



16 May 2013

Joint Regional Planning Panel
Hunter and Central Coast Region

Submission to JRPP meeting, 16 May, 2013 re matter 2013HCC003 - DA 349/2012: BigW at 155 Salamander Way, Salamander Bay

TRRA made a submission when this DA was advertised in June-July 2012, objecting on various grounds.

We maintain our objection and call on the Panel to refuse the application both on its own merits, and having regard (under the public interest and other criteria in s.79C(1) of the EPA Act 1979) to the important context of the recently approved subdivision DA for the Council owned land of which this lot forms a part (the Assessment Report (p.2) recognises the relationship with DA 720/2012 as a Key Issue). We discuss these in turn below.

We emphasise that we are not opposed to the provision of new retail outlets, including a BigW, at the Salamander Centre. Had Port Stephens Council adopted a better approach to the planning of the Centre at any time over the last decade, the community could by now be enjoying additional facilities. But this is the wrong site for a standard BigW store, and approval would lock in poor planning outcomes for the foreseeable future.

Merits of the Application

We do not believe our objections have been adequately addressed in the Assessment Report, and we urge the Panel to reject the application on multiple grounds, including:

- No guarantee of adequate drainage*
- Inadequate parking*
- Poor traffic/parking integration with the existing shopping centre*
- Poor provision for public transport, pedestrian and cycle traffic*
- Unsatisfactory response to concerns about habitat of koalas and other threatened species*
- Failure to adequately address concerns about noise, lighting and signage*
- Generally poor urban design (no less than 7 of 28 DCP requirements for Commercial and Mixed Use Developments are not met)*
- Pre-emption of more sustainable and environmentally sensitive future developments on adjoining sites
- Questionable legality of proposed temporary storage of sand to be excavated from the site

*more detail below, after section on context



It is clear from the Assessment Report that Council's professional officers had significant concerns about the application – it is 'non-conforming' in some major respects and the recommendation for approval is based on a combination of 'waivers' (e.g. from DCP requirements) and 'faith' that some major issues (e.g. drainage) can and will be addressed before any construction certificate is issued. The Assessment Report admits in various places that full compliance with recommended standards is not possible because of the 3 lot subdivision layout recently approved. We would characterise the combined effect of the two DAs as squeezing a 'standard' BigW design into an unsuitable site.

Given Council's clear conflict of interest, it is unrealistic to expect Council staff to recommend rejection, despite their obvious reservations. The Panel (from which we assume the Port Stephens Council members will have stood down) need have no such constraint and we call on the Panel to carefully review the way in which major concerns have been addressed – not satisfactorily in our view.

Approval of this DA will, we submit, lock in planning failure, and condemn the Tomaree community (20,000 residents + large visitor numbers) to a third rate, big box, car dependent, 1970s suburban mall style centre for the next 30-50 years. We submit that the Panel has a responsibility to ensure that development of this critical site within the peninsula's major shopping centre does not ruin the chances of an attractive, sustainable and vibrant centre in the medium to long term.

Context – relationship to planning for the wider parcel of Council owned land and recent subdivision DA approved by Council

This DA is contingent and dependent on the 3 lot subdivision of Council owned land, approved by Pt Stephens Council on 23 April (DA 720/2012) – despite 40 objections (public access was refused to two objectors). The BigW application SoEE and the Assessment Report make frequent references to the subdivision DA, with constant assertions that that DA has dealt with many of the issues in preparation for the BigW development.

We submit that the subdivision DA process, and approval, was so flawed as to render it an unsound basis for the assertions made in the Report for the BigW DA.

Council has repeatedly abused the planning process in relation to this land, not least by improperly keeping the subdivision DA from being considered, as it should have been, by this Panel.

The Panel should be aware of Council's 2009 8-lot subdivision DA for the same land, which was before the Panel on 16 February 2011, but was withdrawn on procedural grounds, but not before the Panel Chair had criticised it for the lack of a masterplan, and concerns about threatened species were also noted.

The Panel may not be aware that the recently approved 3 lot subdivision plan is to all intents and purposes just the first stage of the 2009 plan, with the long term infrastructure largely unchanged. Council has simply arbitrarily identified part of the infrastructure works sufficient to service two of the three lots but keeping the cost just under the \$5million threshold which would have led to it being decided by this Panel (we question whether the costing is credible, especially given the additional drainage works required by conditions which were entirely predictable).

By cynically manipulating a staged approach, Council has therefore been able to act as judge and jury in its own interests in approving the 3 lot subdivision and works.

Council has conducted, in 2012, a community consultation to develop Planning Principles for the site, which were adopted last year, but which Council has confirmed have no binding effect or real weight, until and unless they are implemented in a DCP, with no timetable for this to occur. Even if the Principles are incorporated in a DCP, they can be ignored – the Assessment Report for this DA expressly accepts significant non-compliance with the existing DCP on the basis that ‘DCPs are able to be varied on merit and subject to appropriate justification as they are “official guidelines” only.’ (page 16)

Despite attempts by Council staff to withhold important information about the status of the BigW proposal, and then presenting it as a ‘given’ constraint on layout options, the Planning Principles clearly reflect the community’s desire for a more integrated and environmentally sustainable future development of the Salamander Centre. However the Principles are expressed in such general terms that Council in its Assessment Reports for both DAs has been able to claim consistency when we contend that the subdivision plan, and BigW development are both incompatible with a more outcome oriented interpretation of the Principles.

