

1.4 Confirmation of Minutes of Previous Meeting

RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor GRAHAM:

672/14 That Council confirm the minutes of the previous Ordinary Meeting of Council held on Wednesday 11 June 2014.

Business Arising

There was no business arising.

1.5 Notice of Intention to Deal with Matters in Confidential Session

RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor GRAHAM:

673/14 That Council consider the following matter in Confidential Session, pursuant to Sections 10 A (2) (c) of the Local Government Act 1993:

6.1 – Alternative Approaches to Local Print Advertising to Reduce Costs and Improve Editorial Coverage (Commercial in Confidence)

674/14 That Council note its reason for considering Report No 6.1 - Alternative Approaches to Local Print Advertising to Reduce Costs and Improve Editorial Coverage (Commercial in Confidence) as it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

675/14 That Council request the General Manager to report on these matters in open session of Council.

1.6 Mayoral Minute – Joint Wyong Gosford Delegation to Canberra to Discuss Regional Development

RESOLVED unanimously on the motion of Councillor EATON:

676/14 That Council receive and note the Mayoral Minute – Joint Wyong-Gosford Delegation to Canberra 2014.

2.1 Iconic Development Site No 16 216-224 Main Road and 21 Rowland Terrace, Toukley

RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor GRAHAM:

677/14 That Council delete the requirement for the provision of public foreshore access contained in Wyong DCP 2013 Chapter 6.1 Section 3.16(m), subject to the execution of a Voluntary Planning Agreement in accordance with the 'significant public benefit' offer contained in the letter submitted by ADW Johnson dated 28 May 2014.



678/14 That Council advise the proponent to submit a Planning Proposal to address the current permissibility issue in respect of permanent residential dwellings, by way of a change in zone or an additional permitted use.

679/14 That Council authorise the General Manager to assess the adequacy of the Planning Proposal submitted in accordance with Recommendation No. 2 above and submit it to the Department of Planning and Environment seeking a Gateway determination.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, TAYLOR, VINCENT AND WEBSTER

AGAINST: NIL

2.2 DA 273/2014 - Proposed 2 Lot Subdivision at Killarney Vale

RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor GRAHAM:

680/14 That Council grant consent subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, TAYLOR, VINCENT AND WEBSTER

AGAINST: NIL

2.3 IPART Draft Report on Local Government Compliance and Enforcement

RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor GRAHAM:

681/14 That Council receive and note the IPART Draft Report on Local Government Compliance and Enforcement and the draft submission (attached).

682/14 That Council request the General Manager to lodge a formal submission to the Independent Pricing and Regulatory Tribunal (IPART) in support of the Draft Report on Local Government Compliance and Enforcement, in accordance with the matters raised in this report.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, TAYLOR, VINCENT AND WEBSTER

AGAINST: NIL

1.5 Notice of Intention to Deal with Matters in Confidential Session

TRIM REFERENCE: F2013/02042 - D06675819

MANAGER: Lesley Crawley, Manager

AUTHOR: Jade Maskiewicz; Councillor Services Officer

SUMMARY

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in Confidential Session. The reports are incorporated in the "Confidential" business paper which has been circulated to Councillors.

The Local Government Act, 1993 requires the General Manager to identify those matters listed on the business paper which may be categorised as confidential in terms of Section 10A of the Local Government Act, 1993.

RECOMMENDATION

1 That Council consider the following matter in Confidential Session, pursuant to Sections 10 A (2) (c) of the Local Government Act 1993:

6.1 – Alternative Approaches to Local Print Advertising to Reduce Costs and Improve Editorial Coverage (Commercial in Confidence)

2 That Council note its reason for considering Report No 6.1 - Alternative Approaches to Local Print Advertising to Reduce Costs and Improve Editorial Coverage (Commercial in Confidence) as it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

3 That Council request the General Manager to report on these matters in open session of Council.

Note: Explanation - Section 10A of the Local Government Act 1993 states:

"2(a) personnel matters concerning particular individuals (other than Councillors),

2(b) the personal hardship of any resident or ratepayer,

2(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,

2(d) commercial information of a confidential nature that would, if disclosed:

(i) prejudice the commercial position of the person who supplied it, or

(ii) confer a commercial advantage on a competitor of the Council, or

(iii) reveal a trade secret,

1.5 Notice of Intention to Deal with Matters in Confidential Session (contd)

- 2(e) *information that would, if disclosed, prejudice the maintenance of law,*
- 2(f) *matters affecting the security of the Council, Councillors, Council staff or Council property,*
- 2(g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,*
- 2(h) *information concerning the nature and location of a place or an item of Aboriginal significance on community land.”*

ATTACHMENTS

Nil.

