JRPP No:	2009HCC005
DA No:	DA 36982/2009
PROPOSED	
DEVELOPMENT	Proposal is for ten (10) tourist units and associated facilities
	Avoca Drive, Kincumber.
APPLICANT:	SJH Planning & Design
REPORT BY:	Gosford City Council
CONTACT:	Fred Dobbs
TELEPHONE:	02 4325 8183

# **Assessment Report and Recommendation**

# **EXECUTIVE SUMMARY**

# Reason for Referral to Joint Regional Planning Panel (JRPP)

The proposal is development under Clause 13C(a)(iii) of SEPP (Major Projects) Amendment (Joint Regional Planning Panels) 2009.

# **Assessing Officer**

F W Dobbs

# Application Received 09/07/2009

# Proposal

Ten (10) Tourist Units, Shed and Overflow Car Parking Area for Restaurant / Gallery

#### Zone

Scenic Protection 7(c3) Tourist

# **Area**

15420m<sup>2</sup>

# City Vision 2025

Although not a statutory Plan, the proposal is consistent with the City Vision.

# **Public Submissions** One (1)

Pre-DA Meeting Not Held

#### Political Donations None Declared

None Declared

# **Relevant Statutory Provisions**

- 1 Environmental Planning & Assessment Act, 1979 Section 79C
- 2 Local Government Act 1993 Section 89
- 3 Interim Development Order 122 (Clauses 5 & 24)
- 4 Rural Fires Act 1997 (S100B)
- 5 SEPP 1 Development Standards
- 6 SEPP (Major Development) 2005
- 7 DCP 149 Environmental Controls for Development in the Conservation and Scenic Protection 7(c3) Tourist Accommodation Zone
- 8 DCP 106 Controls for Site Waste Management

- 9 DCP 111 Car Parking
- 10 DCP 159 Character
- 11 DCP 165 Water Cycle Management
- 12 Coastal Lagoons Management Plan

# **Key Issues**

- 1 Interim Development Order No 122
  - Objectives of Zone
    - Character
    - Clause 24 / FSR / SEPP 1 Objection
  - Clause 24 / Height / SEPP 1 Objection
  - Climate change and sea level rise
- 3 SEPP 71

2

- 4 SEPP (Major Development) 2005
- 5 Requirements of DCP 149 Environmental Controls for Development in the Conservation and Scenic Protection 7(c3) Tourist Accommodation Zone
- 6 Sewerage / Effluent Disposal Issues
- 7 Car Parking
- 8 Comments from the RTA / Access
- 9 Environmental & Tree Management Issues
- 10 Comments from Rural Fire Service
- 11 Public Submission

# Recommendation

# REFUSAL

# REPORT

# Background

#### (a) Previous Application

An earlier application (DA 36404/2009) being a similar proposal was refused by Council on 17/04/09 for the following reasons:

- 1 Insufficient information has been submitted to enable Council to undertake a complete and accurate assessment of the proposal, including;
  - a A detailed arborist report prepared by a level 5 Arborist.
  - b Elevations and sections of each proposed unit showing natural ground level, floor level and ridge levels to AHD.
  - c Details of the access driveway including the extent of cut and fill and retaining walls or batters.
  - d Details of the proposed shed.
- 2 The development will result in the eventual removal of many existing trees despite the plans showing that all trees are to be retained. Considering the size and location of the trees the proposed layout for the tourist units is considered inappropriate and is not supported by Council's Tree Assessment Officer.

Council's notification of determination included the following information:

"It is unlikely that the current layout of the development will be supported by Council in a future application for tourist units on the site. Accordingly it is recommended that further discussions be held with Council (once the additional information is prepared) prior to the lodgement of a new application."

Council's notice of determination of refusal of DA 36404/2009 was dated 17/04/09. The advertising / notification period did not close until 24/04/09. Council refused the application prior to the close of advertising as the proposed tree removal and associated environmental issues were regarded as insurmountable. Immediate refusal minimised costs to the owner and negated the need for the applicant to expend further monies on consultant reports for a proposal that would not be supported by Council.

After approaches by the applicant outlining that Council had been hasty in determining the application, Council refunded the development application fees and accepted a new application, DA 36982/2009 with a reduced application fee of \$500.00.

# (b) Chronological History of Current Application

The following points represent a chronological summary of the current application (DA36982/2009):

- 1 09/07/09 The current proposal was submitted as an Integrated Development requiring approval under the Rural Fires Act 1997 (s100B).
- 2 24/08/09 the Rural Fire Service issued the Bushfire Safety Authority containing relevant conditions.
- 3 27/08/09 Council required the applicant to submit information regarding sewer, flora & fauna, clause 24 of IDO 122 regarding height and FSR compliance, car parking issues and concerns with the existing restaurant.
- 4 09/10/09 Council again requests information in 3 above and advises of RTA's requirements.
- 5 15/10/09 applicant submits information previously requested above including a Sewer Servicing Report by Treers Rose & Associates.
- 6 05/11/09 the RTA provide concurrence to the proposal under the Roads Act 1993 subject to conditions.
- 7 12/11/09 Council advised the applicant the Water & Sewer Directorate advise that sewerage of the site is technically feasible however the requirement to actually lay a sewer main within the RTA's road reserve requires the utilisation of a utility providers allocation within the road reserve. Other issues highlighted in Council's advice include a required reduction in unit numbers to reduce tree removal and a SEPP 1 objection regarding height being required. The applicant was invited to withdraw the application as a service provider is unlikely to allow their allocation within the road reserve to be used for provision of the sewer line.
- 8 23/11/09 applicant advises that application will not be withdrawn and connection to sewer is being pursued.

# The Site

# **Location Plan / Aerial Photo**



The site is located on the northern side of Avoca Drive approximately 520 metres south west of the Avoca Drive / Scenic Highway roundabout, directly opposite Brentwood Retirement Village. The site is basically an L-shaped allotment falling away from Avoca Drive to the rear and contains the existing Lizottes Restaurant and Art Gallery. Both these existing uses have been approved by Council

#### **Bangalow Stud**

The property known as Bangalow Stud, being Lot A DP 449600 and Lot 2 DP 976799 is located 65 metres to the west of the subject property (ie separated by one lot). The Department of Planning have issued Director Generals Requirements (DGR's) for a Part 3A Project consisting of 80 Tourist Villas and Conference Centre on the Bangalow Stud Site. The time limit of the DGR's has been extended by the Department and the current expiry date is 3 March 2011. The DGR's include requirements regarding utilities and consultation with Council regarding a proposed on site sewer management (OSSM) system.

Due to the location of the site in the Avoca Lagoon Catchment it is unlikely Council will agree to an OSSM system. Connection to Council's sewer system will be required under DCP 149 -Environmental Controls for Development in the Conservation and Scenic Protection (7(C3) Tourist Accommodation Zone. The proposal comprises the following:

- 1 Ten (10) x two (2) bedroom tourist units;
- 2 Reconstruction of an existing shed containing staff amenities at the rear of the site (9m x 9m);
- 3 Redesign of the existing parking arrangements and provision of a total of fifty-seven (57) car parking spaces for use by the existing restaurant/art gallery; and
- 4 Reconstruction of access and construction of an access road through the site to provide access to the proposed units and shed.

# Assessment

This application has been assessed using the heads of consideration specified under Section 79C of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans. The assessment supports refusal of the application and has identified the following key issues which are elaborated upon for the Panel's information.

# **Interim Development Order 122**

#### a Objectives Of Zone

Clause 5(3) of Interim Development Order No 122 stipulates that consent must not be granted for development of land within the prescribed zone, unless the objectives of the zone have been taken into consideration in conjunction with the objectives of the Local Government Act 1993, pertaining to Ecologically Sustainable Development.

The objective of Zone No. 7(c3) is to enable a limited range of development, including tourist accommodation, on land between the Somersby Plateau and the ocean which has been identified as possessing significant aesthetic or conservation value, and where:

- (a) it can be demonstrated that the development can be carried out in a manner which will not significantly prejudice the aesthetic or conservation quality of the land within the zone; and
- (b) the development is unlikely to have a significant detrimental effect on the growth of native plant communities, the survival of native wildlife populations or the provision and quality of habitats for both indigenous and migratory species; and
- (c) the development will not place undue demands on existing infrastructure.

The proposed site layout will adversely impact on existing mature trees and habitat for threatened and non-threatened fauna species and is contrary to objectives (a) and (b). The applicant has not been able to demonstrate that the site can be connected to Council's sewer system and is therefore contrary to objective (c).

In this instance, it is considered that the proposal is inconsistent with the stated objectives of the Scenic Protection 7(c3) Tourist Zone as well as being inconsistent with the principles of Ecologically Sustainable Development, as specified within the Local Government Act 1993. (Refer refusal reason 6)

#### b Character

Clause 5(4) of Interim Development Order No 122 stipulates that the Council must not grant consent for development unless it has taken into consideration the character of the

development site and the surrounding area, where, for the purpose of this provision, character means the qualities that distinguish each area and the individual properties located within that area.

