

15-12-22

Director – Regional Assessments

NSW Planning

Department of Planning and Environment

Locked Bag 5022

Parramatta NSW 2124

From

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The Director – Regional Assessments

NSW Planning

Department of Planning and the Environment

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Parramatta NSW 2124

Dear Sir or Madam

Subject

Johnson Property Group Pty Ltd

Concept SSD Application (SSD27028161)

Exhibition

Trinity Point Mixed Use Tourism and Residential Development

Concept SSD application (SSD-27028161)

We have never given any donations to a political party

We accept the disclaimer and declaration of the Department of Planning and Environment

Morisset Park and District Action Group (MPDAG) formal objections to SSD-27028161.

In summary our objections are:

- **The proposed building height of 42 metres above natural ground level is unacceptable** and totally out of scale in relation to the local environment and the artist's impressions of the designs are fanciful;
- **Division of site into Tourist and residential.**
- **The sustainability of the proposal is doubtful under expected climate change conditions.** We believe Appendix P of the JPG proposal, which addresses this issue, is based on old data which no longer reflect current sea level rise forecasts;
- **Access to the site from existing roads is inadequate** for the proposed increase in both permanent and transient populations.
- **Safety for the area-** Bushfires
- **Morisset Park area 3 the helipad** under the Lake Macquarie City Council's 2014 LEP, which specifically prohibits helipads on the Lake. This is an absolute final insult to the large number of local residents who have continuously fought against a helipad since 2009 when Trinity Point was initially proposed.

Background

The initial approval for this development occurred in 2009 and excluded approval for the proposed helipad. LMCC approved the helipad under its older LEP despite the range of valid objections this organisation submitted to LMCC and the Independent Planning Panel. Details of these earlier arguments are appended as Appendix 1.

The developer JPG, has, over the last decade or so, lodged a large number of amendments in relation to this development. Usually, these amendments have been lodged in December, accompanied by a large number of documents, rendering detailed analysis and appraisal in a short time virtually impossible. This SSD proposal follows that modus operandi, with about 42 separate documents included, many of a lengthy and technical nature.

Local residents initially engaged with the process, with large numbers attending public meetings to object to aspects of the development, however after experiencing the futility of providing feedback to local and State government planning agencies most residents have now concluded that public consultation in regard to this development is pointless. Valid public objections have been ignored, no meaningful amendments have occurred to indicate that local residents have any role in determining the value of local developments and, as a result, most residents have withdrawn from any engagement in the planning process. If this is the objective of governments and developers, it has been a raging success.

Nevertheless, MPDAG will make this final submission. We value the local environment of Bardens Bay and the tranquillity of southern Lake Macquarie and hope that our objections are seriously considered at last.

Building Height

The developer seeks to amend the Lake Macquarie City Council limit on building heights to allow for the construction of 42 metre high buildings on the highest point of the Trinity Point site. The most southerly of the proposed buildings is planned to be 6 storeys high according to comments in Appendix P. We estimate that this would be equivalent to about 30 metres above natural ground level on that part of the site, or nearly 50 metres above sea level. A structure of this height on this part of the peninsula would be visible from a large area of southern Lake Macquarie and, in our view, would be a completely dominant feature of the skyline, at odds with the mostly natural or low rise residential landscape viewable from the Lake.

Nowhere else on the Lake is such high rise allowed. Many other areas of Lake Macquarie are in much more developed locations than this site, rendering Trinity Point the least defensible location for the first high rise on the Lake shores. We reject the argument that such tall structures are necessary for this location, especially as the proponent has not advanced any detailed business plans for the commercial aspects of the development, nor is there any evidence to our knowledge that there are any firm commitments from developers to finance the proposed commercial developments.

Moreover, the artist's impressions of the Hanging Gardens of Babylon/Egyptian Pyramids style design are, in our view, cynical enticements rather than firm design commitments. We expect that the developer will, at a later stage, discover that there are financial constraints involved in building and maintaining these designs and will "reluctantly" need to revert to more conventional, lower cost designs. There is no guarantee that the hotel and conference facilities will ever be built and we could be left with unacceptable high rise residential buildings that should never have been approved.

Division of Tourist and Residential

It is understood approved concept plans are valid for a period of 5 years. The current concept plans for the Serviced and Residential Apartments (DA/496/2015) together with the proposed hotel has now lapsed. See table 1 page 5 of the EIS.

