



25 November 2010

Kirsty Ruddock  
Environmental Defenders Office  
Level 1, 89 York Street  
Sydney NSW 2000  
AUSTRALIA

Dear Ms Ruddock

**Re: Proposed Eight (8) Lot Subdivision 155 Salamander Way, Salamander Bay – 811/2009, in Port Stephens LGA**

In June this year I spoke and wrote to you seeking advice about how to progress community opposition to a subdivision currently being proposed by Port Stephens Council at 155 Salamander Way, Salamander Bay NSW.

Port Stephens Council is proposing an 8 lot subdivision of land which it owns which surrounds the shopping centre at Salamander Bay. The DA for this subdivision was on public exhibition in November 2009 and went before the Joint Regional Planning Panel for determination in July 2010. It was referred to the JRPP on the basis that Council has a conflict of interest in being both the applicant and the consent authority. The JRPP found that it could not make a determination because there had been a failure by Council to follow the correct notification procedures. So Council is now re notifying stakeholders and is again exhibiting the DA documents.

There are many problems with the proposed subdivision one of which is that fact that it does not comply with the Port Stephens Comprehensive Koala Plan of Management. This Koala Plan of Management is a statutory document which is formed under SEPP 44. Council's own assessment and that of an independent consultant both clearly state that the proposal does not comply with the CKPM (see page 127 in attached pdf file SEE Appendix Assessment of Threatened Flora and Fauna).

We have recently found out that Council has applied to *itself* for a waiver from compliance with the CKPM and that this waiver has been granted. Appendix 4 of the CKPM (<http://www.portstephens.local-e.nsw.gov.au/files/1790/File/CKPoM.pdf>) clearly sets out criteria and performance criteria for granting a waiver and clearly states when a waiver cannot be granted. We believe that Council, as the developer, has not met the

criteria or performance measure to be allow the anyone to grant a waiver. None of the documentation relating to the application for a waiver have been made public.

We are therefore seeking your advice on the following questions.

1. If Council has been deemed to have a potential conflict of interest in determining this development, is it either appropriate or legal for it to be the body to determine if a waiver, from compliance with the CKPM, can be granted? Shouldn't this too be deferred to the Joint Regional Planning Panel or some other independent body?
2. Is there any right or opportunity for a third party to scrutinize or challenge the granting of a waiver from compliance with this statutory document?
3. If a challenge is possible, at what point in the process should it occur?

We have previously sent a disk contains a range of documents relating to this subdivision. Most of these can now be found on the JRPP website [http://www.jrpp.nsw.gov.au/DevelopmentRegister/tabid/62/ctl/view/mid/424/JRPP\\_ID/148/language/en-AU/Default.aspx](http://www.jrpp.nsw.gov.au/DevelopmentRegister/tabid/62/ctl/view/mid/424/JRPP_ID/148/language/en-AU/Default.aspx).

Other relevant links

- Port Stephens Comprehensive Koala Plan of Management  
<http://www.portstephens.nsw.gov.au/environment/1274/1324.html>
- Port Stephens DCP:  
<http://www.portstephens.nsw.gov.au/planning/27679/54619.html>

The TRRA would be grateful for any advice or assistance on the issue of whether Council can grant itself a waiver from the koala Plan of Management, as this will a key issue in determining this development. We hope that you will be able to review this issue on our behalf.

Please contact with Anna Glasby ([research@trra.com.au](mailto:research@trra.com.au), or 0407 497647) or Nigel Waters ([planning@trra.com.au](mailto:planning@trra.com.au) or 0407 230342) to discuss any aspect of the matter in more detail.

Yours truly

Anna Glasby  
Researcher  
Tomaree Ratepayers and Residents Association