The site is located within the Kincumber East 13: Scenic Buffers character locality under DCP 159-Character. The main attributes of desired character with regard to the proposal are as follows:

- these areas should remain rural-residential buffers with low impact rural activities and uses having a modest impact on natural scenic qualities and amenity of surrounding properties in the locality;
- retain natural slopes and prevent further fragmentation of the tree canopy in order to maintain the tree canopy and the informal scenic character of the hillside or valley properties;
- limit intrusion of structures upon their landscape setting by concentrating new buildings and pavements in cleared areas;
- use low impact construction such as suspended floors and decks rather than extensive cut and fill;
- in bushfire prone areas hazard must not be increased by inappropriate new plantings or structures;
- the ideal compromise between desired scenic quality and hazard reduction would limit clearing to the understorey plus thinning of the canopy to establish breaks between existing trees;
- maintain an informal character of existing semi-rural hillsides by avoiding tall retaining walls, extensive terraces or broad driveways that would be visible from the road or nearby properties, and provide see through boundary fencing such as post and rail design;
- surround all buildings with extensive garden setbacks, planted prominently indigenous trees and shrubs to complement the established canopy;
- all new structures that would be visible from a road or nearby property should reflect the modest character and simple articulation of traditional farm buildings;
- roofs should be simple hips or gables without elaborate articulation, gently-pitched to minimise the height of ridges and flanked by wide eaves or extensive verandahs to disguise the scale of exterior walls;
- ensure that outbuildings are compatible with the scale and design of their associated dwelling, particularly by using a similar roof pitch and wide eaves. Any commercial signs should be limited in size and number.

The proposed development consists of low-impact single storey buildings and minimal cut/fill, however a substantial number of trees will require removal. Two of the trees requiring removal in the vicinity of Unit 8 contain hollows and removal of these trees will impact on native fauna. A redesign including relocation of a number of units is required to minimise tree removal. In this instance, the proposal therefore does detract from the character of the immediate locality. (Refer refusal reason 1)

# c Clause 24(1)(a) / Site Area / SEPP 1 Objection

Clause 24(1)(a) of IDO 122 requires a minimum site area of 2 ha for development containing tourist units. The site contains an area of 1.549ha which equates to a variation of 23% or site area shortfall of  $4,581m^2$ 

The applicant has lodged an objection under SEPP No 1 contending the following:

"1 The proposal complies with Clause 24(1)(b) requiring a floor space ratio not exceeding 0.15:1. The FSR of the proposal is 0.093:1.

- 2 Adherence to the standard would dictate against the rational, orderly and economic development of this land, strategically positioned to take optimum advantage of existing rural residential amenity.
- 3 Adherence to the standard would reduce the lands utility in the context of its coastal location with respect to resort facilities
- 4 Adherence to the standard would limit the potential opportunity to capitalise on the existing investment within the site."

# Comment

The Land and Environment Court set five specific questions to be asked when determining the applicability of a SEPP 1 Objection. His Honour Justice Lloyd in *Winten Property Group Limited v North Sydney Council* [2001] *NSWLEC 24* asked the questions which should be asked in relation to each of the SEPP 1 Objections:-

- "1 Is the planning control in question a development standard?
- 2 What is the underlining objective or purpose of the standard?
- 3 Is compliance with the Development Standard consistent with the aims of the policy and in particular does compliance with the Development Standard tend to hinder the obtainment of the objectives specified in Section 5(a)(i)(ii) of the EP&A Act?
- 4 Is compliance with the development Standard unreasonable or unnecessary in the circumstances?
- 5 Is the objection well founded?"

With regard to the above;

- 1 The planning control of minimum site area is a development standard.
- 2 The underlying purpose or objectives of the standards is to control the bulk, scale and size of development on 7(c3) zoned land, so that it is consistent with the zone objectives and does not significantly impact surrounding properties. The proposal is not consistent with the objectives of the zone.
- 3 The proposal will have a significant disturbance of the site due to the number of units proposed and tree removal. The proposal is an overdevelopment of the site which is also as a result of the size being less than 2ha. Compliance with the development standard would not hinder the obtainment of the objectives specified in Section 5 of the EP&A Act.
- 4 Compliance with the development standard is not considered to be unreasonable or unnecessary in the circumstances of this case even though the proposal complies with the FSR requirement of Clause 24(1)(b) of IDO 122.
- 5 Therefore the objection is not considered to be well founded. Similar variations to lot size will have a significant cumulative effect.
  (Refer Refusal Reason 7)
- d Clause 24 / Height / SEPP 1 Objection

Clause 24(1)(c) of IDO 122 requires a maximum height of 7 metres for development containing tourist units. The height of proposed units is up to 7.5m which is a variation of up to 0.5m or 7.1%.

The applicant has lodged an objection under SEPP No 1 contending the following:

- "1 The portions of the building that do exceed the height control are so minor as when read in context will be unnoticeable
- 2 The departures in height have no impact with respect to internal amenity, off-site impact regarding overshadowing, privacy and the like.
- 3 The height departure does not manifest itself in any material way and accordingly compliance is unreasonable and unnecessary.
- 4 Enforced compliance by lowering roof pitch may have a deleterious impact in relation to leaf litter."

# Comment

The Land and Environment Court set five specific questions to be asked when determining the applicability of a SEPP 1 Objection. His Honour Justice Lloyd in *Winten Property Group Limited v North Sydney Council* [2001] *NSWLEC 24* asked the questions which should be asked in relation to each of the SEPP 1 Objections:-

- "1 Is the planning control in question a development standard?
- 2 What is the underlining objective or purpose of the standard?
- 3 Is compliance with the Development Standard consistent with the aims of the policy and in particular does compliance with the Development Standard tend to hinder the obtainment of the objectives specified in Section 5(a)(i)(ii) of the EP&A Act?
- 4 Is compliance with the development Standard unreasonable or unnecessary in the circumstances?
- 5 Is the objection well founded?"

With regard to the above;

- 1 The planning control regarding height is a development standard.
- 2 The underlying purpose or objectives of the standards is to control the bulk, scale and size of development on 7(c3) zoned land, so that it is consistent with the zone objectives and does not significantly impact surrounding properties.
- 3 Compliance with the development standard would hinder the obtainment of the objectives specified in Section 5 of the EP&A Act.
- 4 Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as the proposal complies with the FSR requirement of Clause 24(1)(b) of IDO 122.
- 5 The objection is well founded as the variation to height is insignificant and does not impact surrounding properties due to setbacks and the minor nature of the non-compliance at a maximum of 0.5m.

# Climate change and sea level rise

Climate change and sea level rise have been considered in the assessment of this application.

Climate change and sea level rise will be felt through:

- increases in intensity and frequency of storms, storm surges and coastal flooding;
- increased salinity of rivers, bays and coastal aquifers resulting from saline intrusion;
- increased coastal erosion;
- inundation of low-lying coastal communities and critical infrastructure;
- loss of important mangroves and other wetlands (the exact response will depend on the balance between sedimentation and sea level change); and
- impacts on marine ecosystems.

Internationally there is a lack of knowledge on the specifics of climate change and the likely impact it will have on the subject development. Government action may mitigate the impact of climate change and the question of sea-level rise may be able to be addressed through the construction of containment works or through Council's policies that may be developed over time.

In the absence of any detailed information at the present however, refusal of this application is not warranted based on climate change and sea level rise.

# SEPP 71

The provisions of State Environmental Planning Policy (SEPP) No 71- Coastal Protection requires Council consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the Department of Planning NSW. The subject property falls within the Coastal Zone.

The Aims and Objectives and the matters listed under Clause 8 have been considered. The proposal involves the removal of a number of native trees which will impact on both threatened and non-threatened fauna species. The proposal therefore does not comply with clauses 2(e), 2(g), 2(k) regarding the aims of the Policy and the matters for consideration listed under clauses 8(d) and 8(f).

# (Refusal reason 4)

# SEPP (Major Development) 2005

Clause 13C(a) of SEPP (Major Projects) Amendment (Joint Regional Planning Panels) 2009 is as follows:

13C Coastal Development to which Part applies

This Part applies to development within the coastal zone for any of the following purposes:

(a) caravan parks and tourist and visitor accommodation:

- (i) in the case of development wholly or partly in a sensitive coastal location outside the metropolitan coastal zone that provide accommodation (or additional accommodation) for 10 persons or more, or
- (ii) in the case of development wholly or partly in a sensitive coastal location in the metropolitan coastal zone that provide accommodation (or additional accommodation) for 100 persons or more, or
- (iii) in the case of development outside a sensitive coastal location that is not connected to an approved sewerage treatment work or system - that provide accommodation (or additional accommodation) for 25 persons or more.

# <u>Comment</u>

The proposal involves tourist accommodation outside a sensitive coastal location (as defined under SEPP 71), which cannot be connected to an approved sewerage treatment work or system and provides accommodation for 25 persons or more. **The Joint Regional Planning Panel** is therefore the consent authority for the application.

# Requirements of DCP 149 - Environmental Controls for Development in the Conservation and Scenic Protection (7(C3) Tourist Accommodation Zone

The aims of DCP 149 are as follows:

- to provide further detail to guide assessment relating to tourist-related development to that provided in Council's planning instrument.
- to encourage tourist-related development which is sympathetic with the ecological characteristics of the land on which it is located and in the catchment of the land.
- to encourage tourist-related development where the layout of the development ensures that the natural/rural characteristics are the dominant feature of the land.
- to encourage tourist-related development where the design of buildings blends with the natural/rural setting.

Specific requirements to achieve the above aims are as follows:

- (a) Restrict the amount of development on land on slopes greater than 20%.
- (b) Maximise retention of existing native vegetation.
- (c) Restrict the amount of cut and fill.
- (d) Ensure provision of utility services protects ecological and landscape values of land and catchment and connection to Council's sewer system for any tourist related development.
- (e) Encourage a design of tourist development which is compatible with the natural/rural character of Conservation and Scenic Protection land in the City.

#### Comment on aims and specific requirements of DCP 149

The proposal involves the removal of many native trees including two (2) trees containing hollows and habitat for native fauna. A more suitable design is required to adjust location of proposed building footprints and reduce the number of units to minimise tree removal.

A specific requirement to achieve the aims of DCP 149 is the requirement to connect to Council's sewer system for any tourist related development. The proposed development cannot be connected to Councils Sewer system. The proposal therefore does not comply with the aims and specific requirements of DCP 149.

