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1 March 2009

The Hon. Minister Hon Kristina Keneally, MP,
Minister for Planning
Level 34 Governor Macquarie Tower,
1 Farrer Place,
SYDNEY NSW 2000

Dear Minister,

**Casuarina Town Centre, Urban Design Report for Kings Beach (No 2) Pty Ltd -
Incorporation of swale into Casuarina Village development**

We note that Mr Don O'Rourke, representing Kings Beach (No 2) Pty Ltd, has presented on the proposed development of the Casuarina Village to your department and at public meetings both at Casuarina Beach and Kingscliff. The extent of this development is noted to include the resumption of more than 20 plus metres of the swale, by the length of the swale (many hundreds of meters) (refer DP1048494, registered 17/02/2003), that is subject to easements and adjoining the various lots now running along the swale, including the properties at Lot 235 Beech Lane, Lot 229 Harpullia Court, Lot 230 Harpullia Court and Lot 224 Casuarina Way.

As noted in the attached signed letter by us the "Affected Residents" to Kings Beach (No 2) Pty Ltd "The Developer", we vehemently object to the proposed resumption and thereby reduction of the easement.

We further note that if this resumption was to proceed that it would cause us great detriment and include the significant reduction of the benefit provided by this easement to all of us as, unit holders, landholders and the community. The benefits and enjoyment provided by this easement to us includes:

- the visuals impact and physical impact separation from our property to the commercial precinct that The Developer is attempting to develop;
- views to the beach and ocean;
- the clear air aspects in all directions;
- access via the easement to the beach and the ovals;
- emergency access to the beach;

- The stunning aspect that the swale and the current rock facing affords the properties, the area in general; as compared to filling in the swale and what will amount to a movement of the level of finished level of our properties;
- The changing of a natural aspect of the landscape that may be to our long term detriment given that what is proposed in terms of the piping will not have the same water movement capacity that the current swale does; and
- We note that the properties in question extend into the swale and past the existing stone retaining wall and any attempt to fill on top of our properties and change the contour of our properties and its surrounds will be denied.

We have detailed in our attached letter to The Developer the basis, from the years 2002 to 2008, for our being misled and induced into purchasing the properties at a significant premium in the first place from The Developer, as well as then being induced into constructing our properties on the basis that the swale/easement with afford us all of the benefits indicated above. Further, we note in the proposed response from The Developer to the Director General's Environmental Assessment requirements for the Casuarina Town Centre Concept Plan a more accurate response than that provided by The Developer. It would appear that this is an opportunistic move on the part of the developer to maximise profits and does nothing but remove the amenity of area and rob the community of such an amenity.

You will note from the attached letter that we wrote to The Developer in mid April 2008 after it was represented to us at the public meetings that The Developer would welcome feedback and suggested a way forward in resolving our concerns. The Developer has subsequently informed us that they will not meet with us or entertain our objections and will look to press on with their development proposal "as is".

We The Affected residents based on various documentation including "Master Planning development documentation", produced by The Developer and endorsed by the NSW Government and Tweed Shire Council, over the period 2002 to 2008 have been induced into significantly investing into the affected properties. We believe that if the easement the subject of this and the attached letter were to be altered in any way we would have been misled and deceived into our investment and would rightly seek recompense.

As such, we would seek your assurance that you will not permit the reduction of this public amenity in the form of the reduction of the easement/swale.

Yours faithfully

The residents named here:

- Dr, Ms Ralston and family, Lot 235 Beech Lane, Casuarina Beach;
- Ms Robinson and family, Lot 229 Harpullia Court, Casuarina Beach;
- Dr Amanda Evans, Lot 230 Harpullia Court, Casuarina Beach; and

- Santai Resort - Lot 224, Casuarina Way, Casuarina Beach.

The Santai Executive Committee named here:

- Andy and Catherine Kilpatrick, Lot 82, Unit 308;
- Margie Howarth, Lot 85, Unit 311;
- Andrew Robinson, Lot 108 ,Unit 334;
- Michael and Elisa Valitutti, Lot 64, Unit 231; and
- John Shortis (Resortcorp).