A licenced 5 year Development Application approval for a restaurant to operate on this site was recently granted in February 2022 by Lake Macquarie City Council (LMCC) DA /1494/2018/ E.

Figure 11 (page 23 of the EIS) indicates buildings A and B represents the tourist component

This is the same area approved under the current DA /1494/ 2018/E for 5 years commencing in February 2022.

Under previous and modified concept plan approvals there was no DA approvals for this site. Now, the developer applies for the same site to have 2 approvals.

Concept Plan approvals lapse in 5 years yet the developer has received approval from LMCC as a building development and operational site for the purpose other than a hotel.

Staging the concept development

A staged project delivery scheme is proposed by the developer page 32 EIS.

Stage 1 Construction and delivery of a proportion of residential apartments. *"Returns from the initial sales of residential apartments, and any additional investment, if necessary, will then be used to establish part of the tourist component."*

Comment

The developer has no intention of building any linkages from residential to tourism. The staging inclusions in the developer's EIS document are clear i.e.

- a) 42 meter high (14 storey) residential apartments are to be built 1st.
- b) No tourism components until the residential apartments are financially viable.

Over the past 22 years the developer makes it clear via media reports:

"I'm NOT a hotel builder. I do not want a hotel. I'm a residential developer." Newcastle Herald and Channel 3 Newcastle.

Based on the facts that all current concept plans have now lapsed and the developer has an additional 5 year approval (February 2022) for a licensed restaurant at sites A & B – Morisset Park area 1 (page 23 EIS) and the proposal to build 4 x 42 metre high residential apartment blocks as the stage 1 development in Morisset Park area 2 render this concept plan application as invalid.

Objection 1. – Morisset Park area 1.

The developer currently wants:

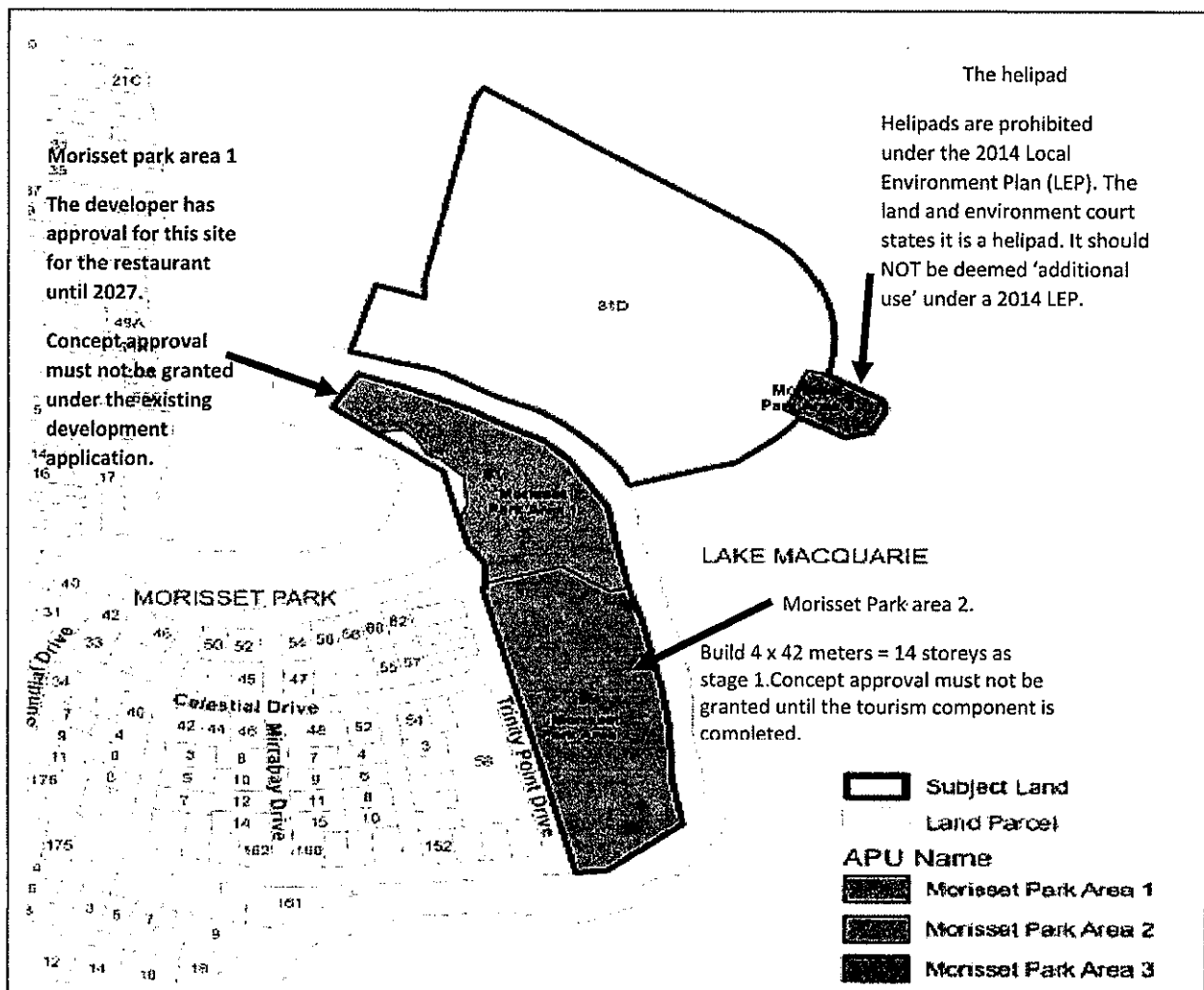
- a) 2 approvals for the same Morisset Park Area 1 where a current D.A. was approved by Lake Macquarie City Council for the next 5 years (2027).

