



17 February 2014

The General Manager  
Port Stephens Council

## **Submission: DA 790/2013 Caravan Park, 4011 Nelson Bay Rd, Bobs Farm**

### ***Introduction and summary***

TRRA Inc is making this submission because this proposed development raises not only some significant site specific and local issues, but also important general issues about how applications for development on land zoned 'Rural' are assessed.

We acknowledge at the outset that residential parks with manufactured homes and/or permanent occupation caravans play an important role in meeting demand for affordable housing – particularly in areas like the Tomaree Peninsula where house prices are relatively high, putting most housing stock out of the reach of those on lower incomes, including many retirees.

However, this does not mean that all proposals for residential parks need to be approved – not only should the overall supply and demand in the area be considered, but also such developments, if justified, should only be approved on appropriate sites and locations.

This development is acknowledged by the applicant to be inconsistent with the zoning of the site, but seeks approval nonetheless based primarily on the public interest in additional residential park sites. TRRA Inc. questions whether this development is justified, in terms of overall supply and demand, and also submits that this is an inappropriate site. TRRA Inc. submits that the DA should be refused.

### ***Public consultation issues***

We have viewed the Statement of Environmental Effects (SEE) prepared by Environmental Property Services which was provided on disk at Tomaree Library but only some days after the start of the advertised exhibition period (16-29 January). Exhibited material otherwise consisted of 3 pages of plans (multiple copies stamped 'advertising copy' and clearly intended for public release, but contradicted by usual statement on folder 'Please do not copy or take away'). No written description or explanation of the DA was provided, other than what was belatedly made available on disk.

Following our inquiries, planning staff confirmed that they would accept submissions after the 29 January deadline (30 January in DA Tracker system) but would not formally extend or re-



**A:** Po Box 290, Nelson Bay 2315 **T:** 4981 0828 **E:** [planning@trra.com.au](mailto:planning@trra.com.au)

advertise the period. While this helps us, and others who might inquire, it does nothing to assist interested members of the public who can only have seen the published notice and may have been deterred from making a submission by the imminent deadline. We have made this point before – it takes time for word of even major DAs to spread around the community, and the statutory minimum for most DAs is clearly inadequate. We submit that Council should always use its discretion to advertise significant DAs for longer than the minimum.

We understand that the DA falls into the category of 'integrated development' because of the relevance of the Rural Fires Act (SEE page 32). We understood that 'integrated development DAs would normally be required to be on exhibition for a minimum of 30 days. We are advised by planning staff that not all integrated development invokes this requirement. We question whether this DA has been exhibited for the required period.

### ***Consistency with zoning under the Local Environment Plan***

The DA proposes redevelopment of almost the entire site – currently a disused winery – into a park for caravans and /or manufactured home units for long term residential use. We submit that this is clearly inconsistent with the zone objectives under both the current LEP 2000 and the LEP 2013 which comes into effect later this month. We understand that the timing of this DA means that it must be assessed firstly against the LEP 2000 but that the forthcoming LEP 2013 must also be taken into account.

The land in question is zoned Rural 1A under the Port Stephens LEP 2000 and RU2 under the Port Stephens LEP 2013

Rural 1A Zones under LEP 2000 should 'maintain the rural character of the area'

RU2 Zones under LEP 2013 have similar objectives but with two important differences – they should 'maintain the rural **landscape** character of the **land**' (our emphasis).

We submit that this implies that it is the landscape character of the specific land subject to the DA which is to be maintained under LEP 2013, not just the overall rural character of the wider area.

We submit that redevelopment of almost the entire site into a residential park would fail the test of meeting **either** zone objective, but most definitely fails to satisfy the RU2 Zone objective under the LEP 2013.

There is another important relevant difference between Rural 1A and RU2 zones descriptions. Both allow, with consent, tourist related developments; respectively 'tourist facilities' (LEP 2000) and 'tourist and visitor accommodation' (LEP 2013). While the former term is ambiguous, the latter is clearly defined to expressly **exclude** 'caravan parks' (whether for short term or long term occupation). The proposed use is Caravan Park (permanent residence). The applicant asserts consistency with the zone objectives in LEP 2000 but does not expressly address the permissible/prohibited uses. (SEE p.24) The applicant admits in the SEE that the proposed use is 'not supported' by LEP 2013.

We submit that the proposed use is both inconsistent with the zone objectives (in both LEPs) and expressly prohibited under the LEP 2013. The appropriate course of action for the applicant would be to submit a planning proposal for a re-zoning. All of the arguments in the current DA/SEE, including the Socioeconomic Impact Assessment (Appendix 6) would be relevant to such

a re-zoning proposal, but cannot be used, we submit, to justify a development which is so clearly no compatible with LEP zoning.

### ***Effect of SEPP 21***

We understand from planning staff that they consider that because State Environmental Planning Policies (SEPPs) take precedence over LEPs, provisions of SEPP 21 (Caravan Parks) can be used to justify approval of DAs which would not otherwise meet LEP requirements.

We have doubts from a reading of SEPP 21 that the relationship between SEPP 21 and LEPs is quite so clear. However, we have to take it on trust that this is a correct interpretation of the relationship. If so, then it appears that the merits of the proposed development, which we would have expected to be relevant to a rezoning request but not to a non-conforming DA, do in this case have to be assessed. It seems clear that this is the basis on which the Pt Stephens planning team are assessing this DA, and we therefore turn to the merits of the DA, including its consistency with SEPP 21.

