARA in regards to the matters raised above

Warren Bolton

Tuesday, 22 October 2024