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The General Manager
Port Stephens Council

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Objection to DA 2019-643 for Sand Resort at 58 Gan Gan Road, Anna Bay - Lot 2 DP 1083740

TRRA Inc objects to this DA on a number of planning and environmental impact grounds. We note that the site is a de-graded former sand mine. Appropriate and limited development of the site may *in principle* be an acceptable use subject to design and environmental protection conditions. However, this DA fails to meet applicable planning standards, and should be refused.

We have no objection to this submission being published, unredacted.

Re-zoning required before a DA

We submit that a primary threshold reason for refusal of this DA is the clear incompatibility of the proposed development with the objectives and permitted uses of the zoning of the site – RU2 Rural Landscape.

The objectives of RU2 zoning, as set out in the Port Stephens Local Environmental Plan 2013 (LEP) are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

Dwelling houses; Eco-tourist facilities and Tourist and visitor accommodation are amongst the uses permitted with consent, while Hotel or motel accommodation and Serviced apartments are expressly prohibited, as are any other activities not expressly permitted or prohibited – this would include the category 'commercial premises' found in other zone descriptions.

The proposed development, which would include 247 accommodation units, a café, bar and restaurant, gym, clubhouse, pool/leisure complex, conference centre and retail space, and which would occupy the entire site, would clearly not '*maintain the rural landscape character of the land*'. We note that this objective is worded more narrowly than the previous R2 zone which included '*maintain the rural character of the **area***' (our emphasis). This reinforces the clear intention of the zone objective which is to allow only incidental uses which do not threaten the primary character of the **specific land in question**. In this context, the standard LEP provision to allow eco-tourist facilities and tourist and visitor accommodation on RU2 zoned land is clearly



designed to allow modest tourist accommodation as a minor ancillary land use on otherwise rural properties.

We submit that the scale and density of the proposed development, together with the clear evidence of the marketing material (concept design document), makes it in effect a hotel/motel/serviced apartment project – this is also admitted on p.7 of the SoEE, and again on p.32. As such it is prohibited in the RU2 zone. The SoEE's statement that *'There is nothing in the Port Stephens LEP (2013) that prohibits the proposed development.'* (p.29) is incorrect.

Even if it were assessed to be not 'prohibited' it would clearly not *'maintain the rural landscape character of the land'* and would obviously not in any way *'encourage sustainable primary industry production by maintaining and enhancing the natural resource base'*.

The assertion in the SoEE that *'the proposed development is permitted with consent on the site, does not contravene the objectives of this zone and therefore is not inconsistent with the zone objectives (p.20)'* (and repeated on p.38) is simply not credible.

If the proponent wishes to develop this project on the subject land, it needs to submit a planning proposal for re-zoning. The process for re-zoning under the EPA Act appropriately provides for a wider consideration of the public interest, longer and more comprehensive community consultation and involvement of the State Department of Planning.

Assessment of this DA on the premise that it is for a 'use permitted with consent' on land zoned RU2 would be a clear abuse of EPA Act processes. We urge Council to inform the proponent that it should withdraw the application and instead submit a planning proposal for re-zoning, as a first stage in a proper process.

Project does not meet the definition of 'Eco-tourist facility'

The applicant is relying on the provision in the RU2 zone description that allows for Eco-tourist facility as a 'use permitted with consent'. The application and the SoEE describe the proposal as being for an 'Eco Tourist facility' and the SoEE cites the definition as including:

'being a building or place that is ... (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.'

It is very clear that the proposed development cannot credibly be characterised as meeting this criterion.

The objective to minimise overall scale and overall physical footprint is clearly not met when the SoEE states on P 21 that *'the facility ...is generously spread throughout the site.'*

The project is in effect a resort complex, more appropriately characterised as a hotel or motel or serviced apartments (which are other defined categories of land use under the LEP). The SoEE admits that the facility will incorporate *'Hotel-style and townhouse accommodation'* (p.7)

The objective to minimise visual impact is likewise not met. The SoEE's claim that *'The proposed eco-tourist facility will not result in any negative visual impacts or reduce the scenic quality of the area.'* (p.18) is not credible for several reasons:

Figures 5 and 6 in the Visual Impact Report clearly show the development from the Birubi Beach 4WD access track and the visitors carpark. Tourists on dune tours will have a clear view of a very large-scale commercial resort operation rather than the natural sand dune/vegetation interface that currently exists. Similarly, the view from the Birubi Beach carpark and the headland within the Birubi Point Aboriginal Place (and likely from the proposed new tourist Information Centre if the adjacent failed resort is cleared) will be affected. It is difficult to understand how this is will not also have an impact on the sensitive Aboriginal landscape/heritage..

