



SUBMISSION: DEVELOPMENT  
APPLICATION AND STATEMENT OF  
ENVIRONMENTAL EFFECTS

Proposed Alterations and Additions to  
Birubi Point Surf Club

1 B Lot DP 753204 974/209 Pacific Avenue Anna Bay  
(address also referred to in the SEE as James Paterson Street)

**11 March 2010**

**A submission of ten (10) pages follows**

.....

**Robert Young**  
**Chairman**  
**Tomaree Ratepayers and Residents Association**  
[chairman@trra.com.au](mailto:chairman@trra.com.au)

# Proposed Alterations and Additions to Birubi Point Surf Club

1 B Lot DP 753204 974/209 Pacific Avenue Anna Bay  
(address also referred to in the SEE as James Paterson Street)

## Summary and Recommendations

Tomaree Ratepayers and Residents Association (TRRA) acknowledges that there is a need to up-grade the Birubi Point Surf Club and that there is potential to introduce additional associated facilities at or near this location which would enhance the location as a prime tourist attraction. We do **not** however support the current proposal as set out in the Development Application number 974/2009. Our support for an alternative redevelopment of the site is conditional upon there being a masterplan adopted by all responsible agencies and that the proposals are also supported by the Aboriginal community.

In its submission on the Tourism Strategy TRRA offered the following recommendation:

“TRRA considers that this Birubi Point and the Stockton Beach/dune area constitute a very significant attraction which requires an integrated plan of management which covers all the activities and involves all of the landholders and stakeholders. It has been suggested that the entry via James Patterson Drive could be closed and that all traffic be brought in via the current four-wheel drive entry road. The precinct’s potential seems to be much greater than current facilities and access ways permit”.

TRRA makes the following comments on the DA and SEE because it is concerned to ensure that any proposed development is in keeping with the iconic status of Birubi Point and the surrounding lands. We contend that the documentation on exhibition fails to acknowledge, or properly address, the potential impacts on this location which is in the middle of an “Aboriginal Place”, has important environmental significance and which is a vital resource for tourism and recreation on the Tomaree Peninsula.

The status and context of the site and its surroundings is described in the recently released **Port Stephens Tourism Plan 2010** - Birubi Beach - Stockton Sand Dunes (page 133):

***“the Stockton sand dunes are one of the main attractions of Port Stephens and are the most significant point of difference between Port Stephens and other NSW coastal destinations”***

and on page 59:

***“The Birubi Beach car park is often the first introduction to Port Stephens for international visitors.”***

The Tourism Plan (page 133) concludes that:

***“the area presents very poorly, suffering from land degradation, graffiti, and vandalism, with the facilities and infrastructure being well past their use-by date. The area also suffers from significant access and parking problems”.***

Most significantly it recommends:

***“A joint interagency-Council approach to the resolution of issues....”***

Documentation supporting the declaration of an area of land surrounding the Surf Club as an “Aboriginal Place” states:

***“The significance of Birubi Point to Aboriginal people requires special recognition. The Birubi Point archaeological site is of special significance to the Aboriginal community because of the extensive nature of the archaeological material and its importance in teaching future generations about Aboriginal culture”.***

**TRRA contends that the proposed addition of a second storey to the existing Surf Club will dramatically reduce the current high impact view across the dunes and over Stockton Bight which now greets all visitors on arrival at the site.**

**We also seriously question claims in the SEE that current access and parking provisions are currently adequate, or able to meet the additional traffic which will be generated by the extensions and new business activities.**

**The impact of the development on Aboriginal heritage and consultation with the Worimi in relation to their cultural interests, have not been properly addressed.**

## Recommendations to Council

### TRRA's recommendations to Council are:

#### 1. To reject the Development Application on the grounds that it:

- fails to address and assess the broader impacts on this iconic location and the surrounding lands, especially in relation to parking, traffic management, archeology, cultural heritage, coastal erosion and sand movement, and flora and fauna.
- that it has not complied with obligations arising from the presence of the surrounding designated Aboriginal Place, nor adequately investigated or addressed the status or impacts on archeology and cultural heritage on and surrounding the site.
- the costings for the development are incomplete and should include the full fit-out of the building, new parking and traffic management and ongoing security and site maintenance.
- that the proposed development is inconsistent with many of the coastal design guidelines for NSW.
- The SEE has many serious omissions, and makes questionable assertions which are not supported by facts and is therefore inadequate.

