

## **HUNTER & CENTRAL COAST JOINT REGIONAL PLANNING PANEL**

### **STATEMENT OF REASONS**

#### **for decision under the *Environmental Planning and Assessment Act 1979 (NSW)***

The Hunter & Central Coast Joint Regional Planning Panel (JRPP) provides the following Statement of Reasons for its decision under section 80 of the *Environmental Planning and Assessment Act 1979 (NSW)* (the Act) to:

Refuse to grant consent to the development application

For:

Extension of Existing Marina (Additional 58 Berths), Depot (change of use) and Car Parking,

Street Address – Lot 1 DP 1058490 – 2E Ridgeway Avenue, Soldiers Point, Lot 2 DP 1058490 – 2F Ridgeway Avenue, Soldiers Point, Lot 539 DP 823769 – 2C Ridgeway Avenue, Soldiers Point, Unidentified land subject to lease extension, Lot 197 DP 27084 – 2 Sunset Boulevard, Soldiers Point; Lot 0 SP 59025 – Unit 2 & 3 Soldiers Point Road, Salamander Bay and Lot 205 DP 27084 – 2A Soldiers Point Road, Soldiers Point (Spencer Park).

JRPP Reference: 2012HCC010 – Council Reference: DA16-2012-57-1

Made by:

**Applicant:** Clippers Anchorage Pty Ltd

**Owner:** Crown Land

- Lot 1 DP 1058490 – 2E Ridgeway Avenue, Soldiers Point.
- Lot 2 DP 1058490 – 2F Ridgeway Avenue, Soldiers Point.
- Lot 539 DP 823769 – 2C Ridgeway Avenue, Soldiers Point.
- Unidentified land subject to lease extension
- Owners consent relating to amended plans has not been provided.

#### **Clippers Anchorage Pty Ltd**

- Lot 197 DP 27084 – 2 Sunset Boulevard, Soldiers Point.

#### **Port Stephens Council**

- Lot 205 DP 27084 – 2A Soldiers Point Road, Soldiers Point (Spencer Park).
- Owners consent has not been provided.

#### **Ragusa Pty Ltd and Body Corporate of SP59025**

- Lot 0 SP 59025 – Unit 2 & 3 Soldiers Point Road, Salamander Bay.
- Strata Corporation consent has not been provided.

## **Type of regional development:**

The proposal is classified as a designated development – Clause 8(b) marinas or other related land and water shoreline facilities, which meets the requirements for designated development under clause 23 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.

## **A. Background**

### **1. JRPP meeting**

Hunter & Central Coast Joint Regional Planning Panel meeting was held on:

Date: Thursday 12 June 2014

Time: 4.00pm

Location: Port Stephens Council, 116 Adelaide Road, Raymond Terrace

### **Panel Members present:**

Garry Fielding – Panel chair

Kara Krason – Panel member

Jason Perica – Panel member

Bruce MacKenzie – Panel member

Ken Jordan – Panel member

### **Council staff in attendance:**

Matthew Brown

Cindy Dickson

Amy Stone

Lisa Kavanah

### **Apologies:** Nil

### **Declarations of Interest:** Nil

### **2. JRPP as consent authority**

Pursuant to s 23G(1) of the Act, the Hunter & Central Coast Joint Planning Panel (the Panel), which covers the Port Stephens Council area, was constituted by the Minister.

The functions of the Panel include any of a council's functions as a consent authority as are conferred upon it by an environmental planning instrument [s23G(2)(a) of the Act], which in this case is the *State Environment Planning Policy (State and Regional Development) 2011*.

Schedule 4A of the Act sets out development for which joint regional planning panels may be authorised to exercise consent authority functions of councils.

### **3. Procedural background**

A site visit was undertaken by the Panel on 12 June 2014. This included viewing the site of the proposal both from the water (by boat, viewing key vantage points in the applicant's and Council's visual assessment) and the surrounding land.

A final briefing meeting was held with Council on 10 May 2012.

The Panel was provided with additional documents prior to the Panel meeting on 12 June 2014:

- Submission dated 6 June 2014 by Kristy Lee (Director) Hamptons Property Services on behalf of the applicant;
- Response to the above submission from Port Stephens Council Assessment Officer dated 10 June 2014;
- Full copy of the RMS submission.