#### (Refer refusal reason 2)

#### Sewerage / Effluent Disposal

#### Sewer Connection

The development application has been submitted prior to the applicant investigating the feasibility of connection to Councils sewer system. The applicant subsequently attempted to address the issue of sewer connection by submitting a sewer design to Council's Water & Sewer Section as part of the development application. The proposed sewer design involves provision of a gravity sewer from the southwest corner of the subject site westerly along Avoca Drive and crossing into Melville Street to the existing sewer dead end (i.e. PE/DE).

Council's Water & Sewer Section provide the following advice regarding sewer connection:

- It is technically feasible to sewer the site however the requirement to actually lay a sewer main within the RTA's road reserve requires the utilisation of a Utility provider's allocation within the road reserve. Each Utility provider is generally given 2 allocations (one on either side of the road).
- The southern road reserve *boundary* is fairly well defined and set, since the road widening along the southern side of this stretch of Avoca Drive has already occurred. The northern Utility allocations cannot be defined at this stage and are not practical to utilise since the acquisition for road widening has not been completed on that side of the road. Utility allocations would meander in and out, due to the irregularly alignment of the road reserve boundary.
- The RTA has already given its preliminary concurrence for the proposed sewer main to be laid within the road reserve, however it would need to be located within one of the utility allocations within the road reserve.
- Council's Water and Sewer Section are planning to utilise its allocation for the upgrade of its trunk water main. Hence it cannot be utilised for the sewer main.

Regarding the above, **the Applicant** was required by letter from Council dated 12 November 2009 to obtain the concurrence from one of the other Utility providers to utilise their allocation for services in order to lay the sewer main within that utility provider's allocation. The applicant was further advised that failing the resolution of this issue, the proposed development cannot be sewered and therefore will not be supported by the Water & Sewer Directorate. Council's Water & Sewer Directorate provided this information to the applicants Engineering Consultant (Trees Rose & Associates) on a number of occasions. The applicant has been unable to obtain use of one of the utility allocations therefore the proposal cannot be connected to the Council's sewer system.

# (Refer refusal reason 3)

# On Site Sewer Management System (OSSM)

The applicant has not submitted nor been requested to submit a design for a proposed OSSM system. The site is located within a lagoon catchment and has insufficient area for on-site disposal of effluent. The intention of the applicant has been to provide sewer connection from the outset. A sewer connection cannot be provided therefore the application cannot be supported by Council.

# Car Parking

The originally submitted plans provided insufficient information regarding car parking for the existing restaurant/art gallery. Existing on-site parking is insufficient regarding both number of spaces and manoeuvrability. The proposal is somewhat integrated with the existing development particularly regarding access and parking therefore the applicant was requested to and subsequently provided a workable arrangement containing a compliant number of parking spaces. The amended site plan now provides for a total of 57 spaces for the restaurant / art gallery and one space for each tourist unit. The amended car parking proposals comply with the requirements of both Council and the RTA.

## Comment from the RTA / Access

The site has access to a State Road (Avoca Drive) and was therefore referred to the RTA for comment under the Roads Act, 1993. The RTA advised by letter dated 5/11/09 that there is no objection to the proposal subject to a number of conditions.

#### **Environmental and Tree Management Issues**

Council's Senior Environment Assessment Officer has provided the following comments regarding the proposal:

"The subject site is heavily treed with many specimens exhibiting an over mature age class with hollow-bearing sections. Given this, the suitability of the current tourist unit layout needs to be carefully examined based on ecological conservation and long term tree retention. On-site discussion with Councils Tree Assessment Officer indicates that the current proposal is likely to require the removal of approximately 7 additional trees to those already nominated. It is considered that some minor adjustment to the current layout could lead to the long-term retention of approximately 10 additional trees to those already nominated. This issue needs to be carefully considered in the context of the zoning. Essentially this will require the current site layout to be reconfigured.

The current proposed site layout will adversely impact on existing mature trees and habitat for threatened and non threatened fauna species and is contrary objectives (a) & (b) of 7(c3) zoning. Further, On-site effluent disposal is likely to lead to increased nutrient flows within the Avoca lagoon catchment and would be contrary to Clause 2.3 of the GCC Coastal Lagoon Management Plan.

The objectives of the relevant policies, zoning objectives and potential environmental impacts associated with the proposal have been considered. The application is not supported for the following reasons:

- On-site effluent disposal is likely to lead to increased nutrient flows within the Avoca • lagoon catchment and would be contrary to Clause 2.3 of the GCC Coastal Lagoon Management Plan;
- The proposed site layout will adversely impact on existing mature trees and habitat for • threatened and non threatened fauna species and is contrary objectives (a) & (b) of 7(c3) zoning;
- Based on non compliance with zoning objectives the application ought to be refused subject to Clause 5(3) of IDO 122." (Refer refusal reasons 5 & 6)

# **Comments from Rural Fire Service**

The application was referred to the RFS as an integrated approval body under s100B of the Rural Fires Act 1997. The RFS advised by letter dated 24 August 2009 that there is no objection to the proposal subject to conditions.

#### **Public Submission**

One public submission was received in relation to the application. Those issues associated with the key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submission is detailed hereunder.

#### 1 Sewerage - current disposal system not coping, smells.

# Comment

The proposal is to provide connection to Council's sewer system. A proposed system has been submitted to Council's Water & Sewer Directorate however the applicant has not JRPP (Hunter and Central Coast) Business Paper – 28 January 2010 – Item No. 1 12 been able to demonstrate that the pipe can be located within a service providers allocation within Avoca Drive. The application is therefore not supported by Council as the Water Supply Authority under the Water Supply Authority Act.

# 2 Security as guests may enter adjoining property.

#### Comment

If the application were to be approved, installation of appropriate boundary fencing would be required as a condition of consent.

# 3 Noise / Lights. The existing restaurant emits noise from live bands and patrons arriving and departing.

#### Comment

The issue of noise emanating from the restaurant is a matter for the licensing Police and if considered unreasonable should be reported to the appropriate authority.

# 4 Garbage - The application does not indicate how garbage will be managed.

#### Comment

The issue of garbage would be controlled by an appropriate condition of consent if the application were supported by Council.

#### Conclusion

The application was advertised / notified in accordance with DCP 128 - Public Notification of Development Applications and one submission was received. Issues raised in the submission could be resolved by appropriate conditions of consent except for the connection to the sewer system and minimum lot size required for such development.

Both the RTA and the RFS have no objection to the proposal subject to conditions of consent.

The proposal does not comply with the minimum site area or the maximum building height permitted under Clause 25 of IDO 122. The submitted SEPP 1 objection has not demonstrated that compliance with the development standard relating to minimum site area is unreasonable and unnecessary in this instance.

Environmental issues such as tree removal and impact on flora and fauna may be resolvable by redesign and/or deletion of some units, however Council has not required any further information as the issue of connection to Council's sewer system cannot be resolved by the applicant. The application is therefore not supported as there is no feasible alternative for effluent disposal.

The application was submitted to Council prior to the applicant resolving the sewer connection issue with Council's Water & Sewerage Directorate. Had the sewerage issue been resolved by the applicant prior to submission of the development application, costs to the owner of detailed reports and designs of an application that would not be approved unless connected to Council's sewer system could have been avoided. Notably the applicant was advised early in the assessment process (by letter dated 27 August 2009) that the sewer issue should have been resolved with Council's Water & Sewer Directorate prior to submission of the development application.

All relevant matters under Section 79C of the EP & A Act 1979, Section 89 of the Local Government Act, the objectives of the zoning and the principles of ecologically sustainable development have been considered and refusal is recommended.

The recommendation below outlines the reasons why the application should be refused.

Attachments: No

# Tabled Items: No

#### RECOMMENDATION

- A The Joint Regional Planning Panel (JRPP) as consent authority refuse Development Application No. 36982 for the proposed Ten (10) Tourist Units, Shed and 13 Overflow Car Parking Spaces for Restaurant/Gallery on LOT: 3 DP: 421607, 0 Avoca Drive KINCUMBER for the following reasons:
  - 1 The proposal does not comply with the requirements of Clause 10(4) of the Gosford Planning Scheme Ordinance and DCP 159 - Character. The design requires removal of many native trees from the site without any feasible replacement or landscaping proposed to reinstate visual and scenic quality.
  - 2 The proposal does not comply with the aims and specific requirement of DCP 149 -Environmental Controls for Development in the Conservation and Scenic Protection (7(C3) Tourist Accommodation Zone, particularly with regard to connection to Council's sewer system and tree removal.
  - 3 The applicant has been unable to obtain the approval of Council's Water & Sewer Section to an approved sewer connection. There is therefore no acceptable way of disposing of effluent as the site is unsuitable for an on site sewer management system due to insufficient area and location within a Lagoon Catchment.
  - 4 Due mainly to required vegetation removal the proposal does not comply with SEPP 71 - Coastal Protection with regard to the aims and matters for consideration, particularly in relation to clauses 2(e), 2(g), 2(k), 8(d) and 8(f).
  - 5 On-site effluent disposal is likely to lead to increased nutrient flows within the Avoca lagoon catchment and would be contrary to Clause 2.3 of the Gosford City Centre Coastal Lagoon Management Plan.
  - 6 The proposed site layout will adversely impact on existing mature trees and habitat for threatened and non threatened fauna species. Together with the inability to connect to Council's sewer system the proposal is contrary to the objectives of the 7(c3) zoning.
  - 7 The objection under SEPP No 1 to the development standard of Clause 24(1)(a) of IDO No 122 is not well founded. Adherence to the standard is reasonable and similar variations would have a significant cumulative impact.
  - 8 The proposal is an overdevelopment of the site.
- B The applicant be advised of Councils decision and of their right to appeal to the Land and Environment Court within 12 months after the date of determination.
- C The objectors be notified of the Panel's decision.
- D The RTA & RFS be notified of the Panel's decision. JRPP (Hunter and Central Coast) Business Paper – 28 January 2010 – Item No. 1

· <b>SJH</b> PLANK	VING & DESIGN
23 <sup>rd</sup> November, 2009	FRED DOBBS
The General Manager Gosford City Council PO Box 21 GOSFORD NSW 2250	
VIA EMAIL/DELIVERED BY HAND: fred.dobbs@gosford.nsw.gov.au	GUSFORD CITY COUNCIL DATE RECEIVED
Dear Sir, Re: Development Application No. 36982 / 2009	2 3 NOV 2009 CUSTOMER SERVICE

#### RE: DEVELOPMENT APPLICATION NO. 36982 / 2009 PROPOSED TOURIST UNITS AND SHED (INTEGRATED DEVELOPMENT) LOT 3 DP 421607 AVOCA DRIVE, KINCUMBER

We acknowledge receipt of your letter dated 12<sup>th</sup> November, 2009, and reconfirm that we are at the present time waiting a response from both Roads and Traffic Authority and Council's Staff in relation to a meeting program to occur sometime in the next week or so (we hope). That meeting of course is to address the alignment/allocation of the sewer route in the road reserve.