#### 2. Council is further urged to initiate the preparation of a joint interagency plan for an integrated redevelopment and management scheme for the all of Birubi Point and the northern end of Stockton Beach and sand dunes. Once this is complete a funding proposal should be presented to both the State and Federal governments to implement the new development plan.

## DETAILED COMMENTS

### Process

1. The development application was notified in the Examiner on 21 January with a closing date of 3 February, a time of year which is still part of the holiday season. The notification was for a development at 1B Pacific Avenue, Anna Bay which is not the location of the Birubi Surf Club. There was no indication that the DA referred to one of the most important public sites in the LGA.
2. Having regard to the range of stakeholders likely to be seriously impacted by this proposal, the extent of consultation and investigation seems to be very limited in scope. Section 4.1.2 , page 15 of the SEE mentions "various consultations and meetings between representatives of Port Stephens Council, NSW National Parks and Wildlife Service and the Worimi Aboriginal

Land Council. No information is provided on the issues or concerns raised in these consultations.

3. It is understood that the Worimi do not accept that correct processes for consultation in respect of Aboriginal heritage and interests have been undertaken and that their serious objections to aspects of the proposal have not been cited or taken into account.
4. As the proposed development is to take place in the centre of a number of recreational business operations and is a focal point for international and domestic tourist operations TRRA would have expected that consultations would have included these operators and Port Stephens Tourism Limited. No mention is made of any such consultations or of the views of these stakeholders.
5. There is no report on the attitude of the Community of Anna Bay.

### Aboriginal Cultural Heritage

Most importantly, the SEE makes no reference to the site of the Surf Club and its associated road access and parking being surrounded by an “Aboriginal Place” Gazetted under Section 84 of the NSW National Parks and Wildlife Act 1974.

The area has well known and well documented Aboriginal cultural heritage and is extremely likely to contain archaeological artifacts. Despite a requirement that DECC be consulted about development within a 4Km buffer of the Aboriginal Place, a simple search of the AIMS database held by DECC, was not undertaken, nor was any expert on cultural heritage or archaeologist consulted about the potential significance of the site or potential artifacts on site. The consultants preparing the SEE have no demonstrated expertise to justify their statements (or lack thereof) about the heritage status of the site specifically or the surrounding area.

### Site constraints

1. The SEE fails to mention the highly dynamic geomorphology of the location or to discuss coastal erosion or sand movements at all. The SEE should contain information on the geomorphology of the area and information on how much sand and dune movement is likely to occur over the life of the building and its potential impact on the site. (also see points re erosion caused by sea level rise later in the document).

2. No assessment of the flora and fauna of the site has been undertaken by anyone with expertise in this field so the statements in the SEE have no validity. This is extremely concerning considering the zoning of the site as Environmental Protection. A search of the NSW Wildlife Atlas does not appear to have been undertaken. Although it is possible that the current site has little significant flora and fauna the immediate surrounds of the building (within metres) is likely to have significant flora and fauna, which needs to be protected.
3. Newcastle Bight Coastal Area (including Birubi Point) is also listed on the National Estate register which may require an additional level of assessment under the Commonwealth EPBC Act. No reference is made in the SEE to the Commonwealth legislation or national significance of the site.
4. Birubi Point falls within the area covered by the NSW Coastal Policy and the associated Coastal Design Guidelines for NSW. Aspects of the proposal including the expansion of the building footprint and increase of height are in contravention of these guidelines but are not discussed in the SEE.

#### Future use of the Surf Club

**The intended use of the extensions is stated in Section 1.1 of the SEE as**

***“erection of a second storey .... to be utilized as a function centre, caretakers residence and patrol tower”***

and ***“upgrading the interior to the existing ground floor including minor extensions to provide new amenities”***.