2.1 Iconic Development Site No 16 216-224 Main Road and 21 Rowland Terrace, Toukley

TRIM REFERENCE: F2011/00334 - D07519459
MANAGER: Steven Mann, Manager
AUTHOR: Jonathan Luke; Senior Strategic Planner

SUMMARY

Further to the Councillor Briefing on 9 April 2014 at which the Concept proposal was presented for Iconic Development Site No 16, this report outlines the 'significant public benefit' offer that the owner, Rustrum has proposed. Associated with this offer, Rustrum have requested Council to delete the Development Control Plan (DCP) 2013 requirement for provision of public access along the foreshore of the site. The matter of permissibility of the current concept under the current SP3 Tourist Zone is discussed with a recommendation that a Planning Proposal be submitted to address the issue.

RECOMMENDATION

- 1 That Council delete the requirement for the provision of public foreshore access contained in Wyong DCP 2013 Chapter 6.1 Section 3.16(m), subject to the execution of a Voluntary Planning Agreement in accordance with the 'significant public benefit' offer contained in the letter submitted by ADW Johnson dated 28 May 2014.**
- 2 That Council advise the proponent to submit a Planning Proposal to address the current permissibility issue in respect of permanent residential dwellings, by way of a change in zone or an additional permitted use.**
- 3 That Council authorise the General Manager to assess the adequacy of the Planning Proposal submitted in accordance with Recommendation No. 2 above and submit it to the Department of Planning and Environment seeking a Gateway determination.**

BACKGROUND

Following a series of presentations by Rustrum and their consultants and architects of the concept plans for the Iconic Development Site at Main Road Toukley, Council officers highlighted in a letter dated 16 April 2014, a number of matters to be considered and addressed as part of the planning documentation and a way forward for the site. This included the need to address the issue of public foreshore access, being a requirement of both Wyong Local Environmental Plan (LEP) 2013 and Wyong DCP 2013.

Wyong DCP 2013 Chapter 6.1 Section 3.16(m) states:

"Public foreshore access shall be provided for the full frontage of the development along Budgewoi Lake. The design is to incorporate Crime Prevention through Environmental Design (CPTED) principles."

2.1 Iconic Development Site No 16 216-224 Main Road and 21 Rowland Terrace, Toukley (contd)

Wyong LEP 2013 Clause 7.6 – “Development on the foreshore must ensure access”, reads as follows:

“Clause 7.6 - Development on the foreshore must ensure access

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- (a) Continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) Public access to link with existing or proposed open space,*
- (c) Public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) Public access to be located above mean high water mark,*
- (e) The reinforcing of the foreshore character and respect for existing environmental conditions.”*

Consultants ADW Johnson (acting for the owner Rustrum) have since submitted three letters dated 5, 21 and 28 May 2014 respectively, concerning public foreshore access, permissibility of the concept plan, and detail associated with the significant public benefit offer in lieu of providing public foreshore access on the site. A copy of each letter is attached.

The first letter and third letters include a request to delete the requirement in the Wyong DCP 2013 for foreshore public access and propose alternate means for achieving significant public benefit. Essentially, Rustrum are seeking certainty, prior to spending significant funds on detailed site planning, that Council will not require public foreshore access on the site on the basis of the significant public benefit offer proposed by Rustrum.

The second letter focusses on the issue of whether the concept design presented to Council staff (and Councillors at a Briefing on 9 April 2014) is permissible under the SP3 Tourist Zone given the configuration of residential units adjacent to commercial and retail uses, rather than ‘above’ as required under the definition for “shop top housing” under the Wyong LEP 2013 definition.