There is no guarantee the developer will ever build a hotel on Morisset Park Area 1 as a current DA is approved until 2027.

Objection 2 – Morisset Park area 2

The developer clearly states in their application that: *"Stage 1 in Morisset Park Area 2 will be built as the first stage."*

These are residential buildings. During the past 14 years the developer uses the same 'financial viability' argument to dispose of the tourist component. The developer wants residential apartments/buildings.



Objection 3 – Concept plan application

The developer has now '**thrown out**' all designs from previous concept plans for the land content. The original INTENTION for this site was for eco-tourism and a blend into the existing low density environment.

- a) No approval for this concept plan should be granted until the developer can substantially prove a linkage between a 50: 50 residential and tourist requirement.
- b) No concept approval plan should be granted and / or approved in Morisset Park area 1 as a Development Approval from local government already exists until 2028.
- c) No concept plan should be granted for Morisset Park area 2 as a stage 1 development. The site is for tourism development NOT residential.
- d) No concept plan should be approved for area 3 as this area is subject to a judicial court decision.

Comment

The developer's request for staging the development and allow residential development to occur before the proposed tourist development could be regarded as a Trojan Horse, allowing JPG to avoid the challenging prospect of engaging an interested developer to commit to a costly tourist venture.

In previous submissions, JPG has avoided presenting detailed business cases supporting the viability of the tourist aspects of the proposal.

There is no viable business case to allow:

- a) The separation of the site into 2 distinct areas i.e. Residential and Tourist.
- b) Residential accommodation to be built as the first construction on the basis that: *"Returns from the initial sales of residential apartments, and any additional investment, if necessary, will then be used to establish part of the tourist component."* See page 32 of the Environmental Impact Statement.

The concept plan is submitted under an Artist's view. This is the 4th submission by the developer to increase the financial viability for Trinity Point.

Every application from the developer for a concept plan relies on:

- a) The submitted artist's impression
- b) Statements made from the developer.

Every development application (DA) lodged under a concept plan approval by the developer with Lake Macquarie Council is over turned and erodes away the amenities and protection approvals set by NSW Department of Planning.

In this instance Lake Macquarie City Council supports and has approved a current 5 year DA for the site identified in the concept plan.

The Morisset Park community wants to know why the NSW Department of Planning would approve a concept plan where an existing 5 year Development Application is approved?

Recommendation

The concept plan is based on an artist's drawing however the devil is in the detail.

1. The developer clearly separates the site into 2 distinct area i.e. Residential for Morisset Park area 2 with a staging requirement for this site to be developed 1st.
2. Morisset Park area 1 – Tourist which currently has an approved Development Application for a period of further 5 years.
3. Based on the developer's concept plan requirements for the separate residential area means there is no tourist linkage between Morisset Park Areas 1 & 2.
4. There is no guarantee under the current proposed changes to the Local Environment Plan (LEP) that the Tourist component will ever be built.

