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5 November 2012

Dr. John Roseth
Chairman
Sydney East Joint Regional Planning Panel
23-33 Bridge Street
Sydney NSW 2000

Dear Dr Roseth,

DA 12/0476 – *Shearwater Landing* Residential Subdivision, Bate Bay Road, Greenhills Beach

Attached with this letter is a submission to your Panel on behalf of Breen Property from JBA, the Company's town planning consultants, as well as other documents supporting this DA.

I write to you as the Executive Chairman and CEO of the Breen Group. The Development Application being assessed by you this week is the culmination of 63 years of commercial endeavour and family history in respect to this site. Whereas I understand that the Panel's assessment of the application is and must be based solely on its merits, I consider that in this case, it is also important that the Panel has some background understanding of the past uses of the site, of my family's historic involvement on the Kurnell Peninsula and in the Shire, and more importantly some comment on the recent conduct by Sutherland Council in its dealings with this development application.

The parcel of land the subject of the DA was purchased in 1949 by a small business consortium of which my late father was a member. At that time the site included the adjacent land on which Cronulla High School is now situated, which was then a caravan park. Bate Bay Road was not constructed, nor was Captain Cook Drive or the oil refinery. Large mobile sand dunes lay across the eastern two thirds of the *Shearwater Landing* site. The purpose of acquiring the land was to establish on it a small brickmaking plant, imported from Michigan, USA. The plant never operated as planned, and shortly after start up, it was decided to close that business. My father, abandoned his career as a Sydney journalist, acquired the balance of shares in the company, moved his family to Cronulla, and for much of the rest of his life (he died in 2002) focussed his energies on developing and expanding a vision for the future and suitable commercial outcomes from this then small asset base.

This resulted in the immediate creation of Metropolitan Sand Company in 1950, which set about producing construction and concrete sand for Sydney's post war building boom. The concrete in many iconic Sydney buildings, including the Opera House, was produced using Metropolitan Sand. Dune sand was extracted from this site adjoining the future Bate Bay Road. Extraction continued there for approximately 20 years, during which time the company had also acquired 500 acres of sand and land further north on the Kurnell Peninsula.

In the mid-1950s, the Group, realising the growing demand in Sydney for specialised kiln dried and screened silica sands, primarily for iron and steel and non-ferrous foundries for the production of moulds for metal castings, installed oil fired kilns, screening and materials handling plant and pioneered the production in NSW of a range of industrial sands not only for



foundry use, but for a wide number of other industrial applications. Raw sands from elsewhere in the State were also trucked to the site for processing, bagging and warehousing.

In the early 1970 sand extraction moved from the Bate Bay Road site to operations further north on the peninsula, and all works finally ceased on this site in 1985, when the plant and office buildings on it were demolished. From 1987 - 1990 much of the site was filled with approximately 700,000 tonnes of inert excavation and construction waste. One of the main sources for this was excavated fill from the expansion of Westfield's Miranda Fair shopping complex. Although I was not at that time involved with the company (having joined it in 1962 and left in 1974 to pursue a career in the international industrial minerals sector) it is clear from subsequent exploratory bore logs and analysis, and contemporary photographic evidence, that some of the material tipped comprised a variety of construction and possibly other waste materials.

The site has remained unused for the past 22 years.

Sand continued to be extracted until 2006 on land owned by Breen Property further north on the Peninsula, the greater proportion of which is currently being filled and rehabilitated, on which much of the Greenhills Parklands and sports complex will be created.

Attempts to resolve land-use issues and to seek an appropriate planning outcome for the Kurnell Peninsula have been made by successive State governments and by the major landowners on the Peninsula for many decades. From the late 1950s and for the subsequent fifty years Breen and related companies put forward a large number of development scenarios for land owned by them on this southern half of the Peninsula, but governments came and went, and nothing eventuated.

Control and ownership of the Breen group of companies was transferred to myself and my immediate family in December 2006. One of my major aims was to work through the issues and misconceptions that had prevented a positive rehabilitation and development outcome in previous decades, so that the initial vision and foresight of my late father, could become not only a viable reality, but would also provide the surrounding community with a permanent legacy in the form of the large "green" parkland corridor.

The VPA and the resultant rezoning in August 2010 that was initiated jointly by my company and Australand has finally produced such an outcome – and the new suburb of Greenhills Beach. The VPA enabled the above rezoning to proceed and requires Breen & Australand jointly to complete the restoration and remediation of the 91 ha parcel of previously mined land, into public parkland, to be transferred to the Council, and to provide 10 fully equipped sports ovals, and a skate park, with all necessary infrastructure on this land. The works for the provision of the playing fields alone involve expenditure by the companies of \$25M, of which Breen's contribution is \$10M. Additional significant expenditure by my company will be spend in restoration works and the provision of parkland on land owned by Breen Property, ultimately to be transferred to Council.

To drive these projects forward, I restructured company staff to better suit the future direction of the Company, at the forefront of which is the *Shearwater Landing* residential subdivision. To this end I have established a team of multi-disciplinary consultants of the highest calibre and professional standing. The result of this is the Development Application before you for this subdivision. Many thousands of hours of highly qualified technical input and advice, and importantly, the constant testing of that advice, has underpinned and driven this project. Six years and some millions of dollars, have been spent in developing the project so far.

The point of this is to demonstrate that this is not a hastily put together proposal, deficient in substance and detail. It is quite the reverse. Nor is this company a recent arrival on the scene, wishing to put up some shoddy, second rate development, and then move on to the next one. We have been a part of the Shire for sixty three years, and for all of that time have been a continuous employer, rate payer, benefactor and commendable corporate citizen.

