



26th June 2009

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

SUBMISSION IN REGARD TO DEVELOPMENT APPLICATION FOR LOTS 2 & 3 DP 502820,

74-80 Gan Gan Road, Anna Bay

FILE NO. 160/2009

This submission is made on behalf of the Tomaree Ratepayers and Residents Association and follows an earlier submission made in April 2009. Following a meeting with Council Planning staff in May, we were offered the opportunity to inspect the detailed supporting documentation accompanying the application (including the Statement of Environmental Effects (SEE) written by consultants engaged by the applicant) and to make a further submission, detailing our concerns.

The proposal outlines a development on land that we understand to be zoned as 1(a) Rural Agriculture in the Port Stephens Local Environment Plan 2000.

We submit that the scale and density of the proposed development makes it clearly inconsistent with this zoning. Certain specified developments are expressly excluded from 1(a) Rural Agriculture zoned land by the LEP, including 'subdivision [for] dwelling houses or dual occupancy housing' (sub clause 12(1)(b)), and 'urban housing' (sub clause 11). We understand that 'tourist facilities' are permitted in Rural 1(a) zones, not because they are expressly allowed (there is no mention of them other than indirectly in clause 14A) but because any 'other' uses not expressly allowed are deemed to be allowed. We submit however that any proposed use must be assessed against the primary objective of the zoning, which is:

"To maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land resources". (Clause 11)

Clause 11 goes on to list a number of ways in which this objective is to be achieved, including by:

"(a)...ensuring that development is compatible with rural land uses and does not adversely effect the environment or the amenity of the area"

and

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"(d) protecting or conserving:

- (i) soil stability by controlling development in accordance with land capability, and
- (ii) trees and other vegetation in environmentally sensitive localities where the conservation of the vegetation is likely to reduce land degradation and biodiversity, and
- (iii) water resources ...". and
- (iv) land affected by acid sulphate soils, and ..."

We submit that the proposed development:

- (a) whilst described as a 'tourist facility' is more accurately characterised as a development of dwelling houses/dual occupancy housing and/or urban housing and is therefore expressly prohibited;
- (b) does not meet the primary criterion of 'maintaining the rural character of the area';
- (c) is not 'compatible with rural land uses', and
- (d) *may* not adequately 'protect or conserve' either soil stability, water resources or land affected by acid sulphate soils, or avoid land degradation and/or loss of biodiversity.

We address each of these grounds for objection separately below. We note that in many cases, the requirements of the LEP which we are concerned may not be met are supported by SEPP 71 – Coastal Protection, the matters listed in which must be taken into account by Council.

Development is in a class that is expressly prohibited.

There appears to be no definition of 'tourist facility' for the purposes of the LEP. However, Council must apply some criteria other than that an applicant chooses to call it a 'tourist facility'. Otherwise 1(a) Rural Agriculture zoning would allow for a wide range of uses, not specifically prohibited, which should logically be restricted to other more appropriate zones.

The application states that the intention is to subdivide and strata title the development into 17 lots to allow for separate ownership. Together with the design and construction standards of the units, and the likelihood that this strategy will result in residential rating, this suggests that they are suitable for, and possibly intended for, permanent residency. We do not know if Council can ensure that a development remains available for holiday lets only by imposing a condition to prevent permanent occupancy. Whether or not this is possible, we submit that the proposed development is clearly more in the nature of 'a subdivision [for] dwelling houses or dual occupancy housing', and/or of an 'urban housing' compound, than it is of a 'tourist facility'. If this is accepted, then it follows that the application must be rejected as being for a 'prohibited' use on land zoned 1(a) Rural Agriculture.

Development does not maintain the rural character of the area.

We understand that each DA must be considered on its merits and in relation to the zoning of the land in question, and must not be unduly influenced by zoning or development of adjoining land. In particular this means that the recent approval of a DA on adjacent land (DA16-2005-788-1) should not be taken as a precedent. Because the land in question lies between the Anna Bay built-up area on one side and other vacant 1(a) Rural Agriculture land on the other sides, consideration of adjoining sites would in any case not assist. The assessment of the 'rural character of the area' must therefore be made by reference only to the site itself, which is clearly currently more 'rural' than 'developed' in character.

We submit that the proposal to develop the entire site of only 4.13 hectares to a relatively high density with substantial permanent buildings (7 x 2-storey and 8 x 1-storey villas containing in total 154 units clearly designed for round the year occupation, and a restaurant and bar fronting Gan Gan Road), would very clearly not maintain 'rural character'. The elevations provided in support of the DA illustrate that the visual impact of the development from all directions would be of a predominantly built form.

The SEE report states that:

"The proposed development is compatible with the rural residential and 'township gateway' character of the area, as it predominantly comprises a number of detached single and 2-storey buildings of a similar bulk and scale to surrounding rural residential development, spread throughout a large area interspersed with paths and vegetation" (4.1.4 page 25).

This claim, which amounts to marketing 'spin' may legitimately be made by the applicant but should not appear in a professional environmental impact study, and we submit that the Council should rely on independent professional advice, including from its own planners, rather than accepting this description at face value.

Development is not compatible with rural land use.

The proposed development clearly constitutes a complete change of use for the entire site. As such it cannot be compatible with rural land use. Major changes of use should be dealt with by re-zoning applications, not by development applications within a clearly inappropriate zone.

Development may not protect or conserve soil stability.