We are not instructed to withdraw the Development Application, but to pursue the connection to the reticulated system as previously advised.

In relation to the "Other Issues" raised, I advise as follows: -

a) "Layout and number of Units/Environmental and Tree Preservation Issues – A revised layout and reduction in unit numbers will result in a reduction in tree removal. A site inspection with the applicant, the undersigned, Council's Tree Management Officer and Council's Senior Environmental Officer would be required to address this issue";

#### Comment

We would be grateful for the opportunity to meet on-site to review the finite details.

 b) "SEPP 1 Objection – Height – The issue of the 7m maximum permissible height standard of Clause 24 has not been addressed. Additional information as outlined in my letter of 19<sup>th</sup> October, 2009 has not been submitted";

#### Comment

The issue of the 7m height control as contained within the provisions of Clause No. 24(1)(c) is addressed in the attached SEPP No. 1 Submission.

We also attach Architectural Plans indicating the 7m height limit and the minor extent of departure which does occur (ranging from zero to (about) 0.5 metres) for small areas of roof protrusions none of which would materially impact on the scenic quality of the neighbourhood nor detract from the amenity of the precinct in a material way.

Environmental Planners . Local Government Liaison . Land Development . Project Management . Building Designers . Liquor Licence Submissions

1 MCCAULEY STREET, DAVISTOWN NSW 2251 . PO Box 3255, ERINA NSW 2250 . TEL: 02 4369 8111 . FAX: 02 4369 8122 GENERAL CORRESPONDENCE – mail@ionghillplanning.com.au ABN 37 134 715 076 . ACN 134 715 076 c) "Response to Submission – Issues include sewerage, security, noise/lights, garbage/waste management. This submission has previously been provided requesting comment";

#### Comment

Other matters raised in submissions are: -

- Sewerage it is always been the intention of the owner to connect the project to the reticulated sewer system and in doing so relieve the site for the present burden of onsite disposal from the existing (Lizottes) Restaurant.
- Security Eco tourism and more regular occupation of the units is proposed will see a higher presence of permitted users in and about the property which should have the benefit of reducing unauthorised activity.

In particular, a greater presence in and about the property via Site Management Staff should also ensure containment of noise, lights and waste management. These issues were addressed at least in part in earlier communications and are matters that might also be addressed in perpetuity by attachment of appropriate Conditions of Consent.

Yours faithfully,

John Hancock

#### JOHN HANCOCK

CC: Lorna McGregor; Treers Rose & Associates; Rick Brocklehurst (via email)– Gosford City Council; Craig Leckie – Roads & Traffic Authority.

Encl: SEPP No. 1 Submission; Architectural Plans.

# OBJECTION PURSUANT TO STATE ENVIRONMENTAL PLANNING POLICY NO 1 DEVELOPMENT STANDARDS (2)

Name and Address of Objector:

SJH Planning & Design Pty Ltd 1 McCauley Street DAVISTOWN NSW 2251

**Property Description:** 

Lot 3 in Deposited Plan No. 421607 Avoca Drive KINCUMBER NSW 2251

Proposed Development and/or Use:

The proposed development involves the erection of ten (10), two (2) bedroom tourist units.

The proposed development is described in detail of the accompanying Statement of Environmental Effects.

Development Standard to which the Objection Relates:

The height control contained within Clause No. 24(1)(c) of Interim Development Order No. 122 which dictates:

"the height of any building......(must not exceed) 7 metres".

Environmental Planning Instrument which specifies the Development Standard:

Interim Development Order No. 122.

Proposed Variation to Development Standard:

Zero to 0.5 metres and variable for small areas of individuals buildings (see Architectural Plans attached).

#### SJH PLANNING AND DESIGN PTY LTD ACN 134 715 076

#### **Reasons for Proposed Variation:**

- 1. The purpose of the height control although not stated is clearly one of a number of measures aimed at addressing building height and bulk within 7(c)(3) Tourist Uses Zone.
- 2. The control is contained within Clause No. 24 of Interim Development Order No. 122 which addresses the floor space ratio of 0.15:1 as well as height; both matters which go to the control of buildings bulk and height.
- 3. It is generally agreed among practitioners that floor space ratio and height controls of themselves and by themselves are not "fail safe" mechanisms to control height and bulk however, applied objectively in design, such controls assist in containing height and bulk of buildings.
- 4. The portions of buildings that do exceed height control is so minor as when read in context will be unnoticeable.
- 5. The departures in height when considered in the context of this site (concealed from public view and exposure to the public domain by the natural topography of the locality) and the buildings departure from height controls have no impact with respect to internal amenity of off-site impact with respect to overshadowing, privacy and the like.
- 6. The departure from height control is minor; does not manifest itself in a material way and accordingly strict compliance is unreasonable and unnecessary in the circumstances and may result in a compromise to (lower roof pitches) which has deleterious impacts in relation to management of leaf litter.

Given that there are no measurable impacts arising from the result of departures in overall height, then we submit that strict compliance with the development standard is unreasonable and unnecessary and in the circumstances the height control needs to be relaxed.

#### SJH PLANNING AND DESIGN PTY LTD ACN 134 715 076

14<sup>TH</sup> October, 2009

The General Manager Gosford City Council PO Box 21 GOSFORD NSW 2250

**URGENT ATTENTION:** 

Fred Dobbs

 $\mathbf{S}$ . $\mathbf{H}$ 

DELIVERED BY HAND

GOSFORD CITY COUNCIL DATE RECEPT 1 5 OCT 2009 CUSTOMER SERVICE UNIT

ፚ

PLANNING

Dear Sir,

#### RE: DEVELOPMENT APPLICATION NO. 36982 / 2009 PROPOSED TOURIST UNITS AND SHED (INTEGRATED DEVELOPMENT) LOT 3 DP 421607 AVOCA DRIVE, KINCUMBER

We thank you for the time taking in reviewing matters surrounding this Development Application and now write to formally advise Council the outcome of our further investigations in conjunction with our associates Robert Payne, (Ecological Surveys and Management), Sue Slaytor (TREEcology), Robert Varga (Varga Traffic Planning Pty Ltd) and Chris White of course author of the Architectural Plans which form the basis of the Application.

In relation to the environmental issues raised in your earlier correspondence, Robert Payne of Ecological Surveys and Management was retained to revisit the site and to address the matters raised by Council's Environmental Officer. Mr Payne's Flora and Fauna Survey is attached. The Report contains a detailed summary of site investigations including by way of Annexure, the results of investigations conducted in 2006.

In brief Option No. 3 of the recommendations is adopted in terms of this Application to facilitate: -

- a) its approval; and
- b) the optimum retention of Hollow Bearing Trees; and
- c) the potential to assess the successful colonisation of nest boxes.

We understand that Option No. 3 might cause the deletion of Unit No. 8 from the approval, but note that the trees referred to in that locality will, due to their "over maturity" and likely failure, require removal in the medium term in any event.

In those circumstances, we find Option No. 3 as recommended by Mr Payne as being the most practical method to manage both the environmental issues and the development potential of this land concurrently.

In relation to vehicular access and management issues, please be advised that we have reviewed the advice of Robert Varga of Varga Traffic Planning Pty Ltd dated 23<sup>rd</sup> September, 2009 (copy attached) in the context of further investigations/refinements following our discussions with your Mr Dobbs.

Environmental Planners . Local Government Liaison . Land Development . Project Management . Building Designers . Liquor Licence Submissions

1 McCauley Street, Davistown NSW 2251 . PO Box 3255, Erina NSW 2250 . Tel: 02 4369 8111 . Fax: 02 4369 8122

GENERAL CORRESPONDENCE – mail@longhillplanning.com.au . DRAWINGS – design@longhillplanning.com.au ABN 37134715076 . ACN 134715076 A combination of those investigations now provide for: -

- a) increased provision of on-site car parking consistent with Roads and Traffic Authority concerns;
- b) the identification of dedicated loading/mini bus parking bay;
- c) the provision of emergency vehicle egress adjacent to the Western most boundary of the site;
- d) the inclusion of East West internal access to the expanded overflow car parking space;
- e) the incorporation of one-way service vehicle access through the tourist unit component (utilising the existing gravel road for maintenance/emergency vehicles); and
- f) the identification of dedicated bin storage areas for both the existing restaurant and proposed tourist unit areas.