It is clear that Council has single-mindedly pursued its original 2009-11 plan for disposal of its land at 155 Salamander Way to achieve a short term cash benefit at the expense of good planning, and potentially at the expense of a greater financial return from a well planned integrated development. Council has not varied its plans in any significant way despite widespread criticism, including from this Panel in 2011, and 40 objections to the 3 lot subdivision DA.

We urge the Panel to reject this DA on the numerous grounds we have identified, and on the basis that Council has abused the planning process to accommodate sale of its own land for a BigW on a site which is clearly unsuitable.

Detailed objections

No guarantee of adequate drainage

The Assessment Report relies on the drainage conditions in approved DA 720/2012 to assert that there is ‘unlikely’ to be any significant impact on the SEPP14 (Mambo) wetlands only 100 metres from the proposed BigW car park. Apart from obvious fears about the use of ‘unlikely’, we submit that it is far from certain that the drainage works proposed as part of the approved 3 lot subdivision will in fact ensure no adverse impact on the wetlands. The conditions require significant stormwater drainage infrastructure over and above that proposed by the applicant, and we are far from confident that these conditions will not be waived once the expense is revealed. The Panel should also take account of the road layout inexorably pointing to a later extension of the perimeter road along the boundary between the overall site and the wetland, with unknown but potentially serious impact on the wetlands (The prospect of this extension is acknowledged in Condition 36).

It is not clear from the Assessment Report whether compliance with stormwater drainage requirements has to be entirely by the applicant on the BigW site (and in perpetuity – Condition 12) (as suggested on p.21 and in Conditions 26-32) or can to some extent rely on infrastructure works to be provided by Council pursuant to the approved 3 lot subdivision DA. We submit that the Panel needs to clarify this matter.

It is unacceptable to approve the DA with such extensive drainage conditions without any certainty as to whether it will actually be possible to meet them.

Inadequate parking

The Assessment Report (p.12) notes that the applicant has proposed 15 less parking spaces than are recommended by the PS DCP 2007 Section B3, and considers this reasonable given the 'general availability of parking around the existing centre'. No reference is made to the later acknowledgement (p21) that Conditions 23 and 36 re access will lead to the loss of a further 4 spaces, nor to the relevant fact that there has been a significant reduction in overall centre parking as a result of the Council approved and recently completed Coles supermarket extension at the other end of the mall. It is widely recognised that there is already a shortage of parking at the Salamander Centre in peak periods, and we submit that this development should not be allowed to provide less than the DCP 'standard'.

Poor traffic/parking integration with the existing shopping centre

The design shows only one connection for vehicular traffic between the new BigW car park and the existing Salamander Centre car parks to the south. It would seem that it is expected that most traffic for the BigW will enter and exit by means of the perimeter road to the north of the new building – through a narrow 'canyon' between the blank wall of the BigW store and a high retaining wall. This will not only be an ugly approach but also a much longer route than if more connections with the existing car park east of the Centre had been negotiated. Council both as landowner and planning authority should have been more active in pursuing this objective, which is clearly supported by the 2012 Planning Principles for the overall site.

Poor provision for public transport, pedestrian and cycle traffic

Council's 3 lot subdivision, now approved, provides for a bus stop on Town Centre circuit a long way from any of the entrances to the shopping centre, with passengers having to cross busy car parks. This DA makes in effect no provision for either public transport or improved pedestrian flow around the wider shopping centre, other than the internal link which has presumably been negotiated with the owners of the existing centre. We submit that a condition of DA approval for a BigW, which will attract many more shoppers, should be a proactive contribution making the Salamander 'friendlier' for public transport use and for pedestrian, cyclists and users of prams and strollers and mobility scooters. A better design more consistent with the 2012 Planning Principles would have provided a bus stop immediately adjacent to one of the entrances to the mall.

Unsatisfactory response to concerns about habitat of koalas and other threatened species

The Assessment Report relies on the assurances given in relation to the 3 lot subdivision DA. We submit that it is far from clear that the BigW car park will not impact on habitat in the north west corner of the site – indeed it is expressly acknowledged in the subdivision DA SoEE that four koala feed trees on the BigW boundary will be removed, and five further trees are directly in a narrow reserve obviously intended (and the only route) for a future perimeter road extension.

Failure to adequately address concerns about noise, lighting and signage

The Assessment Report notes that the cumulative impact from noise sources exceed guidelines for 5 residences (p.18), and that proposed signage exceeds DCP controls (p.17). We also note that Condition 6 allows illuminated signs between 8am and midnight. If the BigW sign at the NW corner of the building is illuminated we submit that an earlier evening switch-off would be appropriate given the proximity to residences (less than 50 metres). The Report suggests a variety of measures to ameliorate noise impact (p.19) but none of these appear to guarantee compliance with guidelines.

Generally poor urban design

The table on pages 13-16 of the Assessment Report shows that no less than a quarter (7 of 28) of the requirements in the Section B4 of the PS DCP 2007 (for Commercial and Mixed Use Developments) are not met. Other design features such as the blank walls, lack of active street frontage, lack of landscaping and 'voids' between the Big W and the existing centre are also described as 'not ideal' but have been accepted as an unavoidable consequence of site constraints. The discussion on pages 16, 20 and elsewhere admits that this non-compliance is a result of the lot layout and location of the perimeter road, recently approved by Council.

We submit that Council has neglected its responsibility to ensure better design and planning standards, as a direct result of its commercial interests in sale of the land, including a longstanding commitment to provide this particular site for a BigW.

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