History

Council originally considered a request from the owner, Rustrum to delete the requirement for provision of public foreshore access to Lake Budgewoi contained in draft DCP 2012 Chapter 115 Section 3.16 at its Ordinary Meeting dated 12 October 2011. The matter was deferred until an inspection of the site by Councillors had been undertaken; a review of the submitted valuation report completed; and a report on alternative options to achieve significant public benefit had been prepared by Council staff. Subsequently a report was considered by Council at the Ordinary Meeting on 14 December 2011 containing reasons in support of the removal of the draft DCP requirement for public foreshore access on the site (a copy of the report is attached).

2.1 Iconic Development Site No 16 216-224 Main Road and 21 Rowland Terrace, Toukley (contd)

Council resolved *unanimously*:

- “1 That Council, subject to agreement being reached with the land owner on alternative options for the achievement of significant public benefit relevant to this development, remove the requirement contained under DCP 2012 (draft) Chapter 115 - Section 3.16 Rustrum Site, which requires the provision of public foreshore access to Lake Budgewoi.
- 2 That Council, subsequent to the agreement outlined above, insert a new requirement within Section 3.16 Rustrum Site, as follows:

“Public foreshore access should be provided for the full frontage of the development along Budgewoi Lake. The design is to incorporate Crime Prevention through Environmental Design (CEPTED) principles. Alternatively, should such public foreshore access not be feasible, then alternative options for the achievement of significant public benefit shall be negotiated to the satisfaction of Council and the proponent. Such alternatives should include improved pedestrian and cycle connections to Osborne Park and the embellishment of the foreshore reserve in the locality.”

PUBLIC FORESHORE ACCESS

The proponent has previously detailed reasons why public foreshore access is both undesirable and impractical at this location and contended that funding associated with provision of public benefit could be better directed towards improving access to and embellishing existing substantial foreshore nearby. These reasons are elaborated in the ADW Johnson letter dated 28 May 2014 and earlier reports to Council on the matter. In essence the site is too steep for practical public foreshore access, would be isolated, is not supported by the any local strategic planning strategy and could give rise to security issues for future residents and patrons given the proximity of the hotel next door. In considering these matters previously, Council officers have concurred with these findings.

CURRENT STATUS

The proponent has now been in negotiations with Council's Property Development Unit to prepare a concept for the development of the site based around the Iconic Development Sites provisions. This follows approval of the Boundary Realignment Subdivision Approval (DA/829/2013) granted in January this year involving part of the existing Toukley Gardens.

As part of this process, the concept plan has been developed to a point at which the proponent has an indication of the likely development yield.

THE PROPOSAL

Based upon the draft concept plan for the Rustrum site, the proponent has agreed in principle to provide significant public benefit to the **value of approximately \$1.23 million** which represents 1.5 times the likely Section 94 Contribution amount that would be attributed to the development.

2.1 Iconic Development Site No 16 216-224 Main Road and 21 Rowland Terrace, Toukley (contd)

The proponent has submitted an in-principle agreement, which outlines the significant public benefit offer. This will be formalised via a voluntary planning agreement (VPA) prepared with a Planning Proposal. It is notable that the underlying aim of improved foreshore public access, envisaged by both the DCP and LEP provisions, is more effectively achieved by the suite of works proposed under the significant public benefit offer.

The offer proposes funding toward the following works to provide a significant public benefit:

Premium upgrade to Toukley Gardens

In line with the proposed boundary realignment and land swap established under the Buy-Sell Agreement with Rustrum and pursuant to Development Approval DA/829/2013. The applicant is required to restore a reconfigured Toukley Gardens to the standard to which it is at present. However as part of the significant public benefit offer under the Iconic Sites process the opportunity exists to implement a significant upgrade of the park. This will enable Council to implement strategic improvements identified under Toukley Planning Strategy and the Toukley Town Centre Public Domain Masterplan. These include establishing the park as an 'entry arrival node' to the town centre and utilising the opportunity to improve the park outlook, connections to the foreshore and northern residential areas and appropriate public art. It is currently proposed to allocate \$545,000 toward this significant upgrade. The final amount will be subject to preparation of detailed landscape design.

Access and Improvements to Osborne Park foreshore

It is proposed to direct approximately \$685,000 toward improved access to and facilities at Osborne Park foreshore.

The reconfigured Toukley Gardens will allow for pedestrian and cycle access along Rowland Terrace and Peel Street to the foreshore at Osborne Park. This is proposed to be formalised by the provision of approximately 750m of off-road Shared pathway with the balance being on-road bike path along Rowland Terrace. This will provide a direct link from Main Road and Toukley Gardens to Osborne Park linking with the existing shared pathway which extends to Seventh Avenue. The cost estimate for these works is \$262,500 which includes on and off-road path, retaining works and protective barriers.