Coastal Environment – special controls

The SoEE confirms that the site is within the coastal environment area and that the DA is therefore subject to the SEPP (Coastal Management) 2018.

It is difficult to understand how the SoEE can have arrived at the conclusion that *'The development will not cause an adverse impact upon the local ecological environment and is not affected by coastal related hazards.'* (p.15)

The reports say *'that the proposed development is unaffected by coastal related erosion and inundation hazards'* (p.15). This is hardly a surprise given that the site is well inland. The concern arising to the proximity to the coast relates to the sand-dunes.

An obvious concern with any development on this site is the management of wind-blown sand from the adjacent Stockton Bight sand dunes. The SoEE makes it clear that the development expressly relies on moveable sand fences, and periodic removal of captured sand, rather than on vegetated landscaping. This is probably a more realistic approach but whether it can adequately manage the extreme conditions that often prevail in the area is doubtful.

The Aboriginal Heritage Assessment Report (AHIA) report by Eikos states on P19 (**our emphasis**)

'The eSpade online mapping tool available from the NSW Office of Environment and Heritage (OEH) website describes the **Landscape surrounding and including the project area** as "Beaches and **unstable dunes** and blowouts of Quaternary Holocene sand along the coastal fringe of the Tomago Coastal Plain. Includes Stockton Beach, Bennetts Beach, Mungo Beach and various other beaches. Typical area is Stockton Beach south-west of Anna Bay".

The topography is described as beaches, foredunes and **often extensive unstable dunes and blowouts** up to 1 km in width. Foredunes are commonly 1 - 10m high with extensive unstable parabolic dunes behind the foredune reaching heights of up to 28m. **Backward transgressive dunes on the inland side of the mobile sand mass may form during strong south westerly winds.** This soil landscape is morphologically dynamic, continually being modified by wind and waves. Soil erodibility from both wind and water is very high. Soil fertility is very low and often with strong salinity. Available water holding capacity is very low. Note that limitations to development include high permeability, high erodibility, high salinity, low wet strength, low available water capacity and strongly alkaline.

The wind erosion hazard for development including urban, grazing or cultivation are noted as Extreme.

However, the Energy and Water Sustainability Report by PTC reaches a very different conclusion:

'Nonetheless, an examination of the prevailing conditions concludes that the impact of wind-borne sand will be low to moderate.' (p.11)

and goes on to play down the risk with the following assertions:

'Winter conditions will see winds from the western to southern quarter. Of these, southerly winds are likely to be the major source of wind-borne sand. However, southerly and south-easterly winds are normally (but not always) associated with rainfall, during which air borne sand is not a concern. Westerly winds can be quite strong in both summer and winter and these are likely to be the only source of significant sand transportation.'

'Helpfully, the site experiences westerly winds for only short periods during the year, estimated at approximately 35% in winter and virtually never in summer. Therefore, given the relatively low frequency of high-strength dry winds from a direction that can entrain sand and the fact that this will be predominantly in winter, there is little concern as to the impact of wind-borne sand on the recommended sustainable measures.' (p.12)

It is not credible to state that because the westerly winds occur predominantly in winter there is little concern as to the impact of wind-borne sand. It is a matter of the *strength* of the westerly winds and not the frequency which is of concern, this is not discussed or explained why in winter it would not be a major problem.

The clear discrepancy between the conclusions of the two reports (AHIA and Sustainability) are a major cause for concern. In assessing the impact and risk of wind-borne sand to this project, the assessment must seek further expert advice and reach its own conclusion.

The statement that *'Paved areas inside the resort are likely to require regular cleaning to remove sand and should be monitored and cleaned as needed, as part of the regular operational requirements of the staff.'* (SoEE p.16) seems likely to be a major understatement, and there are likely to be major implications also for the pool and for the highly exposed facades of many of the proposed buildings. While the maintenance implications are largely a commercial consideration for the applicant or subsequent owners, approval should not be given lightly for obviously highly risky projects.

We understand that owners of adjacent land to the north west have faced difficulties in obtaining approval for developments because of sand management issues, and requirements for dune stabilisation works. Council should take any such requirements into account to ensure that the applicant for this DA is not treated more favourably than others with sites that have similar sand management issues.