Note, waste servicing arrangements will facilitate the placement of bins as strategic locations in close proximity to the residential units for collection and delivery to the roadside for collection by Council's Contractor.

In relation to reticulated sewerage services we confirm that Tony Treers of Treers Rose and Associates has been in communication with other authorities and been able to confirm that the future road alignment on Avoca Drive, Kincumber provides adequate opportunity for infrastructure location within appropriate service corridors (corridors that are likely to be redefined in the medium term with road works contemplated). The further advice of Tony Treers of Treers Rose and Associates is attached.

Architectural Plans attached include details of accessible treatment to "typical unit" (in this instance Unit No. 2) that will satisfy the provision of disabled access requirements.

Roads and Traffic Authority road widening is also shown on the plans which we suspect will need to be redefined as both horizontal and vertical alignments of future road works are further detailed.

We also attached a photocopy of advice under the hand of Sue Slaytor of TREEcology dated 30<sup>th</sup> September, 2009, confirming the likely impact of Tree No. 156 upon failure; a matter that will undoubtedly remain of concern to the proprietor in terms of civil obligations.

The matters raised in Council's correspondence dated 14<sup>th</sup> September, 2009, have, we believe, been fully addressed and for completeness, a schedule commentary in reply to your further letter of the 9<sup>th</sup> October, 2009.

Yours faithfully, per-JOHN HANCOCK

CC: Lorna McGregor (via email/post); Ecological Surveys & Management (via email); Varga Traffic Planning Pty Ltd (via email); TREEcology (via email); Treers Rose & Associates (via email).

Two (2) copies of the Flora and Fauna Survey Assessment (September, 2009) and Addendum to Flora and Fauna Survey Assessment (October, 2009);

Two (2) copies of the Treers Rose and Associates Supplement Sewerage Servicing Reports, together with a CD;

Two (2) copies of the Varga Traffic Planning Pty Ltd's advice dated 23<sup>rd</sup> September, 2009; Three (3) sets of amended Architectural Plans;

Two (2) copies of TREEcology's advice dated 30<sup>th</sup> September, 2009;

Commentary in reply to Council's letter dated 9<sup>th</sup> October, 2009.

# ATTACHMENT TO SJH PLANNING AND DESIGN PTY LTD'S LETTER 14<sup>TH</sup> OCTOBER, 2009; RESPONSE TO GOSFORD CITY COUNCIL'S FURTHER LETTER 9<sup>TH</sup> OCTOBER, 2009

#### DEVELOPMENT APPLICATION NO. 36982 / 2009 PROPOSED TOURIST UNITS AND SHED (INTEGRATED DEVELOPMENT) LOT 3 DP 421607 AVOCA DRIVE, KINCUMBER

Matters raised in Gosford City Council's letter dated 9<sup>th</sup> October, 2009 (received by us on the 14<sup>th</sup> October, 2009) are responded to in seriatim: -

#### 1(a) Sewerage

Tony Treers of Treers Rose and Associates has via separate investigations now confirmed: -

- (a) that sewerage can be directed via a pressure system to the gravity reticulated main;
- (b) that there adequate space within the road reserve for "downstream reticulation" (see Treers Rose and Associate most recent Sewerage Servicing Report(s) attached which relate).

#### 1(b) Tree Removal

Certain of the trees required to be removed for this project are likely to be required to be removed in any event given the advice of Sue Slaytor of TREEcology.

It is noted in particular that the tree in the location of Unit No. 8 has been the focus of attention in the Robert Payne Flora and Fauna Survey Report (referred to below).

If Unit No. 8 is to be removed then trees in that location may be retained for the short term, but we note are likely to be removed given civil obligations in relation to known hazards.

#### 1(c) Environmental Report

The Environmental Report compiled under the hand of Robert Payne of Ecological Surveys and Management is attached. Mr Payne's recommendation includes the potential to retain trees in the location of Unit No. 8 and that as you will observe in the covering note which accompanies this advice, is a matter for Council's consideration.

#### 1(d) SEPP No. 1 – Objection

A SEPP No. 1 Submission was supplied to Council. We invite the Council to contact the writer should further detailed information be required.

#### 1(e) Car Parking

Car parking, see amended Architectural Plans.

#### 1(f) Roads and Traffic Authority Requirements

Noted, see amended Architectural Plans.

#### 1(g) Landscaping

Additional Landscaping Principles Plan have been supplied.

#### 1(h) Disabled Access

Amended Architectural Plans attached demonstrate how Unit No. 2 may be appropriately equipped to facilitate disabled access and fulfil necessary statutory requirements.

# 2 Joint Regional Planning Panel Determination

We note the timetable referred to and also, the fact that the matter would not become a Joint Regional Planning Panel referral issue following determination that the site is able to be sewered.

Give/that our advice is that the site can be sewered than we would expect the Joint Regional Planning Panel will have no further work to do.

# **DEVELOPMENT APPLICATION No 36982/2009**

# PROPOSED TOURIST UNITS (INTEGRATED DEVELOPMENT) LOT 3, DP 421607, AVOCA DRIVE, KINCUMBER

# SUPPLEMENT TO SEWERAGE SERVICING REPORT

For

SJH PLANNING & DESIGN

On behalf of

L. McGREGOR

OCTOBER 2009

Prepared by:

•

TREERS ROSE & ASSOCIATES PTY LTD ACN 002 886 535 ABN 71 002 886 535

ACN 002 886 535 6 5 BARRALONG ROAD, ERINA NSW 2250 CONSULTING CIVIL, STRUCTURAL ENGINEERS & PROJECT MANAGERS ٠

.

1	INTRODUCTION		
2	AVOCA DRIVE		
3	EXISTING SERVICES		
	3.1 V 3.2 F 3.3 (		
4	PROPOSED ROAD RECONSTRUCTION		2
5	5 PROPOSED SEWERAGE SERVICE		2
	5.2 F 5.3 F	DETENTION TIME PREFERRED OPTION ROUTE OF GRAVITY SEWER MAINTENANCE HOLES	
APP	APPENDICIES        1      Street Views of Avoca Drive        2      Aerial View        3      Council Water Plan        4      Dial-Before-You-Dig Details		3

# PROPOSED TOURIST UNITS (INTEGRATED DEVELOPMENT) LOT 3, DP 421607, AVOCA DRIVE, KINCUMBER

# SEWERAGE SERVICING

# 1 INTRODUCTION

This report is a supplement to the Sewerage Servicing Report issued by Treers Rose & Associates Pty Ltd in July 2009.

It examines the constraints involved in routing a gravity sewer from the southwest corner of the subject site, Lot 3, DP421607, westerly along Avoca Drive and crossing into Melville Street to the existing PE/DE.

# 2 AVOCA DRIVE

The existing Avoca Drive road reserve between the subject site and Melville Street varies from 20m wide in the vicinity of Melville Street increasing to approximately 25m wide along the frontage of Brentwood Village.

Roads & Traffic Authority plans indicate proposed road widening on the northern side of Avoca Drive by approximately 6.9 to 7.5m increasing toward Melville Street to provide a road reserve approximately 32m wide for future road widening.

# 3 EXISTING SERVICES

#### 3.1 Water

A DN100 water main is located along the southern side of Avoca Drive. Its route is approximately 7m off the southern boundary of the road reserve.

#### 3.2 Power

Energy Australia has overhead power lines located along both sides of Avoca Drive, that on the south being local power and that on the north being a high voltage transmission line.

There is no underground power along the route of the proposed sewer.

#### 3.3 Communications

- <u>Optus</u>: Optus has plant along the southern side of Avoca Drive located approximately parallel and near the DN100 water main. The service is also located along the western side of Melville Street.
- <u>Telstra</u>: Telstra has local lines along the southern side of Avoca Drive but a Dial-Before-You-Dig search indicates no major plant. Local lines also cross Avoca Drive and a single house service is located on the eastern side of Melville Street.

A detail from Council's water plan and copies of Dial-Before-You-Dig search details are attached for information.

An aerial photograph of the affected area and two views of Avoca Drive in the vicinity of "Lizottes" are also attached.

# 4 PROPOSED ROAD RECONSTRUCTION

It is proposed to widen and realign the relevant section of Avoca Drive in the future.

# 5 PROPOSED SEWERAGE SERVICE

#### 5.1 Detention Time

The original report advised that detention times under normal operating conditions would be in the vicinity of 1.1 to 1.5 hours. During off peak periods the detention time would be extended.

Flushing or chemical septicity control was suggested but an alternative will be to provide a timer in the pumping station controls to override the float switch control and operate the pump after a pre-determined time period to minimise detention time.

#### 5.2 Preferred Option

Four discharge options were suggested in the original report. The preferred option is to pump across Avoca Drive and discharge into a new gravity sewer to be located along the southern side of Avoca Drive into Melville Street terminating in a new manhole over line PE/DE. This option is compatible with the topography of the area.

#### 5.3 Route of Gravity Sewer

The locations of the existing services in Avoca Drive do not comply with any Space Allocation as designated in the Water Supply Code WSA-03 drawings number WAT-1151-S and WAT-1152-S.

The proposed gravity sewer could be located to be within a designated "Sydney Water" allocation but until an RTA road design is available this is not possible. In any case it is apparent that existing services will be relocated to fit with any new road design.

It is recommended that the proposed gravity sewer be located along the southern side of Avoca Drive either on an alignment between the road boundary and the water and communication services or between the water and communication services and the line of power poles.

It is apparent that the sewer will, of necessity, be relocated along with other services at a later date.

#### 5.4 Maintenance Holes

In order to maintain the gravity sewer within a narrow corridor the use of proprietary "Poo Pits" in lieu of standard maintenance holes is recommended.