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17 April 2008

The Directors, Kings Beach (No2) Pty Ltd
C/- Mr Don O'Rourke
Consolidated Properties
Level 12, 344 Queen Street
BRISBANE QLD 4000

Dear Sirs,

**Casuarina Town Centre, Urban Design Report for Kings Beach (No 2) Pty Ltd -
Incorporation of swale into Casuarina Village development**

We note that you have presented on the proposed development of the Casuarina Village to a couple of public meetings both at Casuarina Beach and Kingscliff. The extent of this development is noted to include the resumption of up to 20-odd plus metres of the swale that is subject to easements and adjoining the various lots now running along the swale, including our properties at Lot N235 Beech Lane, Lot 229 Harpullia Court, Lot 230 Harpullia Court and Lot 224 Casuarina Way.

Please note that we vehemently object to the proposed resumption and thereby reduction of the easement.

We further note that if this resumption was to proceed that it would cause us great detriment and include the significant reduction of the benefit provided by this easement to all of us as, unit holders, landholders and the community. The benefits and enjoyment provided by this easement to us includes:

- the visuals impact and physical impact separation from our property to the commercial precinct that you are attempting to develop;
- views to the beach and ocean;
- the clear air aspects in all directions;
- access via the easement to the beach and the ovals;
- emergency access to the beach;
- The stunning aspect that the swale and the current rock facing affords the properties, the area in general; as compared to filling in the swale and what will amount to a movement of the level of finished level of our properties;

- The changing of a natural aspect of the landscape that may be to our long term detriment given that what is proposed in terms of the piping will not have the same water movement capacity that the current swale does; and
- We note that the properties in question extend into the swale and past the existing stone retaining wall and any attempt to fill on top of our properties and change the contour of our properties and its surrounds will be denied.

We wish to point out to you that the lots including Lot N235 Beech Lane, Lot 229 Harpullia Court, Lot 230 Harpullia Court and Lot 224 Casuarina Way were purchased from your group. You have access, no doubt, to the following documents that were produced to induce us to purchase these lots:

- Master plan for Casuarina Beach. (as now reproduced in the Casuarina Town Centre, Urban Design Report for Kings Beach (No 2) Pty Ltd - February 2008, page 2)
- The three town centre concepts that were presented at a series of public displays late in 2006. (as now reproduced in the Casuarina Town Centre, Urban Design Report for Kings Beach (No 2) Pty Ltd - February 2008, pages 11, 12 and 13)
- Marketing documents.
- Website images.
- Price lists;
- Title searches and survey plans;

These documents dating back to as early as 2002 and as late as April 2008, induced us and others to purchase property that adjoins the swale, on the basis that the swale would exist in perpetuity as indicated in all of this document. As you will note, the swale on all of the documents, including most importantly the detailed survey and lot plans, indicate the width and length of the swale. The inducement was based on there being a clear easement area of at least 36 metres between the lot and any commercial or other development. This area would clearly give us and sustain our views, privacy and other amenities, including access via this easement. It is clear also from the various marketing and pricing schedules that the lots that adjoin the swale were being marketed and subsequently sold at a significantly greater price than lots that did not adjoin the swale. It is clear that through the marketing materials, as well as the assertions made to us by the selling agents, and supported by the price differential, that the extent and amenities of the swale added significantly to the benefit purported to be delivered by this easement.

Not only has all of the documentation and your selling agents induced us to purchase the property, it has also induced us to construct our properties on the basis that the swale/easement with afford us all of the benefits indicated above.

We also note that in your proposed response to the Director General's Environmental Assessment requirements for the Casuarina Town Centre Concept Plan that the following would add to a more accurate and balanced response:

1. *Land Use Pattern and Visual Impacts*

1.1 *Integration and compatibility of the proposed land uses (retail, commercial, tourist, open space) across the site with regard to access arrangements.*

“The proposed land uses are consistent with well accepted urban design principles for Town Centre Design. The variety of proposed land uses are all uses that would be expected to be found in a Town Centre and in the case of the proposed Casuarina Town Centre the proposed uses are well integrated across an urban form that is conducive to Town Centre activity. The uses are centrally placed in the site development that has occurred over the last nine years and have frontage directly on to the two major access roads servicing the Town Centre.”