We are concerned that the development of this site may have unpredictable and potentially undesirable consequences for soil stability. In the case of this site, the 'soil' is in fact predominantly blown sand forming part of the Stockton Bight dune complex. We note that the SEE report considers Sand Migration Management at section 4.5.4. We submit that Council needs to obtain independent advice to corroborate the opinions of the consultants engaged by the applicant. Given the proximity of the site and its physical similarity to the dunes in the National Park, we also submit that the views of the National Parks and Wildlife Service be sought and considered.

Development may not avoid land degradation or loss of biodiversity.

We note that the land in question is already degraded, having probably been sand-mined in the past, and is only partially vegetated, mostly with bitou bush. However, this should not prevent consideration of the effect of the proposed development in relation to potential further land degradation, and/or loss of biodiversity, including habitats for native fauna, including any endangered species. We note that the SEE report considers these issues at sections 3.1 (negotiations with Catchment Management Authority) and 4.5.3 (flora and fauna). We submit that Council needs to obtain independent advice to corroborate the opinions of the consultants engaged by the applicant. We also submit that the views of the National Parks and Wildlife Service and other relevant agencies on habitats and endangered species be sought and considered.

Development may not protect or conserve water resources.

The proposal envisages significant landscaping, which is put forward as a major means of making the proposal visually and environmentally acceptable. However, as the site is predominantly pure sand, major and continuing irrigation works will be required if new planting is to survive. We question whether approving developments that will depend so heavily on irrigation is consistent with either this criterion in the LEP or with the Council's overall sustainability objectives and criteria.

For developments on rural land, we suggest that the presumption should be for retention of as much as possible of existing vegetation, rather than, as planned for this site: 'removal of all existing vegetation' (3.1 page 15, which contradicts other statements in 4.5.7 about limited retention) and its replacement by some new landscaping. The proposal for 'offset' planting on adjacent land is not in our view an adequate substitute. We submit that Council should seek the views of the Catchment Management Authority (with whom the applicant is negotiating a Property Vegetation Plan) be sought before a decision is made on this application.

Development may not protect or conserve land affected by acid sulphate soils.

The SEE report notes that the land in question is in an area identified by Council as affected by Class 4 potential acid sulphate soils. The applicant has obtained an Acid Sulphate Soil Assessment, which tested samples of soil from the site and concluded that they are neither actual acid sulphate soils nor having the potential to be acid sulphate affected (4.5.9). This latter finding seems inconsistent with the Council's Acid Sulphate Soil Planning Map and we submit that Council should explore the reasons for this inconsistency.

Aboriginal Heritage Issues

The SEE report notes (at 4.1.3.1) that State Environmental Planning Policy (SEPP) 71 - Coastal Protection - requires Council to take account of various aims, including 'to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge.' This site is close to an 'Aboriginal Place' and an Interim Cultural Heritage Site Survey has been prepared by the Worimi Local Aboriginal Land Council (we assume paid for by the applicant), which found that proposed Lot 31 has some materials of Aboriginal culture and heritage significance, and makes recommendations for a Management Plan and engagement of a Aboriginal sites officer during construction. At the very least compliance with these recommendations should be made a condition of any consent, but we also submit that the Worimi ALC be asked to independently give their views as to any concerns about the development, particularly in the context of wider plans in relation to Aboriginal culture and heritage for the Birubi area.

Previous Consideration.

We understand that the land in question was the subject of at least one previous Development Application, which was considered by the Department of Planning rather than by Council, and we further understand that it was declined. We assume that the officers' report to Council on this application will outline the history of the site and take into account any reasons for the previous refusal that may be relevant to the current proposal. We further submit that if it has not already done so, Council should seek the views of the Department of Planning on the current application.

Conditions if DA approved.

If, despite our objections, the DA is approved, we submit that the following specific matters be the subject of conditions:

Significant reduction in scale.

Council should seek to minimise the potential adverse environmental impact of the development by requiring it to be significantly scaled back to more closely fit the objectives and criteria of the 1(a) Rural Agriculture zoning.

Signage.

We are concerned that the proposed sign at the Gan Gan Rd entrance to the site should be of an appropriate size and design. Recent precedents of unsightly flashing signs erected, for example, at Soldiers Point and Nelson Bay bowling clubs suggest that existing controls (in the Port Stephens DCP 2007 and SEPP 64) are not meeting community expectations. We submit that Council should ensure that any signage associated with the development is discreet and subdued.

Integration with plans for Birubi area.

We further submit that the applicant be required to contribute specifically (both financially and in design) to the realisation of an integrated approach to planning for the Birubi Beach 'precinct'. This might for instance include vehicular and pedestrian linkages to a new movement and circulation pattern for visitors to Birubi Beach and the Surf Club. It would be remiss of the Council not to ensure that any development of this site was consistent with longer-term plans for this significant tourist attraction.

Conclusion

To summarise, we submit that this DA should not be approved, on various compelling planning grounds. If the owners wish to proceed with a development of this scale and nature, they should be required to follow the appropriate process of first applying for a re-zoning of the site, which can then be considered on its merits. We stress that we are not opposed in principle to a tourist facility on this site. Such a facility of an appropriate scale and design, taking into account all the environmental factors we have referred to, could be well be an appropriate and welcome development.

Yours faithfully,

R. A. Young

Chairman

Tomaree Ratepayers and Residents Association