Ca inthem Trees

Anthony Treers Principal Engineer, CPEng, BSc(Eng), MIEAust 09 October 2009

Lot 3, DP 421607, Avoca Drive, Kincumber Sewerage Strategy Treers Rose & Associates Pty Ltd 08022 Supplement to Sew Strat.doc

# **APPENDIX '1'**



Northern side of Avoca Drive - looking East



Southern side of Avoca Drive - looking West

۱

# **APPENDIX '2'**



# **APPENDIX '3'**



Lot 3, DP 421607, Avoca Drive, Kincumber Sewerage Strategy

•

# APPENDIX '4'

٠

.

.





WARNING - Due to the nature of Telstra underground plant and the age of some cables and records, it is impossible to ascertain the precise location of all Telstra plant from Telstra's plans. The accuracy and/or completeness of the information supplied can not be guaranteed as property boundaries, depths and other natural landscape features may change over time, and accordingly the plans are indicative only. Telstra does not warrant or hold out that its plans are accurate and accepts no responsibility for any inaccuracy shown on the plans.

It is your responsibility to locate Telstra's underground plant by careful hand pot-holing prior to any excavation in the vicinity and to exercise due care during that excavation.

Please read and understand the information supplied in the duty of care statement attached with the Telstra plans. TELSTRA WILL SEEK COMPENSATION FOR LOSS CAUSED BY DAMAGE TO ITS PLANT.

Telstra plans and information supplied are valid for 60 days from the date of issue. If this timeframe has elapsed, please reapply for plans.



WARNING - Due to the nature of Telstra underground plant and the age of some cables and records, it is impossible to ascertain the precise location of all Telstra plant from Telstra's plans. The accuracy and/or completeness of the information supplied can not be guaranteed as property boundaries, depths and other natural landscape features may change over time, and accordingly the plans are indicative only. Telstra does not warrant or hold out that its plans are accurate and accepts no responsibility for any inaccuracy shown on the plans.

It is your responsibility to locate Telstra's underground plant by careful hand pot-holing prior to any excavation in the vicinity and to exercise due care during that excavation.

Please read and understand the information supplied in the duty of care statement attached with the Telstra plans. TELSTRA WILL SEEK COMPENSATION FOR LOSS CAUSED BY DAMAGE TO ITS PLANT.

Telstra plans and information supplied are valid for 60 days from the date of issue. If this timeframe has elapsed, please reapply for plans.

ł



# VARGA TRAFFIC PLANNING Pty Ltd Transport, Traffic and Parking Consultants (

ACN 071 762 537 ABN 88 071 762 537

23 September 2009 Ref 09103

SJH Planning & Design PO Box 3255 ERINA NSW 2250

Attn: Mr John Hancock mail@longhillplanning.com.au

Dear John,

#### DEVELOPMENT APPLICATION NO. 36982/2009 PROPOSED TOURIST UNITS AT LIZOTTES AVOCA DRIVE, KINCUMBER

I refer to Council's letter dated 27 August 2009 which requested additional information in respect of a number of matters associated with the Development Application.

The parking surveys we undertook found that there were 40 cars parked in the main on-site parking area near the restaurant. They advised that 2 more cars could have been accommodated in that carparking area if required, suggesting that the total capacity of the existing main carparking area is 42 carparking spaces. Most of the parking spaces are located in "informal" spaces amongst the trees, such that smaller cars occupy the smallest spaces, and larger cars occupy larger spaces.

If a formal carparking arrangement was to be provided as requested by Council, with standard size parking bays and aisles (such as may be found at any shopping centre), the capacity of the carparking area would be very substantially reduced, particularly if the trees were to be retained.

However, I was under the impression that the existing restaurant and associated carpark was previously approved by Council and is NOT the subject of the current DA. If so, I don't think the Council entitled to reopen discussions about the number of parking spaces provided for the restaurant, as the restaurant and its carparking area is not the subject of the current Development Application.

The only changes sought to the restaurant carpark is the new road connection between the carpark and the proposed tourist units. The connection to the existing carpark will probably result in the loss of 2 parking spaces, however this would be offset by the additional parking spaces proposed at the restaurant, along the eastern boundary of the site.

Accordingly, in my opinion the request from Council to formalise the parking arrangements for the existing restaurant is inappropriate, as the existing restaurant carpark is not the subject of this Development Application, and no changes are sought to the existing carpark, apart from the new road connection.

However, I note that what *is* or *isn't* the subject of a Development Application is primarily a townplanning matter, and would therefore appreciate your advice on this matter before I prepare a response to Council's request.

Please do not hesitate to contact me on telephone 9904 3224 should you have any enquiries.

Yours sincerely

Man

Robert Varga Director Varga Traffic Planning Pty Ltd
Sue Slaytor 0419 445 226 PO Box 97, Castlemaine 3450 slaytor@bigpond.com /

Attn: John Hancock -SJH Planning CC: Robert Payne – Ecological Surveys & Management

30 September 2009

**REF:** Lizottes site, Avoca Drive at Kincumber

I have attached a scan of the amended plan with tree canopies. This plan was sent to Robert Payne on 15/9/09. I also sent a copy of the original plan I took out on site. We discussed how Trees 156 and 157 could be retained, and also the condition of Tree 153 which is basically a standing trunk.

The location, height and basal defect of Tree 157 make it impossible to retain in any similar development on site because in the event of failure its target area is not predictable. Retaining Tree 157 effectively limits occupancy and access to a small area at the southern part of the site in the proposed location of Units 1 and 2.

In the Arborist's Report I noted that Unit 5 required the removal of Trees 157 and 156, when it is actually Tree 157 that poses a risk. The risk to Unit 8 from Tree 156 was noted in the report.

Tree 156 could be retained if Unit 8 is deleted from the development. The target zone for this tree is likely to be in a West North-west direction (note that in previous email I stated East North-east which is incorrect). I recommended dense planting and fencing of the area in the gully to discourage regular usage of this zone. I do not know how this would affect the absorption capability of trenches given increased shading but this may be countered by greater uptake by shrubs. Note also that trenches will have to be installed carefully to minimise damage to tree roots.

Tree 153 has no crown and is located clear of fixed targets, therefore this tree can be retained. I suggest planting around its base area to a distance of some 10 metres.

Tree 155 (overmature Blackbutt with hollows) is proposed to be retained as its target zone is the planted gully that will be clear of structures.

Given the number of tree retained on the site, I believe there is potential to erect a range of nesting and shelter boxes over the property that are suited to the fauna identified in this area. Should Tree 157 be removed (dismantled as recommended by Robert Payne) this will provide habitat opportunities for any displaced fauna.

The plantings around habitat trees will further enhance habitat values on the site, provided suitable native species are selected.



Should you have any queries please do not hesitate to contact me on 0419 445 226.

Yours faithfully

. د .

Sue Slaytor MISAA Consulting Arborist, Landscape Design, Conservation & Land Management



\_

MS. LORNA MCGREGOR

# FLORA AND FAUNA SURVEY LOT 3 DP 421607 AVOCA DRIVE KINCUMBER

Robert Payne Ecological Surveys and Management

> 15 Mountain-Ash Way UMINA BEACH NSW 2257 September 2009

# TABLE OF CONTENTS

•• •

1.0	INTRODUCTION	1
2.0	LOCATION AND CADASTRE	1
3.0	CHARACTERISTICS OF THE STUDY AREA	2
4.0	LITERATURE REVIEW 4.1 Avoca Valley Way at Kincumber 4.2 Survey of the Subject Site in 2006	4 4 4
5.0	WILDLIFE ATLAS DATABASE SEARCH	5
6.0	SURVEY METHODOLOGY 6.1 Additional Fauna Survey 6.2 Liaison	8 8 9
7.0	RESULTS OF THE FAUNA SURVEY 7.1 Weather Conditions 7.2 Liaison	9 9 10
8.0	THE PROPOSAL	10
9.0	WILDLIFE CORRIDOR	14
10.0	DISCUSSION	14
11.0	CONCLUSIONS	16
REFERENCES		
Figure Figure Figure Figure Figure Figure Figure	<b>of Figures</b> e 1 Aerial Photo of Subject Site e 2 Air Photo Map showing current vegetation mapping e 3 Temperature/Relative Humidity e 4a Northern Section of the Subject Site e 4b Southern Section of the Subject Site e 5 Plan of Proposed Tourist Units e 6 Proposed Regional Corridor e 6 Plan of Important Habitat Trees 148-163	2 3 10 11 12 13 14 18
List of Photos Photo 1 Old Growth Blackbutt Trees Photo 2 Sap Site Tree		

List	of	Tab	les
	_		_

с<sup>1</sup> . «

Table 1 Revised Database RecordsTable 2 Summary of microbat species	5 15
List of Appendices	
Appendix 1 Bird Species List	20
Appendix 2 Seven Part Tests	
Option 1	22
Option 2	32
Appendix 3 Previous Survey Report – 2006	42
Appendix 4 Tree Photos – Tree Hollows	
Tree 156	56
Tree 157	59
Tree 155	61
Tree 148	63

# STATEMENT

Following the completion of the flora and fauna report for Lot 3 DP 421607 (Payne, 2009) further liaison was undertaken with SJH Planning and TreEcology with respect to the status of the overmature trees in view of the proposed development. TreEcology(2009) have now provided further written advice and this is presented in Appendix 1.

Tree number 157 (see Appendix 4 Payne, 2009), which appears to have at least one vertical hollow and two side hollows, cannot be retained at all because it is too dangerous. The report further states Tree 156 can be retained if unit 8 is deleted from the proposal and understorey planting and fencing is used to prevent public access into the danger or potential impact zone. Tree numbers 153 and 155 (see Appendix 4 Payne, op. cit.) can now be retained if a similar protection area is created. Tree number 153 has five hollows and tree number 155 three side hollows and several spouts.

