

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
DETERMINATION OF DEVELOPMENT APPLICATION NO. 249-10-2004
(FILE NO. 9036098)

LOT 41 & 42 DP 1070195 BOOMERANG DRIVE PACIFIC PALMS
CONSTRUCTION OF TOURIST FACILITY

I, Minister for Planning, pursuant to Section 80 (1)(b) of the *Environmental Planning & Assessment Act, 1979* (as amended), and clause 10 of State Environmental Planning Policy No. 71 determine the development application referred to in the attached Schedule 1, by refusing consent to the application subject to reasons outlined below.

1. The development proposed is unacceptable as it will result in fragmentation of a regionally significant corridor and in this way is inconsistent with State Environmental Planning Policy No 71 – Coastal Protection pursuant to Clause 8(i) in that the proposal fails to protect existing wildlife corridors from development impacts;
2. The development proposed is unacceptable as it will significantly affect biodiversity generally as a result of the removal of approximately 16 hectares of vegetation from the site and in this way is inconsistent with:-
 - (a) the aims of State Environmental Planning Policy No 71 – Coastal Protection pursuant to Clause 2(1)(a), (g) and (j) in that the proposal does not protect the natural attributes of the coast, does not protect and preserve coastal vegetation and does not manage the coastal zone in accordance with the principles of ecologically sustainable development. In particular, the proposal fails with respect to the conservation of biological diversity and ecological integrity in relation to the significant impacts on the natural vegetation on the site, threatened species and the corridor values of the site;
 - (b) the matters for consideration of State Environmental Planning Policy No 71 – Coastal Protection pursuant to Clause 8(g) in that the proposal does not provide for measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act) and their habitats as the flora and fauna assessment was inadequate and the remainder of the site outside the development footprint has not been adequately conserved;
 - (a) the principles for tourism pursuant to clause 23 of the Hunter Regional Environmental Plan 1989 in that the proposal is not environmentally acceptable given the significant vegetation removal and the large development footprint on highly constrained land;
 - (c) the objectives of Great lakes Local Environmental Plan 1996 pursuant to clause 2(1)(b) in that the proposal does not protect or enhance the environmental qualities of the area;
 - (d) the objectives of the 1(c) Future Urban Investigation Zone pursuant to clause 8 of the Great lakes Local Environmental Plan 1996 in that the proposal compromises the environmental qualities of the area; and
 - (e) the strategic actions (Part B) of the NSW Coastal 1997 in that the proposal does not protect or improve the natural environment of the coastal zone (Goal 1) or provide for ecologically sustainable development (Goal 5).

3. The development proposed is generally contrary to the public interest as the proposal is inconsistent with Pacific Palms Local Environmental Study 2004 in that the proposal disregards the conclusions and recommendations of this study which aims to conserve the ecological values of the site within the Pacific Palms area.
4. The development proposed is unacceptable as it will adversely impact on the visual amenity of the locality given the incompatibility of the proposal with the surrounding development, the extensive removal of vegetation from the site and the visual prominence of the site located within a natural view shed. In this regard, the proposal is inconsistent with:-
 - (a) the aims of State Environmental Planning Policy No 71 – Coastal Protection pursuant to clause 2(1)(e) in that the proposal does not protect visual amenity of the coast;
 - (b) the matters for consideration of State Environmental Planning Policy No 71 – Coastal Protection pursuant to Clause 8(f) in that the proposal does not protect the scenic qualities of the coast;
 - (c) the objectives of the 1(c) Future Urban Investigation Zone pursuant to clause 8 of the Great lakes Local Environmental Plan 1996 in that the proposal significantly detracts from the scenic quality of the land; and
 - (d) the strategic actions (Part B) of the NSW Coastal 1997 in that the proposal does not enhance the aesthetic qualities of the coastal zone (Goal 3)
5. The development proposed is unacceptable as the scale of the proposal is out of character with the surrounding area and is located on highly constrained land. In this way, the proposal is inconsistent with:
 - (a) the aims of State Environmental Planning Policy No 71 – Coastal Protection pursuant to Clause 2(1)(k) in that the size and scale of the proposal is inappropriate for its location within an area dominated by natural areas and other low-density tourist developments on relatively unconstrained land; and
 - (b) the matters for consideration under State Environmental Planning Policy No 71 – Coastal Protection pursuant to Clause 8(d) in that the development is not suitable for its location and relationship with the surrounding area given the proposal's incompatibility in relation to scale with surrounding developments.
6. The development proposed is unacceptable as the proposed access point does not provide adequate sight distance for vehicles leaving the site and in this way poses a significant risk to traffic within the site and along Boomerang Drive.

Frank Sartor
Minister for Planning

Sydney,

2006

SCHEDULE 1

PART A—TABLE

Application made by:	Terry Morris Morrisbray Architect Pty Ltd C/o Kerry Nash KR Nash & Associates Pty Ltd
Application made to:	Minister for Planning
Development Application:	249-10-2004
On land comprising:	Lots 41 & 42 DP 1070195 Boomerang Drive Pacific Palms
For the carrying out of:	Construction of Tourist Facility comprising 103 detached buildings and associated facilities.
Estimated Cost of Works	\$10 million
Type of development:	State Significant Development
S.119 Public inquiry held:	No
BCA building class	Class 1a and 10a
Approval Body / Bodies:	Department of Planning
Determination made on:	
Determination:	Development consent is not granted subject to the reasons outlined in the Determination

PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 249-10-2004

Responsibility for other approvals / agreements

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Appeals

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid for a development application, within 12 months after the date on which the applicant received this notice.

Appeals—Third Party

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

Legal notices

Any advice or notice to the consent authority shall be served on the Director-General.

PART C—DEFINITIONS

In this consent,

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

Applicant means Morrisbray Architects Pty Ltd and Kerry Nash (KR Nash & Associates Pty Ltd) or any party acting upon this consent.

Approval Body has the same meaning as within Division 5 of Part 4 of the Act,

BCA means the Building Code of Australia.

Certifying Authority has the same meaning as Part 4A of the Act.

Council means Great Lakes Council.

DA No. 249-10-2004 means the development application and supporting documentation submitted by the applicant on 13 October 2004.

Department means the Department of Planning or its successors.

Director means the Director of the Urban Assessments (or its successors) within the Department.

Director-General means the Director-General of the Department.

Minister means the Minister for Planning.

PCA means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

Regulations mean the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Subject Site has the same meaning as the land identified in Part A of this schedule.