A Park Upgrade Concept Masterplan prepared by Council's Open Space and Recreation Unit exists for Osborne Park, which provides clear direction for upgrade and enhancement to facilities in this location. This is referenced as the basis for improvements at Osborne Park. In this regard the following works are proposed:

- New playground involving relocation and replacement with new equipment - \$200,000.
- Two new Picnic Shelters with wheelchair accessible design and electric BBQ at \$50,000 each - \$100,000
- Shared Path Link from Osborne Park to Leonard Avenue – \$12,500
- Increased carparking and overflow car plus trailer parking with car barriers. A rough estimate of 1,365m² of 'at-grade' carparking area at \$80 cost per/m² including carparking barriers – approx. \$110,000.

Based on the works proposed above it is considered that the public benefit offer will provide adequate funding to provide significant improvement to foreshore access in the locality and greatly improve the facilities on the foreshore. These improvements will be more effective in achieving public foreshore access outcomes than attempting to achieve access in an isolated and physically difficult to access location such as the Rustrum site. It is therefore recommended that Council resolve to delete the DCP requirement for public foreshore access subject to formalisation, via a VPA, of the significant public benefit offer contained in ADW Johnson's letter dated 28 May 2014.

PERMISSIBILITY

The matter of permissibility has emerged with the development of the current Concept Plan. ADW Johnson on behalf of Rustrum have requested Council planner to undertake a review of the permissibility of the Concept Plan under Wyong LEP 2013.

At the time of exhibition of the Wyong LEP in February 2013 the proponent raised the question of whether mixed use was permissible under the SP3 Tourist Zone, raising concern that 'mixed use' was not listed as a permissible use. Council planners' analysis showed that 'mixed use' is not a defined use and therefore not prohibited. A mixed use scheme would be possible via the list of permissible uses under the SP3 landuse table including 'Shop top housing'. The definition for 'Shop top housing' at that time was:

"Shop top housing means mixed use development comprising one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises."

Based on the above definition the proposed Concept would likely be permissible being proposed 'otherwise attached' underneath retail or business premises. However the definition in the final Wyong LEP 2013 has deleted the bracketed "or otherwise attached to" phrase meaning that shop top housing may only be considered as such if located above retail or business premises. The current definition reads as follows:

"Shop top housing means one or more dwellings located above ground floor retail premises or business premises."

Council's Development and Rezoning Unit has confirmed that under the current definition the draft Concept Plan would not be permissible in its present form. The proposed Concept Plan which involves a mix of permanent residential, tourist accommodation, retail and business premises is consistent with the strategic vision for the locality as outlined in the Toukley Planning Strategy 2010 which recommended a 2(G) Residential Tourist Zone under Wyong LEP 1991, a zone which facilitated residential dwellings whether located above, adjacent to or above other uses. Accordingly, a change to Wyong LEP 2013 via a Planning Proposal would be consistent with the underlying strategic planning for this locality.

Three main options to address this, which could be pursued via a Planning Proposal to amend the LEP, exist.

1. The first involves reverting back to the draft definition for shop top housing. The Department of Planning and Environment (DoPE) are unlikely to support a definition change.

2.1 Iconic Development Site No 16 216-224 Main Road and 21 Rowland Terrace, Toukley (contd)

2. The second would be to introduce an additional use within the SP3 Zone to permit "residential flat buildings", however this would have the effect of allowing this across all similarly zoned land which may not be desirable.
3. The third option would be to implement a B4 Mixed Use Zone across the site. The list of uses permissible under a Mixed Use zone will allow the flexibility for the range of uses envisaged by the Concept Plan. B4 Mixed Use Zone will also facilitate retail and business premises together with a mix of permanent residential and tourist accommodation and therefore would be consistent with the underlying strategic planning for the locality.

It is recommended that Council invite the proponent to address the permissibility of residential dwellings via a Planning Proposal. In this regard, to facilitate the draft concept plan, the proponent already intends to prepare and lodge a Planning Proposal to address the zoning due to the proposed land swap (change of zone from RE1 Public Recreation) and to amend other planning provisions associated with height and floor space ratio. Therefore the 'permissibility' issue may be addressed via the same Planning Proposal.

