



9 September 2013

The General Manager
Port Stephens Council
Box 42, Raymond Terrace NSW 2324

Reference: PSC2009-08546

Planning proposal - Rezoning and reclassification of various Council Lands – 2013 - Sites 17 & 18 - 2 Ridgeway Avenue and 9 Mitchell Street, Soldiers Point.

Tomaree Ratepayers and Residents Association Inc. makes this submission on that part of the Planning Proposal currently on exhibition which deals with two parcels of land adjacent to the Soldiers Point Marina. These are a **larger lot** (9 Mitchell Street, Soldiers Point - Part Lot 322 DP 636840 and a **smaller lot** (2 Ridgeway Avenue, Soldiers Point - Part Lot 2071 DP 852662). (see Attachment 2 to the Proposal)

We note that Council is required to hold a public hearing, which is scheduled for September (Proposal, page 15), and look forward to the opportunity to present our submission orally at that hearing.

The current position

It appears that the land in question has been used by the commercial marina (Clipper's Anchorage Pty Ltd) for many years – partly for access and partly for marina related activities.

All of the **larger lot** is already zoned 3a General Business but is classified 'community' not 'operational'. We understand that this is inconsistent – Council owned 'community' land should not be zoned for business use. A small adjacent lot (Lot 321 DP 636840 - 154 m²) immediately east of the marina building is already leased to the marina (see Figure 13). The larger lot (516 m²) is used by the marina for access to various parts of the commercial operations.



Some of the ‘public reserve’ land appears to be fenced off for exclusive use of the marina – the planning proposal acknowledges that:

“the Marina has established some facilities on Council land, such as formal car parking (Part Lot 2071), hard stand, fencing and minor building overhang (Part Lot 322 DP 636840)” (Attachment 2, p2).

While the public through walkway to the Point reserve, which traverses this larger lot, is not impeded, neither is it clearly apparent or signed.

The **smaller lot** is currently zoned 6a General Recreation and is classified ‘community’ not ‘operational’. While these two statuses are consistent, part of the lot is in practice essential for pedestrian and trolley access to the marina, and yet there appears to be no lease, or payment, in respect of this access.

The proposal notes that in addition to the part of Lot 2071 leased from Council, the marina already has a 25 year lease (2011-2036) from Council on Lot 321 DP 636840, (the small adjacent parcel), as well as leases from the State government on other crown land.

We note however that there appear to be some irregularities in relation to Lot 321 – the lease which commenced on 1 December 2011 was only signed on 5 October 2012, and Council only approved a Right of Entry Deed at its meeting on 13 August 2013 (there also appears to be error in the DP number for Lot 321 on the certificate of title – (an extract of which is shown at Attachment 2, Figure 1) – it is incorrectly shown as DP 596092, when it is in fact DP 636840).

The proposal

Council proposes to rezone the smaller lot 3a General Business, and re-classify all of both lots from ‘community’ to ‘operational’ status, with a view to granting the marina a ‘non-exclusive conditional licence’ over all of both lots, with a condition of maintaining the public access walkway connecting the two reserves to north and south. While the permitted uses are not clearly specified, the proposal states that:

‘It seeks to provide spaces in which the Marina can transport goods (e.g. boats) without occupying the land on an exclusive basis. A licence agreement will clearly state the right of the public to access of the area’ (page 15 of Attachment 2)

The public reserve status of the land will be revoked. The land will remain in Council ownership, and the proposal notes that Council intends to carry out improvements to the walkway and better signage. These improvements do not however seem to be guaranteed by the re-zoning and re-classification, and are presumably subject to resource constraints i.e. they are not ‘locked in’.



Our submission

We support the objective of ‘regularising’ the status and lease arrangements for this land, providing there is an absolute guarantee of continued public access, and provided the complicated lease and right of entry instruments on both this and adjacent land are in fact lawful¹.

However, we submit that there should be a clearer public statement about the proposed and permissible uses of the land to be re-classified, re-zoned and/or licenced, so that the community can make an informed judgement about whether the proposal is, overall, in the public interest.

It is not clear, for instance, how the proposed ‘transport of ... boats’ can be compatible with the ‘right of public access’ particularly given health and safety considerations, or whether the part of the land currently fenced off for exclusive (unauthorised?) marina use will be opened to public access under the licence conditions. Also, would the marina be able to erect any structures on the licenced land, or to use it for exclusive parking of either boats or motor vehicles? – these would seem to be incompatible with the ‘right of public access’.

We also submit that a clearer public statement be made about the environmental protection conditions which will apply to any use of the land to be leased to the marina under this proposal.

The proposal suggests that the licence to be granted to the marina would generate revenue for Council ‘likely to be at least \$4,000 per year (Attachment 2, p3).

Given that the overall effect of the proposal would seem to be to effectively legitimise commercial use of by the marina of a substantial area of publicly owned land, the estimated annual licence fee proposed seems grossly inadequate. Has the land been valued, both in present use/zoning/classification and for proposed use/zoning/classification, as a basis for levying a commercially realistic charge? If not, the proposal would seem to amount to a significant transfer of value from ratepayers to a private entity.

Payment for past use

There has clearly been an irregularity in allowing the marina both access over and use of a public reserve (apparently without any payment) – presumably ever since the marina was built? (This applies both to the land subject to this proposal and to the adjacent Lot 321) We submit that Council should seek retrospective payment from Soldiers Point Marina for this use. If this is not a matter that can

¹ We refer here to the uncertainty over Lot 321 DP 636840 already noted above.



be dealt with by the planning proposal, we request that you forward that part of our submission to the relevant part of Council for separate consideration, and request a reply concerning this matter of payment.

Conclusion

TRRA Inc. submits that there are currently too many unanswered questions to allow for a final judgment as to whether the proposal in respect of these two lots is in the public interest. We call on Council to clarify the history of unauthorised and potentially unlawful use, to confirm what uses will be permitted on the licenced land, and to further explain and justify the likely licence fee, before any decision is made.

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