It is in this context that I wish to bring to your notice a major issue of concern in respect to the way in which this application has been handled by Council, which has informed the structure and content of

both Council submissions to your Panel, those being the Assessment Report and Recommendation and Draft Conditions of Development Consent, prepared by Annette Birchall – Environmental Assessment Officer, and the second being the submission by Councillors based on the report prepared by John Brunton, Director of Environmental Services.

Prior to the lodgement of this DA on 8 June 2012 a number of productive conferences were had by Breen with Council's planning & professional staff. The great majority of issues that were present in the first DA, withdrawn in November 2011, had been resolved, and Mr Damien Vella – Breen Group's General Manager, was informed by Ms Birchall prior to lodgement that there were no major issues remaining in contention, (presumably apart from Council's objection to the development of the 3 lots adjoining Captain Cook Drive). The issues that had been resolved included the request and acceptance by Council's Chief Environmental Scientist that Breen firmly committed to a 15% reuse factor of in-situ fill in the cap (rather than having that merely as a target). This we did. The resulting site contours, we were also led to believe, were acceptable, as was the great majority of the design, engineering, project management and other aspects of the development.

We therefore lodged this DA.

There were subsequent conversations between Council planning assessment officers and the GM of this company that indicated that a draft Report to the JRPP being prepared by her was a favourable one, without any mention of the deferred approval or conditions which are central to Council's current submission.

The panel has been provided recent correspondence between Mr John Brunton, Council's Director Environment and my Company. The main issue he has had, over a number of years, was the "excessive height" of the proposed site contours. He asserts that this was a significant cause of concern as expressed in a significant number of public submissions. This is simply untrue. Mr Brunton claims that the subsequent most significant changes to the Council's Report to the Panel were a reflection of the material in the public submissions and in respect to the levels and quantity of fill being used reflected the concerns of the JRPP. Indeed in Ms Birchall's report (p8, 5.3) it is stated that "The proposed amount of imported fill "The proposed amount of imported fill to raise the level of the site is considered unnecessary and unacceptable." The only fill being imported is to produce the clean soil barrier, or "cap" required for the remediation of the site. Its purpose is not to raise the level of the site but to fulfil the Site Auditor's requirements.

The application was placed on public exhibition for one month in July – August. An information session for the public was also held. 8 people attended. 11 written submissions were received. One of these was from Australand who objected to the Shearwater Landing site levels. Their adjacent site is a virtually flat site, located approximately at RL 8, so it is inevitable that our site is higher. They have their own commercial, competitive reasons to object.

There were only 4 other submissions which objected to the height of site contours, from residents in adjoining Bate Bay Rd and Sanderson Street, and their concerns were principally concerning loss of some views, and were largely limited to questioning the height of the immediately adjacent future lots on Bate Bay Road. Ms Birchall's report concurs with this element of our site design, ie that the subdivision meets the existing contours of Bate Bay Road, and then slopes away from it. Importantly, contrary to the assertions of Mr John Brunton, the main focus of these four written submissions was not about the contours of the site in general, but loss of views. One of the homes, at the top of Bate Bay Road, complains about view loss to the north and west across Botany Bay to the City skyline, but this same house retains uninterrupted ocean views to the east.

A meeting was held with Council's planning staff on 19 July to discuss the percentage of fill that could be reused on in the clean soil barrier or "cap". Mr Brunton was present. A subsequent GIPA application by Breen to access internal Council documents in an endeavour to understand what the causes of Council's backtracking were, demonstrated that the previous recommendations and findings by Council's Chief Environmental Scientist, Ian Drinnan, were seriously misrepresented by Mr Brunton, who claimed that it Mr Drinnan had reported that 60% recovery and reuse might be

achievable.

Mr Drinnan had not suggested this.

It was agreed that further computer modelling of the fill body be undertaken to ascertain whether a higher percentage than 15% could be achieved. Mr Brunton said at that meeting that he would support whatever Mr Drinnan recommended as a result of the additional investigation.

He has not.

The safely achievable percentage, as has been reported and supported by independent verification in our submission was 18%. Mr Brunton has not accepted that and reported to Council that a new RAP should be undertaken in order that this figure can be augmented. The draft conditions of consent and deferred approval requested is a reflection of his "11th hour intervention".

In early October Mr Vella had been advised by Ms Birchall that the report to your Panel she was submitting was supportive of the application, with few if any issues. Later in the month she advised that whereas her report was in broad terms supportive, there were many conditions.

I submit that the new and final report had been substantially changed from the original Council planning staff's draft, and that such changes reflect a subjective bias and attitude to this project by one individual.

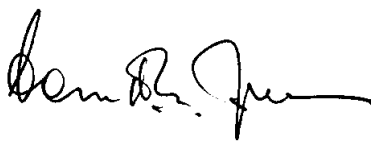
As we have submitted, there is absolutely no basis for a deferred approval.

There are at least 6 major design outcomes in this DA that had been approved by Council planning staff as a result of many discussions with our team of consultants, that have now been completely overturned in Council's submission to you. The role in this of Mr Brunton is clear. It is obstructive, completely unwarranted, and ignores the facts and the advice of experts.

I therefore respectfully submit to your Panel that such conduct of Council has been lacking in professionalism and principle, and that such be taken into account in your general assessment of the merits of the *Shearwater Landing* DA.

It is a project that we will develop with excitement, confidence and responsibility. It will be a lasting asset to the Shire and to the 161 families who will live there. It does not deserve the micro-meddling that is at the core of Council's recommendations to you.

Yours sincerely



Tom Breen
Executive Chairman & CEO