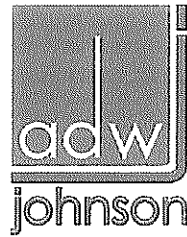
CONCLUSION

Based on the significant public benefit offer and the suite of works that this will enable Council to undertake to improve local foreshore access and facilities, it is recommended that Council resolve to delete the DCP requirement for public foreshore access subject to formalisation, via a VPA, of the significant public benefit offer contained in ADW Johnson's letter dated 28 May 2014.

Given the land use mix proposed under the draft Concept Plan is consistent with the strategic planning for the locality, it is recommended that Council invite the proponent to lodge a Planning Proposal to address the issue surrounding the permissibility of Shop top housing.

ATTACHMENTS

- | | | | |
|---|--|-----------|-----------|
| 1 | Confidential Council Report dated 14 December 2011 - Iconic Development Site No 16 - Located at 216-222 Main Road and 21 Rowland Terrace, Toukley – distributed under separate cover | Enclosure | D02838118 |
| 2 | ADW Johnson Letter - Rustrum - Foreshore Public Access - 5 May 2014 | | D08851601 |
| 3 | ADW Johnson Letter - Rustrum to WSC - Concept Permissibility - 21 May 2014 | | D08851613 |
| 4 | ADW Johnson Letter - Rustrum to WSC - Public Benefit Offer - 28 May 2014 | | D08851620 |



Our Ref:IM:TM:36418

05 May 2014

General Manager
Wyong Shire Council
PO Box 20
WYONG NSW 2259

ATTENTION: MR STEVE MANN

Dear Steve

RE: RUSTRUM KEY SITE, TOUKLEY.

Thank you for your letter dated 16 April 2014, confirming support for the Rustrum key site concept and design.

We note that the site concept, as supported by Council, makes no provision for foreshore public access on the Rustrum site, however, your letter of the 16th April 2014, once again raises the issue of such access.

Council's support is welcomed. However, we believe the combination of the Council resolution of December 2011 and the DCP 2013 provisions regarding foreshore access on the site jeopardizes the project by potentially allowing public foreshore access. Rustrum would like either the resolution or the DCP, or both, amended to eliminate this problem.

Rustrum cannot, in all fairness, be expected to continue to DA stage (spending up to a further \$300,000) with the possibility of foreshore public access being imposed as a condition of approval.

The issue of public foreshore access on the site has been ongoing and has been addressed in detail via the 3A approval over the site and in a number of submissions to Council by our client. Assessment conducted as part of the 3A approval process for a seniors living development on the site, identified significant problems if public access to the foreshore was established. Creating an isolated public space on the foreshore adjoining the Beachcomber Hotel was found to be contrary to crime prevention principles.

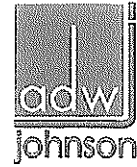
Information has also been provided to Council that confirms the adverse effect of public foreshore access on the viability of this project. Providing foreshore public access on the Rustrum site will not produce a significant public benefit due to the small area, its isolation and relative lack of amenity.

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Despite the known problems associated with public foreshore access to the site, Council's DCP 2013 still requires that the Rustrum key site development provide public access to all of the site foreshore. Following site inspection Councillors agreed with the merit of the Rustrum position on this matter and in December 2011 adopted a qualified response via the Council resolution reproduced below.

Rustrum believes that improved public access to the lake foreshore is best achieved by embellishments and improvements to nearby Osborne Park, a substantial (but neglected) public foreshore asset.

The current DCP 2013 provision for the Rustrum site is as follows:

Public foreshore access shall be provided for the full frontage of the development along Budgewoi Lake. The design is to incorporate Crime Prevention through Environmental Design (CPTED) principles.

On 14/12/2011 Council adopted the following resolution in respect of the Rustrum key site.