Sustainability

We also note from Appendix P that most of the site in question is regarded as “flood fringe” land as a result of expected sea level rise by the year 2100. The flood maps presented in Appendix P are based on the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, a document that is now 17 years old and relies on projections of sea level rise that are likely to be significantly understated. The International Panel on Climate Change estimates that sea levels will rise by about 50cm for each 0.5 degrees Celsius rise in mean temperature during this century.¹

The overall assessment underscores efforts to pin down how much more temperatures will rise if atmospheric emissions continue, and provides climate scientists' most confident projections yet for the twenty-first century. One key metric that researchers use to make their projections is 'climate sensitivity', a measure of how much long-term warming would be expected on Earth from a doubling of atmospheric carbon dioxide concentrations compared with pre-industrial levels. Although the IPCC's best estimate remains at 3 °C, the report reduces the uncertainty in that figure, narrowing the probable range to 2.5–4 °C, using evidence such as modern and ancient climate records. This compares with 1.5–4.5 °C, the wider range for sensitivity reported in the IPCC's last climate assessment, released in 2013. ² The implication of these findings is to expect a sea level rise of about 3 metres by 2100, a rise that would not be sustainable for this development.

Comment

Regardless of sea level rise, the proposal intends to place all parking underground. This would involve are very large excavation below the current water table, particularly towards the northern part of the site.

Will water seepage would occur and necessitate continual pump out of seepage?

How would such pump out water be disposed of?

¹ See <https://os.copernicus.org/articles/17/181/2021/>

² <https://www.nature.com/articles/d41586-021-02179-1>

The water would be contaminated with vehicle waste pumping into the Lake and would be illegal.

The proposed site is bounded by the un-named lake. This is a salt marsh area. This issue needs to be addressed.

Access to the site

Traffic flow

The proposal increases the intended volume of road traffic flow to the site. For those unfamiliar with the location, it is important to appreciate that there are currently just two roads providing access to Trinity Point.

The older road, Henry Road predates Trinity Point by many years. It is currently neither kerbed nor guttered, is in poor repair and provides access to about 40 older properties along Henry Road, as well as to the Trinity Point site.

The other road, the northerly part of Trinity Point Drive, was constructed in the early stages of the residential development of Trinity Point. This road incorporates a number of chicanes, is kerbed and guttered but is narrow and often has cars, boat trailers and caravans parked along it because the residential blocks adjoining it are much smaller than those on Henry Road. Trinity Point Drive loops around the site and joins Henry Road near the entrance to Trinity Point at its southern end.

The substantial increase in both permanent and transient populations implied by this latest proposal inevitably would lead to greater traffic volumes along these roads.

Page 115 of the developer's Environmental Impact Statement (EIS) states "*Section 2.4 of the Morisset Contributions Catchment Plan sets out that other than payment of a monetary contribution, an obligation to provide contributions towards community infrastructure could be satisfied by the provision of a material public benefit/works-in-kind.*"

The developer's past performance regarding contributions is poor. The developer was required to pay over \$700,000 when building to marina however the developer lodged an application to have this contribution waived. So who paid? The taxpayer of course.

The developer has, it seems, deliberately developed Trinity Point Drive as a secondary route, given its narrowness and the use of chicanes, meaning the long term residents along Henry Road would endure the bulk of increased vehicle traffic. Given that other developments are planned for the area, especially the sporting centre to be built adjoining the Morisset Hospital site, adds to traffic flows on Morisset Park Road, existing road access is quite inadequate for the planned expansion of Trinity Point.

This is a pattern that has repeatedly appeared over the years for this development. Existing residents have lost amenity on Bardens Bay as a result of the marina, they have endured heavy vehicle movements during construction, they are expected to endure regular noise intrusion from helicopter take offs and landings, regular noise from partying on vessels moored at the marina and the loss of easy access to the boat launching ramp at Morisset Park because of the increased local population and the absence of a launching ramp at Trinity Point. See our comments below in Appendix 1 in relation to the perception of noise in particular.