Given this scenario one tree with hollows will be lost and mitigation measures can be implemented by installing six specially designed batboxes into the canopy of the trees that are located outside the development area. These batboxes must be installed prior to the development commencing and the existing hollows must be removed in accordance with the recommendations set out in Payne (op. cit). If this scenario can be achieved there will be no significant impact caused to small microbat species from the proposal. A seven part test of significance is set out in Appendix 2.

#### **Robert Payne**

#### Wildlife Ecologist

1 October 2009

Robert Payne - Ecological Surveys and Management

1

LOT 3 DP 421607 AVOCA DRIVE KINCUMBER-FLORA AND FAUNA SURVEY ADDENDUM for Ms. L.J. McGregor-October 2009

## **APPENDIX 1-ADDENDUM BY TREECOLOGY**

Attn: John Hancock -SJH Planning CC: Robert Payne – Ecological Surveys & Management

30 September 2009



REF: Lizottes site, Avoca Drive at Kincumber

I have attached a scan of the amended plan with tree canopies. This plan was sent to Robert Payne on 15/9/09. I also sent a copy of the original plan I took out on site. We discussed how Trees 156 and 157 could be retained, and also the condition of Tree 153 which is basically a standing trunk.

The location, height and basal defect of Tree 157 make it impossible to retain in any similar development on site because in the event of failure its target area is not predictable. Retaining Tree 157 effectively limits occupancy and access to a small area at the southern part of the site in the proposed location of Units 1 and 2.

In the Arborist's Report I noted that Unit 5 required the removal of Trees 157 and 156, when it is actually Tree 157 that poses a risk. The risk to Unit 8 from Tree 156 was noted in the report.

Tree 156 could be retained if Unit 8 is deleted from the development. The target zone for this tree is likely to be in a West North-west direction (note that in previous email I stated East North-east which is incorrect). I recommended dense planting and fencing of the area in the gully to discourage regular usage of this zone. I do not know how this would affect the absorption capability of trenches given increased shading but this may be countered by greater uptake by shrubs. Note also that trenches will have to be installed carefully to minimise damage to tree roots.

Tree 153 has no crown and is located clear of fixed targets, therefore this tree can be retained. I suggest planting around its base area to a distance of some 10 metres.

Tree 155 (overmature Blackbutt with hollows) is proposed to be retained as its target zone is the planted guily that will be clear of structures.

Given the number of tree retained on the site, I believe there is potential to erect a range of nesting and shelter boxes over the property that are suited to the fauna identified in this area. Should Tree 157 be removed (dismantled as recommended by Robert Payne) this will provide habitat opportunities for any displaced fauna.

The plantings around habitat trees will further enhance habitat values on the sile, provided suitable native species are selected.



Robert Payne - Ecological Surveys and Management





Should you have any queries please do not hesitate to contact me on 0419 445 226.

Yours faithfully

Sue Slaytor MISAA Consulting Arborist, Landscape Design, Conservation & Land Management



•

Robert Payne – Ecological Surveys and Management

3

# **APPENDIX 2 – SEVEN PART TEST**

# OPTION 3.

This option involves removing the one tree, number 157, and replacing the hollows lost with six batboxes in other trees outside the development area.

# Common Bent-wing Bat and Little Bent Wing Bat

(a) In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.

The proposal is for a unit tourist development with no bright lighting and the removal of one tree with hollows. It is assumed bat boxes will be placed in other trees as an offset. The action proposed will not have an adverse effect on the life cycle of these two bat species, because they are not hollow dependent fauna, such that a local population of the two species is likely to be placed at the risk of extinction.

(b) In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the lifecycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.

The section is not applicable to the Common Bent-wing and Little Bent-wing Bats.

- © In the case of an endangered ecological community, whether the action proposed:
- is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
- is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction

This question is not applicable.

- (d) In relation to the habitat of a threatened species, population or ecological community:
- the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
- the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.

The proposal will incur a minor loss of foraging habitat as a result of the action. The removal of one mature tree will fragment the habitat but the habitat being lost as a



Robert Payne - Ecological Surveys and Management

result of tree removal is very common in the local area. Thus, the habitat is not very important to these two bat species.

# (e) Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

There has been no critical habitat declared for the Common Bent-wing and Little Bent-wing Bat.

# (f) Whether the action proposed is consistent with the objectives or actions of a Recovery Plan or Threat Abateman Plan.

There has been no Threat Abatement Plan or Recovery Plan prepared for the Common Bent-wing and Little Bent-wing Bat.

# (g) Whether the action proposed constitutes or is part of a 'Key Threatening Process' or is likely to result in the operation of, or increase the impact of, a key threatening process.

The proposal will incur removal of the one mature tree, with hollows, qualifies as two 'Key Threatening Processes'.

Robert Payne – Ecological Surveys and Management

## The Eastern Free-tail Bat, the Eastern False Pipistrelle, the Greater Broadnosed Bat and the Yellow-bellied Sheath-tailed Bat

(a) In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.

The proposal is for a unit development and the removal of only one out of the five trees which are likely to be den sites for these bat species. If the newly installed bat boxes are colonised by the small bat species then the action proposed will not have an adverse effect on the life cycle of the four bat species such that a local population of the species is likely to be placed at the risk of extinction.

(b) In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the lifecycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.

The section is not applicable to the Eastern Free-tail Bat, Eastern False Pipistrelle, Greater Broad-nosed Bat and Yellow-bellied Sheath-tail Bat.

- © In the case of an endangered ecological community, whether the action proposed:
- is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
- is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction

This question is not applicable.

- (d) In relation to the habitat of a threatened species, population or ecological community:
- the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
- the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.

The proposal will incur a minor loss of habitat as a result of the action but the offset of installing nest boxes would be an acceptable alternative. The removal of trees will fragment the habitat and the habitat, comprising denning hollows, being lost as a result of tree removal is not very common in the local area. Given that these microbat species were present all through the evening from sunset to sunrise the habitat would be very important to these bat species.



Robert Payne – Ecological Surveys and Management

6

# (e) Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

There has been no critical habitat declared for the Eastern Free-tail Bat, Eastern False Pipistrelle, Greater Broad-nosed Bat and Yellow-bellied Sheath-tail Bat.

# (f) Whether the action proposed is consistent with the objectives or actions of a Recovery Plan or Threat Abateman Plan.

There has been no Threat Abatement Plan or Recovery Plan prepared for the Eastern Free-tail Bat, Eastern False Pipistrelle, Greater Broad-nosed Bat and Yellowbellied Sheath-tail Bat.

# (g) Whether the action proposed constitutes or is part of a 'Key Threatening Process' or is likely to result in the operation of, or increase the impact of, a key threatening process.

The proposal will incur removal of one trees with hollows which qualifies as two 'Key Threatening Processes'.

#### The Yellow-bellied Glider

(a) In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.

The proposal is for a unit development, the removal of one tree which has hollows and the installation of nest boxes for microbats. The offset action proposed does not apply to the Yellow-bellied Glider and given that the Yellow-bellied Glider does not seem to be present on this site, the action will not have an adverse effect on the life cycle of the Yellow-bellied Glider such that a local population of the species is likely to be placed at the risk of extinction.

(b) In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the lifecycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.

The section is not applicable to the Yellow-bellied Glider.

© In the case of an endangered ecological community, whether the action proposed:

- is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
- is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction

This question is not applicable.

- (d) In relation to the habitat of a threatened species, population or ecological community:
- the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
- the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.

The proposal will incur a minor loss of habitat as a result of the action. The removal of the one tree will fragment the habitat and the habitat being lost as a result of tree removal is very common in the local area. This habitat would not appear to be important for the Yellow-bellied Glider.

# (e) Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

There has been no critical habitat declared for the Yellow-bellied Glider.

Robert Payne – Ecological Surveys and Management

# (f) Whether the action proposed is consistent with the objectives or actions of a Recovery Plan or Threat Abateman Plan.

The action, in its current format, in terms of mitigation measures, does not apply to the Yellow-bellied Glider because the hollows in tree 157 are only suitable for microbats.

# (g) Whether the action proposed constitutes or is part of a 'Key Threatening Process' or is likely to result in the operation of, or increase the impact of, a key threatening process.

The proposal will incur removal of one tree with hollows which qualifies as two 'Key Threatening Processes'.

# The Grey-headed Flying Fox

(a) In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.

The proposal is for a unit development including the removal of one tree which has hollows. The offset action proposed does not apply to the Grey-headed Flying Fox. The action proposed, given that the Grey-headed Flying Fox does not seem to be present on this site and is not hollow dependant, will not have an adverse effect on the life cycle of the Grey-headed Flying Fox such that a local population of the species is likely to be placed at the risk of extinction.

(b) In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the lifecycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.

The section is not applicable to the Grey-headed Flying Fox.

© In the case of an endangered ecological community, whether the action proposed:

- is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
- is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction

This question is not applicable.

- (d) In relation to the habitat of a threatened species, population or ecological community:
- the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
- the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.

The proposal will incur a minor loss of foraging habitat as a result of the action. The removal of trees will fragment the feeding habitat and the habitat being lost as a result of tree removal is very common in the local area. This habitat would not appear to be important for the Grey-headed Flying Fox.

(e) Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)



Robert Payne – Ecological Surveys and Management

There has been no critical habitat declared for the Grey-headed Flying Fox.

# (f) Whether the action proposed is consistent with the objectives or actions of a Recovery Plan or Threat Abateman Plan.

The action, in its current format, in terms of mitigation measures, would not interrupt the measures proposed under the Grey-headed Flying Fox Recovery Plan.

# (g) Whether the action proposed constitutes or is part of a 'Key Threatening Process' or is likely to result in the operation of, or increase the impact of, a key threatening process.