**On page 16 it is stated that *“the function centre will be utilised by surf club staff for their functions, with some additional functions to external persons. It is likely that the majority of functions will occur at night and as such there is minimal potential for conflict with users of the beach during the day”*.**

The plans show a significant area on the upper floor as “restaurant” in addition to the function room.

The proposed uses and the time of the usage are highly significant in assessing the impacts on parking and access. TRRA questions the claim that the function room will be used mainly at night when its major appeal is the view. There would seem to be a strong possibility of functions or restaurant business at lunch time or during the afternoon (especially at weekends) when the fundamental attraction of the view down the beach is available. This would refute the suggestion that there is unlikely to any significant impact on parking or access requirements.

- The SEE does not adequately describe the current visitation numbers, purpose or experience. Nor is there any projection of the additional visitation to the site following the development.
- Page 11 of the SEE also mentions a restaurant. The operation of the restaurant is not adequately described in the document nor is the legality of such a facility addressed. The hours of operation are not listed in the document nor is there any description of how many people the restaurant will cater for. It is ridiculous to propose having a restaurant in the building which could not operate during the day, as its primary draw-card would be the view, which could not be seen at night.
- In section 4.4 of the SEE there is also no mention of the staffing requirements for either the restaurant or the function centre, or the provision of any staff parking for these ‘businesses’.
- The SEE also fails to acknowledge the tourism benefits of an improved visitor facility and should acknowledge that tourists and tourism businesses are likely to want to use the facility and the restaurant in it.
- The lease or licence requirements for the use of the building for private businesses should also be addressed in the SEE, at least to enable assessment of the economic impacts of the proposal.
- The SEE fails to adequately address potential sea level rise and the impacts that this will have on the site and the surrounding area, especially in relation increases in beach erosion and sand dune movement.

### Footprint/ Floorspace Anomaly

In section 2.5 on page 5 of the SEE it is stated that the Gross Floor Area of the existing building is around 344 square metres. This compares an area for the proposed building of around 1407 square metres.

In Section 4.12 “Aboriginal Heritage” it is stated that “the proposal has been designed to ensure minimal disturbance beyond the footprint of the existing building”. Even with much of the additional floorspace being on the second level there is still a significant extension beyond the present footprint.

The NSW Design Principles for Coastal Settlements on page 74 prescribes guidelines for the “key site” – “on dunes and foreshore reserves”

The guideline states:

***“where redevelopment occurs the footprint of the new building is the same as the existing building” and “minimize building footprints and building heights”.***

It is TRRA's contention that the impact of visitation to the club and its significantly expanded operations will spill over into the surrounding natural areas adjoining the site. No mention is made of measures necessary to manage this impact (signage, additional pathways, fencing of sensitive sites, etc).

### Construction Impact

The construction and likely ongoing operational impacts on the known Aboriginal heritage are not adequately addressed. Section 4.12 acknowledges that there are important sites (eg a midden) in direct proximity to the building yet there is no information provided as to how these will be protected from the ongoing use and visitation to the new building.

### Traffic, Access, Parking and Public Transport

In section 14.5 of the SEE it is claimed that the additional development will not add significantly to access and parking requirements.

TRRA based on observations of its members and the assessment of the Tourism Plan (Pages 59 and 133) refutes this claim. Even without any extensions, the road access via James Paterson Street is very inadequate involving multiple humps which are very difficult for tourist coaches to negotiate. Parking during the peak holiday periods and many weekends is marked by serious overflow. It is not unusual for cars and buses to be forced to park on the sides of the entry road with consequent damage to the flora and intruding into the "Aboriginal Place". This is occurring despite the fact that there is no directional road sign to Birubi Point at the turn in from Gan Gan Road.

By adding significant capacity at the surf club and potentially additional business activity (functions such as weddings) attended by 50-60 cars it is inevitable that the existing access and parking will need to be upgraded and extended. An alternative access from the south-west linking to the 4 wheel drive entry to Stockton Beach has been mooted and should be evaluated in an integrated planning initiative for the whole area.