### **B. Evidence or other material on which findings are based**

In making the decision, the Panel considered the following:

#### ***Environmental Planning and Assessment Act, 1979***

s.79C (1) Matters for consideration—general

(a)(i) the provisions of the following environmental planning instruments:

- State Environmental Planning Policy No.55 (Remediation of Land)
- State Environmental Planning Policy No. 62 (Sustainable Aquaculture)
- State Environmental Planning Policy No. 71 (Coastal Protection)
- State Environmental Planning Policy (State and Regional Development) 2011.
- Port Stephens Local Environmental Plan 2000 (PSLEP2000).
- Port Stephens Local Environmental Plan 2013 (PSLEP2013) – savings provision applies.

a)(ii) the provisions of any draft environmental planning instrument:

- There is no draft EPI that applies to this site.

(a)(iii) the provisions of the following development control plan:

- Port Stephens Development Control Plan 2007

(a)(iiia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

- There are no relevant planning agreements

(a)(iv) any matters prescribed by the relevant Regulations:

- Division 5 of Part 9 of the Environmental Planning and Assessment Regulation 2000

(a)(v) Coastal zone management plan:

- Government Coastal Policy

The Panel was provided with 1319 submissions of objection made in accordance with the Act objecting to the proposal. In making the decision, the Panel considered all the submissions.

In making the decision, the Panel also considered the following material:

1. Council's Assessment Report on the application received on 29 May 2014.

**Plans - Marina**

2. Proposed berth extension option J, dwg. SK1.31, dated 10/01/13.
3. Proposed lease extension option F (bow to stern mooring), dwg.SK1.6), dated 20/10/07.
4. Hydrographic Survey, dated 02/08.

**Plans - Car parking**

5. Valet car parking layout dwg.001(v.03), prepared by Hamptons Property Services.
6. No.2 Sunset Boulevard car parking layout, dwg.002 (v.01), prepared by Hamptons Property Services.
7. Swept paths dwg.TX.01, prepared by Traffix.

**Internal referrals**

8. Building surveyor
9. Fire safety officer
10. Development engineer
11. Traffic engineer
12. Natural resources officer
13. Heritage officer

**External agency advice**

14. NSW Department of Primary Industries (Fisheries)
15. NSW Department of Primary Industries (Great Lakes Marine Park) Marine Park Authority.
16. NSW Environmental Protection Authority (EPA)
17. Roads and Maritime Services
18. Office of Environment and Heritage
19. NSW Department of Planning and Environment
20. NSW Office of Water

## 21. Hunter Water Corporation

### **Summary of submissions**

Full summary of submissions provided in the Council's Assessment Report at Annexure 15.

### **Zoning maps**

- 22. No. 2 Sunset Boulevard (Zoned 2(a) Residential)
- 23. No.2C Ridgeway Avenue and No.2E & 2F Ridgeway Avenue (Zoned 3(a) Business and 7(W) Environmental Waterways Zone respectively)
- 24. Unit 2 & 3 324 Soldiers Point Road (Zoned 4(a) Industrial).
- 25. No.2A Soldiers Point Road (Zoned 6(a) General Recreation)

In making the decision, the Panel also considered the following submissions made at the meeting of the Panel on 12 June 2014:

1. Submissions addressing the Panel against the application:
  - Colin Howard (Soldiers Point Community Group)
  - Neil Hansford
  - Anne Marie Dowell
  - Bruce Pease (EcoNetwork Port Stephens Inc)
  - Peter Maloney
  - Gwenda Murray
  - Irene Jones
  - Neville Lilley (Worimi Knowledge Holders Aboriginal Corporation)
  - Mary Howard
  - Kevin Lynch
  - Trevor Murray (Hunter Bird Watchers Organisation)
  - Don Carter
  - Colin Howard on behalf of Brian Hooker
  - Jean Armstrong
  - Geoff Diemar (Port Stephens Oyster Farmers Association)
  - Kay Smith
  - Cherylle Stone
  - Margaret Wilkinson (Tomaree Residents & Ratepayers Association)
  - Andrew Smith (Worimi Local Aboriginal Land Council)
2. Submissions addressing the Panel in favour of the application:
  - Michael Callanan (Solicitor)
  - Dominic Fanning (Ecological Consultant)
  - Kristy Lee (Planning Consultant)

### **C. Findings on material questions of fact**

***(a) Environmental planning instruments.*** The Panel has considered each of the environmental planning instruments referred to in Section B.