- 1 *That Council, subject to agreement being reached with the land owner on alternative options for the achievement of significant public benefit relevant to this development, remove the requirement contained under DCP 2012 (draft) Chapter 115 - Section 3.16 Rustrum Site, which requires the provision of public foreshore access to Lake Budgewoi.*
- 2 *That Council, subsequent to the agreement outlined above, insert a new requirement within Section 3.16 Rustrum Site, as follows:*

"Public foreshore access should be provided for the full frontage of the development along Budgewoi Lake. The design is to incorporate Crime Prevention through Environmental Design (CPTED) principles. Alternatively, should such public foreshore access not be feasible, then alternative options for the achievement of significant public benefit shall be negotiated to the satisfaction of Council and the proponent. Such alternatives should include improved pedestrian and cycle connections to Osborne Park and the embellishment of the foreshore reserve in the locality.

Part 1 of the resolution reflects the preferred outcome for local foreshore access but it is now outdated. Part 2 of the resolution is inconsistent with Part 1 as it does not fully remove the requirement for public access on the Rustrum site. So long as public access to the foreshore is "feasible" then foreshore public access is required on the Rustrum site by the combination of the DCP controls and the resolution.

As Council's policy intention is to allow alternative public foreshore access options, it is requested that Council reconsider and adopt a new resolution as follows:

That Council, subject to agreement being reached with the land owner on alternative options for the achievement of significant public benefit relevant to this development, remove the requirement contained under DCP 2013 Chapter 6 - Section 3.16 Rustrum Site, which requires the provision of public foreshore access to Lake Budgewoi.

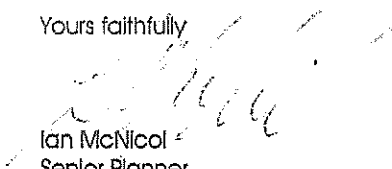


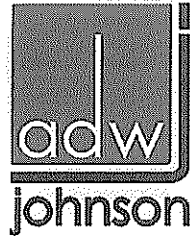
Meanwhile, Rustrum wishes to act consistent with the intention of the resolution. In pursuit of an agreement with Council over public foreshore:

- Rustrum accepts the public benefit calculation provided by Council in the letter dated 16 April 2014 as part of the key site process; and
- Rustrum undertakes, via a Voluntary Planning Agreement, to provide as part of the calculated public benefit "improved pedestrian and cycle connections to Osborne Park and the embellishment of the foreshore reserve in the locality".

It would be appreciated if Council would, by way of response, accept Rustrum's undertaking "to provide improved pedestrian and cycle connections to Osborne Park and the embellishment of the foreshore reserve in the locality". Our client would then be able to proceed, with a degree of certainty, from the current concept stage to a full Development Application.

Yours faithfully


Ian McNicol
Senior Planner
ADW Johnson Pty Ltd
Hunter Office

Our Ref: IM:TM:36418

21 May 2014

The Mayor
 Wyong Shire Council
 PO Box 20
 WYONG NSW 2259

Dear Sir,

RE: RUSTRUM KEY SITE – MAIN ROAD TOUKLEY –ZONE SP3.

We understand that Council planners are undertaking a review of the permissibility of our recently submitted concept for the Rustrum Key Site. It is essential that there be no doubt as to the permissibility of the concept.

In February 2013, in response to the issue of a draft LEP by Council, ADW Johnson on behalf of Rustrum Pty Ltd, made a detailed submission to Council in regard to the proposed SP3 zoning for the Rustrum site. In May 2013, the Town Planning department advised Council in a point by point response to the ADW Johnson concerns (copy attached). These responses provided Council, and, through publication of the Minutes of the Council meeting, the Public, a detailed, comprehensive and unambiguous explanation of the uses permitted within the proposed SP3 zone for the Rustrum site.

Having been through the process of creating a commercially viable concept for mixed use of the key site, our client, Rustrum, was astounded to be told that the permissibility of the proposal was in question. As the attached document clearly sets out, shop top housing land provides for mixed use developments but does not allow residential flat buildings.

The Rustrum concept is for a single building incorporating ground floor retail and business premises with residential dwellings and commercial and tourism above and beside. This addresses the topography of the site and the frontage to Main Road. The mixed use portions of the building share car parking, services and common areas and fit within the one structure or envelope.

The old definition of shop top housing was:

"shop top housing means mixed use development comprising one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises."

In response to the Rustrum LEP submission, Council appears to have taken the view that the old shop top housing definition applies. On the basis of the Council response Rustrum has proceeded with the concept so that not all dwellings are located above retail or business premises. The intent of shop top housing is to meet needs for retail and business premises at street level while also allowing residential components that do not compromise the street level commercial function. In this respect the Rustrum concept is wholly consistent with the definition of shop top housing.