The suggestion in the SEE that the function centre/restaurant would mainly be used at night has been questioned above and should not be relied on to justify the claim that the development will not have any requirement for additional parking or improved access.

The proposal should include an upgrade and expansion of the existing car park and improvements to the road network servicing the site.



## Visual Impact

In section 4.17 on page 18 of the SEE it is stated:

*“the visual impact of the proposed development and prominence of the site has been considered throughout the design of the building.....the building will have a single storey scale to the car park frontage which will continue to allow for predominantly undisturbed views to the surrounding coastline and beaches”.*

TRRA rejects this claim. The existing building is below the level of the car park and the view is virtually uninterrupted. The proposed second storey on top of the existing building together with extensions to the east and west of the existing clubhouse will create a total obstruction of the view from the approach road and carpark. The SEE Appendix provides a mock up of the building when looking north toward the building but avoids a similar illustration of the view from the car park. The illustration of the Function Centre entry provides a guide to the impact of the building when viewed from the car-park and it is relatively high despite being described as one storey. In addition this façade has no windows to break its mass.

There is no provision for a public viewing platform at this second storey level.

- **The “sense of arrival” and spectacular view to the dunes and the beach will be denied.**
- **Of equal concern is the increased prominence and intrusion of the building when viewed from the beach and dunes.**

Failure to Adequately Assess the Impact of the Activity both during Construction and ongoing Operations and failure to comply with the SEPP 71, LEP 2000, and the Port Stephens DCP

- See comments above re parking and visitation

- The impacts of the building on the visual amenity of the site will be considerable. Although the new building is likely to be more attractive than the current building, it will impact significantly and reduce the view from the headland southwards down the beach. This view is a major tourism draw card and of enormous cultural significance and should be protected not blocked.
- The proposal is not in compliance with SEPP 71, as it **does not** meet criteria 8(l) “protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals”, or protect the “scenic qualities of the New South Wales coast” (8f). We also believe that it is not a suitable design for the location and therefore fails to meet criteria 8 (d) as well.
- The SEE has failed to assess the impacts of the facility beyond the immediate footprint of the building, especially in relation to flora, fauna, geomorphology, and Aboriginal Heritage. There will be flow on impacts from use around the building and between the building, beach, dunes and surrounding suburb. Therefore it cannot be said that the development complies with clause 35(1) of the LEP.
- Clause 44 of the LEP is also not complied with as the proposal will detract substantially from the visual impact and aesthetic quality of the view from the road and car park, as the height of the building will mean that the view down the beach will not be seen from the road.
- The SEE has also failed to demonstrate that the Heritage provisions in the LEP have been complied with as they have not undertaken any professional cultural heritage or archeologically assessment. They haven't even done the most basic database searches. The document does not acknowledge the Aboriginal Place surrounding the site or its cultural significance.
- The DCP (B3) is not complied with because the assessment of parking and traffic movements is inaccurate. Additional parking **will be required** for the function centre and restaurant, and increased tourist visitation by coaches, buses and private vehicles.

For the reasons outlined above the assessment of environmental impacts of this proposal is considered inaccurate and deficient in many regards.

State Environmental Planning Policy (Major Development) 2005

Section 5.4 of the SEE sets out the circumstances where a proposed development is to be determined by a Joint Regional Planning Panel rather than the Council.

The SEE states that, as the capital investment value of the proposed development is \$2.4 million (less than the \$5 million threshold) and the height of the building is 10.2 metres (less than the 13 metres threshold), the JRPP requirement does not apply.

TRRA queries the estimation of the capital value of the development being \$2.4 million having regard to the intended use as a restaurant and function centre where fit-out and equipment for such activities is costly. In addition, TRRA has queried the claim that no additional provision is necessary to cope with increased traffic and parking. There is also a need for increased lighting, waste disposal facilities, drainage and walkways. If these costs are fully assessed it may well yield a capital cost above the threshold of \$5 million.