Your proposed response does not adequately describe the reduction of the open space aspects and access that will result from your proposed resumption of the swale.

1.2 *Justify any inconsistencies in the proposed concept plan for the site...*

“There are no obvious inconsistencies contained within the proposed concept plan for the site. The Town Centre is located in the identified location for such a use and at a time consistent with the status of development in and around the proposed site.”

This is clearly not right as the town centre has moved to include the resumption of the swale. Where is the justification and rationale for this, other than the obvious economic one?

1.6 *Address the visual impact in the context of the adjoining and surrounding development in relation to setting, density, built form, building mass and height as viewed from the public domain including all publicly accessible coastal locations.*

“The visual impact of the Town Centre is consistent with the developing character and scale of the local community into which it is proposed to be placed. Height is within the generally accepted height limits for coastal communities in Northern NSW. The proposed built form contains variety of built form, articulation, shadowing, street activation and consistent visual interest throughout the central area. Surrounding development has been developed in a similar approach but perhaps without the particular visual interest proposed for the Town Centre facilities.

Density is consistent with adjoining communities such as Seaside City, Salt and Kingscliff. The setting is conducive to a visually strong Town Centre because of the strong green backdrop to the centre, central location within the community and direct visual connection to Old Bogangar Road and the balance of the New Tweed Coast.”

There is no indication here of the significant change in the visual impact and what this will mean to the existing residents. Further, there is no indication here that you will be reducing an advertised public and emergency access path to the beach.

2.0 Consider measures that would be implemented to ensure ongoing public access to the foreshore.

“The proposed urban form of the Town Centre is predicated on the premise that ongoing public access to the foreshore is desirable and will occur. The urban design amenity inherent within the concept takes this principle as the base condition and builds all the surrounding urban form from this base. The Boulevard and Esplanade are focused on the access locations as is the carparking and pick up and drop off facilities.”

Again there is no indication that a major access and buffer area is being removed and how you intend to compensate or deal with these consequences.

Given what you and your group of companies are now purporting to do, it would be understandable that we would maintain that your actions to date has been clearly misleading and deceptive conduct on your, and your group's, behalf. We would also presume that if and when you are successful in your attempts to have this easement rezoned and reduced, that the loss of amenities and benefits that we would suffer would need to be justly compensated. You will note that this is not our preferred course of action as we have invested heavily based on your previous documentation, conduct and clear inducement for us to invest and build in this master planned community. As such, we would seek your assurance that you will not be looking to pursue the reduction of this public amenity in the form of the reduction of the easement/swale and that you will honour your master planning and purported principles of being an honest developer.

We understand that you may be amenable to resolving this issue through the following mechanism;

1. That an addendum be prepared to the Master Plan that has been lodged with State Government that retains the Swale in its original form with consequential changes/modification made.
2. That the above be finalized with a binding legal confirmation that you will be bound by this addendum and that this has been submitted as part of the Master Plan.

To ensure the above we would suggest the following as a way ahead:

1. Organise a meeting with yourself and representatives of the affected to residents to examine the addendum showing the reversion to the original swale and the consequential changes. Also produced the form of the legal confirmation to us of the lodgement and that your groups will be bound by such.
2. Lodge the addendum;
3. Produced the legal confirmation to us of the lodgement and that your groups will be bound by such.

4. We will produce a confirmation that we are supportive of the master plan with addendum as lodged.

Yours faithfully

The residents named here:

- Dr, Ms Ralston and family, Lot N235 Beech Lane, Casuarina Beach;
- Ms Robinson and family, Lot 229 Harpullia Court, Casuarina Beach;
- Dr Amanda Evans, Lot 230 Harpullia Court, Casuarina Beach; and
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