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We contend that Council, by its adoption of SP3 zone for the Rustrum site and by its response to the Rustrum submission, has adopted the broader interpretation of the definition. However, any development application for the concept will be determined by the Joint Regional Planning Panel (not Council) so it is extremely important that there are no questions as to permissibility.

Rustrum have suffered considerable expense, in both time and money, arranging for competitive and commercially viable concept submissions from teams of architects. These submissions were based on the SP3 zoning and the Council response to the Rustrum draft LEP submission. Rustrum does not want to repeat the concept process again. Of particular concern is the fact that the current uncertainty and resultant delays could have been avoided had Council not rejected Rustrum's draft LEP submission.

It is Rustrum's preference that the key site concept proceeds to development application on the basis of an SP3 zone and shop top housing for the residential components. However, if the zone does not provide for the approval of the Rustrum concept as is, then it is requested that Council take urgent steps to provide certainty of permissibility.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Ian McNigel', written over a white background.

Ian McNigel
Senior Planner
ADW Johnson Pty Ltd
Hunter Office

\\136419\Workbooks\Working Docs\140521 Draft letter to WSC re SP3 zoning MW v3.docx



Our Ref:IM:KL:36418

28 May 2014

General Manager
Wyong Shire Council
14 Hely Street,
Wyong
By email

Attn. Jonathan Luke

RUSTRUM KEY SITE PUBLIC BENEFIT WORKS

Rustrum Pty Ltd offers significant public benefit works as set out below.

The public benefit works are linked to foreshore access requirements by a resolution of Council. As part of the Rustrum Key Site process it is Council's position that foreshore access will be required on the Rustrum site unless adequate public benefit alternatives could be provided.

Rustrum seeks a decision of Council that the proposed works will achieve significant public benefit and that no foreshore access will be required on the Rustrum site.

The relevant resolution of Council

This resolution was made in respect of the Rustrum key site following a site inspection by Councillors on 14/12/2011.

- 1 That Council, subject to agreement being reached with the land owner on alternative options for the achievement of significant public benefit relevant to this development, remove the requirement contained under DCP 2012 (draft) Chapter 115 - Section 3.16 Rustrum Site, which requires the provision of public foreshore access to Lake Budgewoi.
- 2 That Council, subsequent to the agreement outlined above, insert a new requirement within Section 3.16 Rustrum Site, as follows:

"Public foreshore access should be provided for the full frontage of the development along Budgewoi Lake. The design is to incorporate Crime Prevention through Environmental Design (CEPTED) principles. Alternatively, should such public foreshore access not be feasible, then alternative options for the achievement of significant public benefit shall be negotiated to the satisfaction of Council and the proponent. Such alternatives should include

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improved pedestrian and cycle connections to Osborne Park and the embellishment of the foreshore reserve in the locality.

Proposed Public Benefits

Council has advised that the public benefit for the Rustrum Key Site Concept, will be in the order of \$1.23 million.

Following discussions with Council staff, Rustrum proposes to allocate the public benefit as follows:

- Toukley Gardens Park improvements \$600,000 approximately; and
- Osborne Park and pathway improvements \$600,000 approximately.

The details of the public benefit will be subject to agreement with Council and detailed designs of the proposed improvement works.

Public Foreshore Access on the Rustrum Site

There is no significant public benefit in providing public access to the Rustrum foreshore.

The Rustrum frontage to Budgewoi Lake is some 80 metres. Immediately to the west is the Beachcomber Hotel to the high water mark and beyond, immediately to the east is private property to the high water mark. There is no public access either along the lake foreshore or over the Rustrum site to the lake as shown in Figure 1. Locally the lake bottom is covered in heavy layer of ooze which makes wading very difficult and compromises recreational use.

The merits of foreshore access on the Rustrum site were assessed in detail via the Part 3A project approval for seniors living that applies to the site. As public access was found to be contrary to Crime Prevention through Environmental Design principles it was not required as part of the approval. The main issue was that public access was incompatible with good security and patron management for the adjoining hotel. The area was going to be very difficult to police due to its visual and physical isolation from adjoining roads and public places.