Safety for the Area

BUSHFIRE SAFETY ISSUES

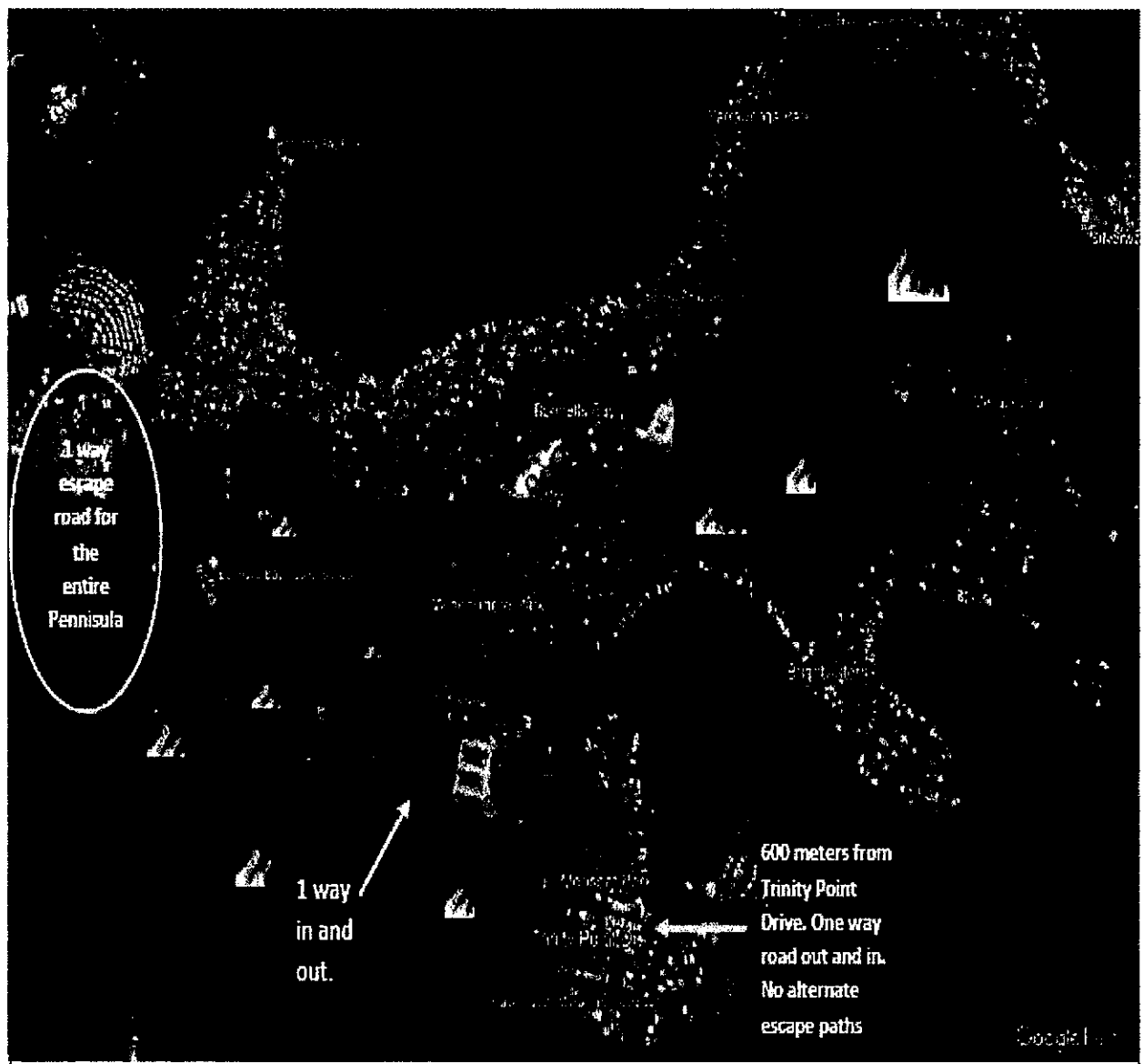
The area is a peninsula i.e. Fishery Point Road which is one road in and one road out.

The proposed development is for:

- a) 4 residential buildings consisting of 180 residential units.
- b) 2 hotel building consisting of 224 tourism units
- c) 2 x 300 seat restaurants
- d) 1 x 300 seat conference centre.

The proposed Trinity Point development is 5 kilometres from Morisset via a one road in and one way out road i.e. Trinity Point Drive and Morisset Park Road. Both roads on each side are bounded by dense bushland.

Trinity Point Drive is a narrow street (about 500 meters long) and leads directly onto Morisset Park Road bounded on each side of the road with dense bushland.