### ***Consistency with SEPP 21***

Note: The layman might reasonably expect that a different SEPP - SEPP 36 (Manufactured Home Estates) – would apply to this ‘all permanent’ residential park rather than SEPP 21. However, we are advised by planning staff that SEPP 36 arbitrarily applies only to such estates on urban (zoned) land or on land immediately adjacent to urban land.

SEPP 21 addresses the approval process for caravan parks and imposes certain conditions. The aims and objectives of the SEPP (Clause 3) do not however in any way suggest that it favours increased provision of caravan/residential park sites, or waiver of zoning or other controls which apply to land which it is proposed to use for such sites. It does say that in the event of inconsistency with any other environmental planning instrument, SEPP 21 prevails (Clause 5), but we cannot see any way in which the zoning controls in the Port Stephens LEPs (either 2000 or 2013) are inconsistent with SEPP 21 and should therefore be overridden.

We note that SEPP 21 requires Council, as the consent authority, to determine ‘the number of sites ... that the Council considers are suitable/not suitable for long-term residence ‘(Clause 8(2)), and impose a condition a specifying the maximum number of [long-term] sites (Clause 8(3)). This reads as if 100% ‘long-term’ parks are not envisaged. This would be consistent with an interpretation of the relevant planning instruments that proposals for 100% long term residential parks should only be permitted on land zoned for residential use rather than using arguable exceptions to other zones (including rural land).

TRRA Inc. submits that while consistency with SEPP 21 would be necessary if any approval was to be granted, the SEPP itself does not provide any rationale for approval of this DA which is clearly inconsistent with the zone objectives applying to the land, or any reason for Council as the consent authority to in effect grant a ‘waiver’ from the normal application of the zoning controls.

SEPP 21 also requires consideration of suitability of the land for use as a caravan park, and whether there is adequate low-cost housing or land available for low-cost housing (Clause 10 (a) and (c) respectively.

In relation to (a) see our comments below under ‘Other relevant considerations’



In relation to (c), we submit that the Socioeconomic Impact Assessment (SIA - SEE Appendix 5) does not make a convincing case for a need for additional permanent residential park sites. The SIA confuses the issue by discussing tourist accommodation – while this would be a relevant consideration under Clause 10 (b) of SEPP 21, if it were proposed to include short-term sites, in this case it is clearly proposed that 100% of the sites would be for long-term residence. In these circumstances, supply of and demand for tourist accommodation on the Tomaree Peninsula are irrelevant.

### ***Consistency with SEPP (Rural Lands) 2008***

This SEPP applies to Port Stephens LGA, and prevails over any other EPI (Clause 5). In determining a DA for rural dwellings, Council is required to consider: (a) existing and approved uses of land in the vicinity; (b) .. significant impact on land uses likely to be preferred and predominant land uses in the vicinity and (c) [whether the proposed use is] likely to be incompatible with a use referred to in (a) or (b).

The land uses in the immediate vicinity are a mixture of large lot residential, and agricultural /horticultural (including the recent use of the subject land for cultivation of vines).

We submit that the proposed redevelopment of this land for high density permanent residential is clearly 'incompatible' with the uses of land in the vicinity (other than an already approved caravan park at 16 Trotter Rd (DA 16/2007)). This view is also consistent with our submission that the DA fails the test of the zoning objective that the proposed use 'maintain the rural (landscape) character of the area (land)' (LEPs 200 (2013)).

### ***Consistency with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005***

The applicant's SEE addresses compliance with this Regulation in Appendix 5. The Regulation has separate Parts dealing with Manufactured Home Estates (Part 2) and Caravan Parks, Camping Grounds and Moveable Dwellings (Part 3). It makes clear that '*The installation of manufactured homes elsewhere than in manufactured home estates is governed by Part 3. That Part deals with relocatable homes, which includes a manufactured home.*' (Note under Clause 5)

It seems clear, although paradoxical, that this DA, despite being for a park to accommodate 100% relocatable homes, has to comply only with Part 3 (Caravan Parks...) and not with Part 2 (Manufactured Home Estates).

The SEE asserts compliance with all the requirements of Part 3. We question whether this can be justified – in particular the asserted compliance with the water supply and sewerage clauses 101 and 102, given that the nearest mains sewerage connection is admitted to be some 3.5 km away, and no agreement appears to have been reached with Hunter Water to provide a connection, either for this site or a combined connection for this site and the already approved park at 16 Trotter Rd.

### ***Other relevant considerations***

Apart from consistency with the Planning Instruments already discussed above, there are numerous issues raised by the proposal that relate to the suitability of this particular site for the proposed use. These are relevant both to the matters to be assessed under s79C of the EPA Act, and to the consideration of suitability required under Clause 10(a) of SEPP 21.

We refer to the issues of traffic, noise, groundwater, stormwater, fire risk and threatened species impact identified in the submissions by local residents. We support their questioning as to whether these issues have been adequately addressed in the SEE.

We understand that this DA has been 'called up' by several Councillors and that it will not therefore be determined under delegated authority. We look forward to seeing the Assessment Report when the matter is tabled for consideration by Council, and reserve our right to request 'public access' at the relevant meeting.

Nigel Waters  
Convenor, Planning Committee  
Tomaree Ratepayers & Residents Association Inc.

0407 230342 [planning@trra.com.au](mailto:planning@trra.com.au)