In addition to the security and policing issues it is not clear how public access would be provided as there is no public access along the foreshore. Public access would have to be over the Rustrum site. If access was to be from the adjoining park then there would have to be stairs to accommodate the steep fall in levels. There would thus be quite limited public access opportunities.



Figure 1: Lake Budgewol Foreshore and location of Rustrum Site.

Overall, there is no net public benefit in providing public access to the Rustrum site foreshore.

For these reasons Rustrum believes that, in accordance with the Council resolution, foreshore access on the site is not feasible.

Toukley Gardens Park Improvements Public Benefit

The Park and the Rustrum site are identified as part of an entry / arrival node for Toukley see Figures 2 and 3.

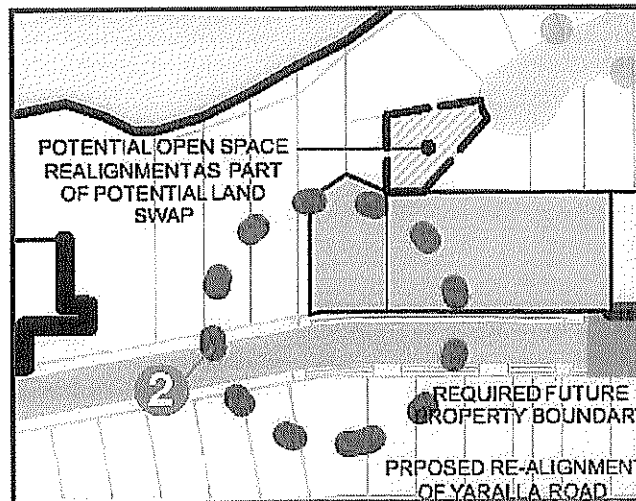


Figure 2: Extract of Extract of Toukley Town Centre Public Domain Plan.



The Toukley Planning Strategy 2010 makes the following recommendations in respect of Toukley Gardens Park.

Enhance Toukley Gardens including improvement to landscaping, furniture and explore the opportunity for appropriate public art to contribute to the Precinct. Investigate opportunities to improve the park outlook and connections to the foreshore or northern residential areas.

The potential land swap identified in Figure 2 has already been agreed between Rustrum and Council and a subdivision to provide suitable connections has been approved. The park outlook has been a primary consideration in concept design of the key site.

The Toukley Town Centre Public Domain Plan (see figure 3) shows the Park as an entry and arrival node. Creation of the node is identified as a key short term project for Council.

Enhancement of Toukley Gardens Park to a very high standard will directly address Council policy objectives.

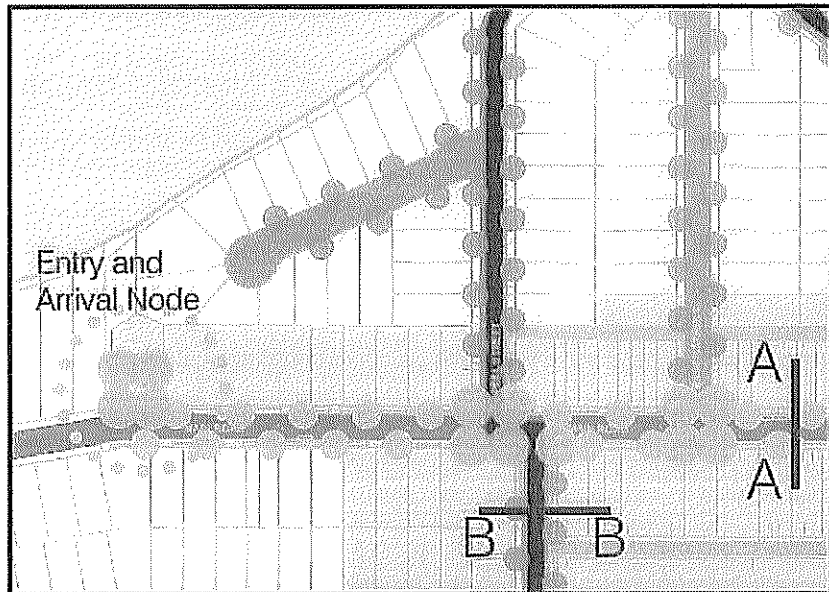


Figure 3: Extract of Toukley Town Centre Public Domain Plan showing Toukley Gardens Park node.