The proposal will incur removal of one trees with hollows which qualifies as two 'Key Threatening Processes' but would not impact habitat, as such, for the Grey-headed Flying Fox. Flowering habitat is needed for the Grey-headed Flying Fox.

# The Glossy Black Cockatoo

(a) In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.

The proposal is for a unit development and the removal of one tree which has hollows. The action proposed, given that the Glossy Black Cockatoo does not seem to be present on this site, will not have an adverse effect on the life cycle of the Glossy Black Cockatoo such that a local population of the species is likely to be placed at the risk of extinction.

(b) In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the lifecycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.

The section is not applicable to the Glossy Black Cockatoo.

© In the case of an endangered ecological community, whether the action proposed:

- is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
- is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction

This question is not applicable.

- (d) In relation to the habitat of a threatened species, population or ecological community:
- the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
- whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
- the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.

The proposal will not incur a loss of potential denning habitat as a result of the action because the holloes in tree number 155 are not large enough for denning purposes. The removal of the one tree will fragment the habitat and the habitat being lost as a result of tree removal is very common in the local area. However, nesting hollows for the Glossy Black Cockatoo are rare in the area. This habitat would not appear, however, to be important for the Glossy Black Cockatoo because they are of insufficient size.

Robert Payne – Ecological Surveys and Management

(e) Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

There has been no critical habitat declared for the Glossy Black Cockatoo.

(f) Whether the action proposed is consistent with the objectives or actions of a Recovery Plan or Threat Abateman Plan.

There is no threat or abatement plan for the Glossy Black Cockatoo.

(g) Whether the action proposed constitutes or is part of a 'Key Threatening Process' or is likely to result in the operation of, or increase the impact of, a key threatening process.

The proposal will incur removal of one tree with hollows which qualifies as two 'Key Threatening Process'.









- 1. DISTURBED AREAS TO BE KEPT TO A MINIMUM.
- 2. CONTROL CLEAN WATER FROM ABOVE THE SITE, THROUGH THE SITE OR AROUND THE SITE

HIGH EVAPORATION PLANTING

TOP SOIL

- 3. KEEP CLEAN WATER SEPERATE FROM DIRTY WATER.
- 4. CONSERVE ALL TOPSOIL, STOCKPILE AND PROTECT FOR REUSE ON SITE.
  - 5. PROTECT ALL DISTURBED AREAS FROM EROSION. 6. MINIMISE SEDIMENTATION.
- MAINTAIN ALL EROSION AND SEDIMENT CONTROL MEASURES UNTIL COMPLETE REHABILITATION IS ACHIEVED.
- EROSION/SEDIMENT CONTROL MEASURES TO CONFORM WITH EROSION AND SEDIMENT CONTROL PLAN FOR SUBDIVISION WORKS. œ











SCALE N.T.S

1711 - SEP 2009







# **EXTERNAL LIGHTWEIGHT 90/90/90 WALL**



# LOT 3 DP 421607 AVOCA DRIVE KINCUMBER PROPOSED TOURIST UNITS MRS LORNA MCGREGOR DA15 - DETAILS

# **EROSION AND SEDIMENT**





















All communications to be addressed to:

Headquarters 15 Carter Street Homebush Bay NSW 2127 Headquarters Locked Bag 17 Granville NSW 2142





The General Manager Gosford City Council PO Box 21

Gosford NSW 2250

Your Ref: DA 36982/2009 Our Ref: D09/1026 DA09071561457 MH

# ATTENTION: Fred Dobbs

24 August 2009

Dear Mr Dobbs

# Integrated Development for 3//421607 Avoca Drive Kincumber 2251

I refer to your letter dated 10 July 2009 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

# **Asset Protection Zones**

The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants.

 At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

# Water and Utilites

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

2. Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

• In recognition that an unreliable reticulated water supply exists, a 20000 litre water supply shall be provided for fire fighting purposes.

# Access

The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area.

3. Internal roads shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

# **Evacuation and Emergency Management**

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments.

- 4. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
  - An Emergency /Evacuation Plan is to be prepared consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation plan'.

# **Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.

- 5. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures - Test for Flammability of Materials'.
- 6. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 1.

For any queries regarding this correspondence please contact Mark Hawkins on 8741 5175.

Yours sincerely

Corey Shackleton Team Leader - Development Assessment & Planning

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at <u>www.rfs.nsw.gov.au</u> and search under 'Planning for Bush Fire Protection, 2006'.

09\_1322 File 184DA150;1



The General Manager Gosford City Council PO Box 21 GOSFORD NSW 2250

DA36982/2009 - LOT 3 DP 421607 AVOCA DRIVE, KINCUMBER PROPOSED 10 TOURIST UNITS

Dear Mr Dobbs,

I refer to Council's letter of 13 July 2009 regarding the abovementioned development application.

The property is affected by a road widening proposal shown by pink colour on the attached diagram. Any improvements to the property are to exclude the area required for road widening purposes.

Councils consent conditions for DA 24734/2004 (Downstairs Function Room) included the following advice to the applicant:

- Any further intensification of development on this site may initiate a requirement for a dedicated left turn deceleration lane, and possibly a restriction of traffic movement to left in / left out only.
- No reliance should be given to on-street parking in Avoca Drive in the determination of parking needs relating to the proposed development.

A previous application (DA 36404/2009) for Tourist Units included a plan (ref: DA03 – Site Details) which formalised the off-street parking provision. This plan resulted in 27 formalised off-street car parking spaces.

The current development application (DA 36982/2009) included a Traffic Impact Study prepared by Varga Traffic Planning Pty Ltd - 25 June 2009. The study concluded that the current off-street parking capacity consisted of 55 informal car spaces. This represents an increase of 28 spaces from the 27 formalised spaces proposed in the previous application.

Roads and Traffic Authority

The Pavilon Building, 29 George Street Woy Woy NSW 2256 PO Box 766 Woy Woy NSW 2256 DX8812 www.rta.nsw.gov.au | 13 17 82 The RTA will not accept on-street parking on Avoca Drive being used for the purposes of parking calculations for this site. The parking provision for all current and proposed uses must be contained within an off-street carpark designed to Australian Standards (AS2890).

The current application was discussed at Council's Local Development Committee on 11 August 2009. The information contained in this letter must supplement the minutes of the Local Development Committee meeting. The RTA's previous correspondence of 9 April 2009 also refers.

The following information should be noted by Council and the applicant:

- The RTA does not support the claim that the tourist units will operate on an ancillary basis to the restaurant. As such, the parking provided for the tourist units should not be included in the parking calculations for the restaurant, gallery and function rooms.
- A concrete median on Avoca Drive will be required to prevent right turns into and out of the site.
- A left turn deceleration lane will be required on Avoca Drive to allow the safe passage of through and left turn vehicles.
- The property is affected by a road widening plan as shown by pink colour on the attached diagram. The area required for future road widening includes the internal circulating road (parallel with Avoca Drive) servicing the proposed overflow car park on the eastern side of the site. The overflow carpark must not be reliant on this internal road as the sole means of future access to and from Avoca Drive.
- The internal road layout and driveway connection must be designed so that they are compatible with the future boundary.

The RTA objects to the current proposal and requires the following information to be submitted to Council for further assessment by RTA:

• A site plan showing the internal car park layout (to AS 2890), including access driveways, aisle widths, driveway design and bus / taxi facilities. The parking layout must cater for the peak demand of 57 spaces identified in the Traffic Impact Study. The driveway location must be located a minimum of 30m from the western boundary, in order to accommodate a left turn deceleration lane.

For clarification of any matter, please contact Scott Stapleton on 4379 7004.

Yours since Craig Leckie

Traffic and Safety Manager Central Coast



# To Gosford City Council

1 am writing to you in regards to the development application No# DP 421607 proposed at Lot 3 Avoca Drv Kincumber.

RE: Development Application Not 36982/2009 Lot 2 Avoca dr Kincumber

My wife ,children and I have lived next to Lot 3 for the last 12years and have looked carefully over the development application and have the following concerns.

#### **1.Sewerage**

We are extremely concerned about the development being approved without a full environmental impact study carried out on the sewerage system. The existing tank that is meant to provide for lizottes restaurant also situated on this property has not been successful as the smell of effluent has been quite over powering and feel with the extra sewerage from the tourist cabins it is not fair for this problem to continue and council needs to guarantee a fail safe system as the smell is a health hazzard to myself and my family.

#### 2. Security

The plan shows no existing security fence. As you can see we are an adjoining property and there is plenty of opportunity for guests / residence to enter our property. We know this as we have experienced many guests of the restaurant entering our property wanting to go for a walk and generally being nosy, and believe the guests/ residence will be no different.

#### **3 Noise /Lights**

What kind of restrictions do you have in place to control noise and bright lighting.? We currently experience way too much noise, not only from the live bands at lizottes but also from the patrons and their vehicles. Due to the poor parking provided there, patrons and staff are forced to park in the paddock right up against our fence line with ours and our children's bedrooms situated directly above this. We experience a lot of noise when everyone leaves at the same time straight after the show often after midnight.

#### 4 Garbage/ Waste Management

The development application does not show where the garbage will be controlled from. Once again we are affected by the existing developments garbage. As they have a lot of their rubbish bins along our fence line we are constantly picking up rubbish in the way of wine bottles, food scraps and cardboard cake boxes that make their way onto our side of the fence. We are concerned not only by the smell but with the increase of garbage from the tourist cabins that our problem will increase.

We would hope that if the development is approved that there are stringent guidelines for them to follow to not increase the issues we are experiencing with the current development.

Belinda and Richard Missingham On Behalf of R&H Pickett

. current de