



09 August 2010

Panel Secretariat
JRPP Northern Region
Level 13, 301 George Street,
SYDNEY NSW 2000

Attention: Ms Emily Dickson

Dear Madam,

RSL LifeCare – Bayside @ Byron
Development 10.2009.433.1
Application:
Description:

Alterations/Additions to the existing aged care facility and proposed new services apartments designed under the provisions of the State Environmental Planning Policy (housing for Seniors or people with a disability) 2004.

Parcel No. 211330, 3870
Property address:: LOT: 3 DP: 862033, LOT: 2 DP: 617652
192-202 Broken Head Road, 184-190 Broken Head Road SUFFOLK PARK

Council has received the advice from Hemmings QC from Allens Arthur Robinson dated 4 August, 2010 which I understand has been forwarded to the JRAPP for consideration in determining this application.

Council does not support the use of the "*di minimis principle*" in relation to minor increases in flood heights due to development. Council has previously indicated to the JRPP that the cumulative impact of developments in catchments like Suffolk Park, is the reasoning behind Clause 24 of the Byron Shire LEP and in particular CI 24(3)(a)(ii).

The legal advice that Council has supplied as a result of the JRPP (1 July, 2010) from Marsdens Law Group and dated 23 July, 2010 which provided advice that Clause 15 of the Seniors SEPP would prevail over Council's LEP. Therefore, the JRPP is able to approve an application that does not comply with Clause 24 of the Byron Shire LEP.

However, the JRPP still must consider the merit of the application before it, there is a major flood issue in the catchment, and part of the solution will be in Council's Draft Section 64 Plan.

I therefore urge the JRPP to consider the imposition of the conditions proposed by Council's Specialist Engineer in relation to drainage.

If you require further information please do not hesitate to contact me directly on 02 66 267062.

Yours sincerely

Ray Darney
Executive Manager
Environment & Planning
Enc. #992825

BYRON SHIRE COUNCIL - MEMORANDUM

MEMO TO: Executive Manager - Ray Darney

MEMO FROM: Team Leader Specialist - John Samuels

SUBJECT: RSL Lifecare - (JRPP) Seniors Aged Care development
Development Application: 10.2009.433.1
LOT: 3 DP: 862033, LOT: 2 DP: 617652, 192-202 Broken Head Road
SUFFOLK PARK, 184-190 Broken Head Road SUFFOLK PARK

DATE: 9 August 2010

FILE NO(s): 211330, 3870D x-10.2009.433.1 /#992825

Engineering Supplementary report – Flooding and Drainage

1. Council's staff report to the JRPP recommended refusal for this development due to an increase in flood levels and non compliance with Clause 24 Byron LEP. The flood modelling for the building development proposed could not demonstrate that there would be no, zero increase in flood levels.
2. At the JRPP Meeting of 1 July 2010, submissions were presented by residents who experience regular flooding of their property, and they also expressed their concerns of any increase in flooding attributable to this development.
3. Stormwater upgrading drainage works, external to the site, would alleviate flooding upstream of the site. Such works that could achieve this are:-
 - o Replace, upgrade, and enlarge the box culverts under Broken Head Road south of Beech Drive intersection.
 - o Re-profiling and clearing out of Tallow Creek immediately downstream of Broken Head Road to free up flood/stormwater flows.
4. Council has developed a Section 64 (Stormwater Drainage Plan) that covers the Tallow Creek catchment. This plan is in DRAFT stage only and has not been placed on public exhibition, nor reported to Council (scheduled for September).
5. The plan provides for major upgrading works and infrastructure renewal works. Major works identified in this plan include the Broken Head Road culverts.
6. The plan also provides for Section 64 contributions at a rate of \$8,590 per ET.
7. Whilst this plan has not been adopted, it is seen as politically wise and ethically prudent, that this development contributes to these works, in accordance with the DRAFT Plan, as compensation and a mechanism to alleviate these flooding impacts attributable to this development, should the Panel decide to approve this development.
8. Contributions could be levied as follows:-

Stage 1 – Extension to existing Age Care Nursing Facility

4.5ET

\$8,590 per ET

Total \$38,655

Stage 2 – Senior Living Independent Living Units

23.3 ET

\$8,590 per ET

Total \$200,147

9. Contributions would be refunded to the Applicant should the abovementioned drainage works not proceed within 3 years of the date of the Consent.

10. A suitable condition of consent could be imposed as follows:-

Section 64 Developer Contributions – Stormwater Drainage

Contributions set out in the schedule below are to be paid to Council, specifically to contribute to the following works generally identified in Council's (DRAFT) Section 64 Plan:

- Upgrading and replacing the stormwater drainage box culverts under Broken Head Road, immediately south of Beech Drive.
- Improving hydraulic profile and capacity of Tallow Creek, immediately downstream of Broken Head Road.

Contributions as follows:

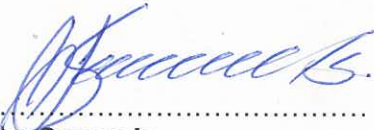
Stage 1

4.5ET	@	\$8,590 ET	TOTAL	\$38,655
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Stage 2

23.3 ET	@	\$8,590 ET	TOTAL	\$200,147
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NOTE: These contributions are to be refunded to the applicant should these works not proceed within 3 years of the date of this Consent.



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John Samuels.