The Panel agrees with and adopts the analysis in Council's Assessment Report in relation to the environmental planning instruments referred to in Section B above. Mr Perica questioned the categorisation in the report of the use of SP 59025 as a "depot" given in the report, given the use appeared to be ancillary to the marina use, but acknowledged this may be arguable in the absence of a legal nexus between the sites. The issue was somewhat academic as both uses are permissible in the zone.

***(b) Development control plan.*** The Panel considered the Port Stephens Development Control Plan referred to in Section B.

The Panel agrees with and adopts the analysis in Council's Assessment Report in relation to the Development Control Plan.

***(c) Planning agreement.***

The Panel noted that no planning agreement applies to the proposed development.

***(d) Other legislative provisions.***

The Panel adopted the analysis in Council's Assessment Report in relation to the other legislative provisions.

***(e) Regulations.***

The Panel adopted the analysis in Council's Assessment Report in relation to the Regulations.

***(f) Likely environmental impacts on the natural environment.*** In relation to the likely environmental impacts of the development on the natural environment, the Panel agrees with and adopts the analysis in relation to the likely environmental impacts of the development on the natural environment in Council's Assessment Report.

Mr Perica and Ms Krason slightly differed on the issue of visual impact, acknowledging there would be some negative visual impact, but that was not sufficient to refuse the application alone, given the view corridors tended to include a foreground or backdrop of existing moored boats, albeit the proposal would intensify the number and grouping of boats and mooring structures.

***(g) Likely environmental impacts of the development on the built environment.*** In relation to the likely environmental impacts of the development on the built environment, the Panel agrees with and adopts the analysis in relation to the likely environmental impacts of the development on the built environment in Council's Assessment Report.

***(h) Likely social and economic impacts.*** In relation to the likely social and economic impacts of the development in the locality, the Panel agrees with and adopts the analysis in relation to the likely social and economic impacts of the development on the natural environment in Council's Assessment Report. The Panel

shared the concern that a key aspect within the DGRs requiring a thorough analysis of alternatives and justification for the proposed siting had not been provided.

***(i) Suitability of site.*** Based on a consideration of all of the material set out in Section B and given the Panel's findings in this Section C, the Panel's finding is that the site is not suitable for the proposed development.

***(i) Public Interest.*** Based on a consideration of all of the material set out in Section B and given the Panel's findings in this Section C, the Panel's finding is that granting consent to the development application is not in the public interest. In particular, the Panel is of the view that the following matters lead to the conclusion that granting consent to the development application is not in the public interest.

#### **D. Why the decision was made**

In light of the Panel's findings in Section C1 above, the Panel unanimously decided to refuse consent to the proposed development for the following reasons:

- The reasons recommended in Council's Assessment Report, excluding reason 13 (community consultation) and alterations to reason 14. Public Interest, which is to read as follows:
  - The proposed development is not in the public interest. In particular, the proposal fails to provide a development that is appropriate for the site given existing site constraints and the character of the locality. As such, the proposal is contrary to the public interest having regard to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.

##### **Particulars**

The proposal results in numerous dis-benefits to the public, including:

- Its visual impact on the outlook from Everitt Park, Soldiers Point Holiday Park, and Sunshine Beach;
  - It does not provide facilities for people with a disability; and
  - It reduces the area for navigation through additional berthing replacing existing swing moorings, which will result in a public detriment.
- The proposed development is inconsistent with the provisions of SEPP 71 (Coastal Protection).

##### **Particulars**

The proposal:

- Is not suitable for its location and is considered an overdevelopment of the waterway. (clause 8(d))

- Will significantly impact upon the amenity of the foreshore. (clause 8(e))



JRPP member (chair)  
Garry Fielding



JRPP member  
Jason Perica



JRPP member  
Kara Krason



JRPP member  
Bruce MacKenzie



JRPP member  
Ken Jordan