We note that a current proposal to develop a sand extraction industry at 4226 Nelson Bay Rd Anna Bay (DA 16-2019-636-1) close to this 'Sand Resort' site is similarly located on the northern boundary of the Stockton sand dunes. A key justification for the sand quarry DA is a 'requirement to maintain the electrical easement free of obstruction. **Southerly winds** are resulting in **continuous sand deposition, causing an ongoing issue** with the ability to maintain the easement.' (DA 2019-636 EIS p.16 - **our emphasis**)

The SoEE notes that the Coastal Management SEPP requires that the consent authority:

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. (p.18)

The SoEE assertion in response that *'The proposed eco-tourist facility is in keeping with the surrounding environment and development.'* is simply not credible. The resort would represent a very significant change to the surrounding environment.

Ecological impact

We note that an onsite flora survey was only conducted on 30th July 2019 and Fauna and Habitat assessment onsite on 30th July and 2nd August 2019 (page 11). This seems a very limited and inadequate 'snapshot' from a single season. We note that there is no mention of any rare orchids within the SoEE, whereas a particular orchid species is a major consideration affecting the current sand quarry proposal nearby (DA 2019-636)

While the Ecological Report found no evidence of koalas onsite, it also noted that the supplementary koala habitat on the site forms part of a significant corridor:

'3.5 Corridors and Connectivity

The site's vegetation is directly connected to a continuous strip of native vegetation that runs west into Worimi National Park, which occurs approximately 1700 m from the site. To the north and east the site is connected to vegetation that runs just to the north of the township of Anna Bay and ultimately connects to Tomaree National Park, which occurs approximately 1600 m from the site.

The site's vegetation is an important part of the 'Watagan to Stockton link', a significant Biodiversity Corridor as identified in the Hunter Regional Plan 2036 (Department of Planning and Environment, 2016).

The site's vegetation is also identified in the Anna Bay Strategy and Town Plan (PSC, 2008) as being significant vegetation and part of a locally significant corridor. The vegetation within the site is part of an important corridor, both locally and regionally, which provides connectivity to two National Parks. The site is bordered by rural / residential development to the north and by sand dunes to the south, thus it is considered that the removal of the site's Coastal Sand Apple Blackbutt Forest would potentially have a significant impact on the function of this corridor, reducing its viability to only fauna that are comfortable traversing relatively open spaces.

***It is thus recommended that the proposal seeks to retain as much native vegetation as possible to reduce any potential impacts on this corridor.'* (Ecological Report, p.24 – our emphasis)**

It is clear from the plans and other documentation that very little if any native vegetation would be retained – the entire site will need to be cleared for construction.

Increased traffic in and out of the development will also cross the koala habitat corridor and have potential negative effects on wildlife, as will the nocturnal lighting of the development.

Other planning issues



There are clearly a range of other planning issues, relating to matters including visual appearance, effect on local amenity, traffic generation. We know that some local residents are particularly concerned about these aspects of the proposed development. While we have not covered all of these issues in this submission, we expect Council staff to fully assess all these aspects, against relevant controls and development and building standards and in light of submissions.

Need to ensure adequate site maintenance and rehabilitation in the event of failure

The experience of the adjacent 'Anna Bay Resort' adjacent to the site of this DA has highlighted the need for some way of ensuring that major development sites are kept in a presentable state both during construction, construction pauses and in the event of total failure.

While we understand that Council may be limited in its ability to require payment of an 'up-front' bond which could be used for site maintenance, we urge Council to explore all possible measures, which could be incorporated as conditions of consent or implemented in some other way. The community demands that Council find a way of ensuring that the situation on the adjacent site is not repeated.

Shared public path along Gan Gan Road

Provision of a shared foot/cycle path along Gan Gan Road in front of this site has recently been endorsed by Council as a priority infrastructure project, but full funding is not yet secured.

Any development that is approved on this site should be required, as a condition of consent,

1. To either construct the section of the path on the Gan Gan Road frontage to Council's specifications or make an equivalent financial contribution over and above the standard levies payable under section 7.11 of the EPA Act.
2. Require suitable safety measures to ensure the large volume of traffic in and out of the resort gives way to users on the path.

Conclusion

This DA should be refused on multiple planning and environmental impact grounds, as set out above. If the applicant wishes to develop the site for anything like the proposed use, a re-zoning application should be required first.

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