The Trinity Point site road (Trinity Point Drive) is also one way in and one way out. This road was constructed in the early stages of the residential development of Trinity Point and incorporates a number of chicanes, is kerbed and guttered but is narrow and often has cars, boat trailers and caravans parked along it because the residential blocks are small.

Bushfire season

The developer clearly states in the application a 'high population season during the summer and bushfire months.'

The substantial increase in both permanent and transient populations implied by this latest proposal inevitably leads to greater traffic volumes along both Trinity Point Drive, Morisset Park Road and Fishery Point Road.

What to expect during the Bushfire season for this proposed development

When calculating a minimal 60% rate for occupancy (residential and tourism accommodation) together with hospitality rates (restaurant and conference centre) and the marina at the '*height of the summer holiday season*' represents almost 900 cars.

Given the devastating effects of the past bushfire and flood experiences, local government now has a clear responsibility to the existing community to insist all new development together with increased population and traffic meets safety measures to protect the existing and extended community.

When examining the proposal by Lake Macquarie Council (LMCC) to change the Local Environment Plan (LEP) and accommodate the developer's increases to the site, **NOWHERE** in this proposal has LMCC identified the bushfire hazards or an escape plan for Morisset Peninsula.

Local Environment Plans are legislated and in place to protect not only the local amenity but also the safety of the community.

This proposal increases the size of the community and as stated by the developer the volume of road traffic will increase during the summer months and over the holiday periods.

The Helipad: Morisset Park area 3

Under no circumstances should Area 3 be classified and re-purposed as **Additional Permitted Use** and described as an area for food and drink.

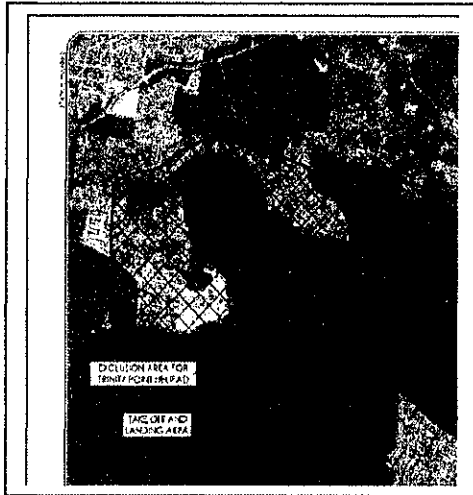
The helipad is what it is **a helipad!**

It was always intended as a helipad and approved by the Land and Environment Court in December 2019 as a helipad with restrictions attached for a 'no fly zone.'

Helipads are prohibited under the 2014 Local Environment Plan and to consider **eroding** the impact of aircraft take off / landings and the approved no fly zones set by the Land and Environment Court Judgement to "**Additional Permitted Use for the purposes of food and drink**" is an insult to the judicial system.

The helipad and the exclusion **No fly area for aircraft** was approved in December 2019 under Lake Macquarie Council's 2004 Local Environment Plan (LEP) at the Land and Environment Court hearing in December 2019. The exclusion no fly aircraft area is bounded by a straight line east from the Marina to the

south-east end of Bardens Bay, along the western side of Sugar Bay, Bulgonia Road, Pillapai Road, Rhodes Parade, west of Lake Petite, Chifley Road, Morisset Park Road, Charles Avenue and the southern and eastern shores of Morisset Park to the Marina.



XXXX – No Fly zone.

Under LMCC's current 2014 LEP helipads are prohibited within Lake Macquarie. The developer was aware of these changes and submitted a Development Application (D.A.) under the 2004 LEP just 28 days before the 2014 LEP was gazetted.

Lake Macquarie 'held over' and contravened the Development Application procedure requirements without the required documentation for 4 years.

Hundreds of community objections were received by Lake Macquarie Council regarding the helipad development application. LMCC disregarded all community objections and 'did a deal' with the developer 2 days before the Land and Environment court hearing.

In this application LMCC proposes to 'water down' the 2014 LEP which prohibits helipads and state that the helipad and the No Fly Exclusion zone is NOT a helipad but ***"Additional Permitted Use for the purposes of food and drink!"***

The helipad is what it is!

Its purpose and intention is for take-off and landings. Any application (from the developer) to change the intent and purpose of the current 2014 LEP and accommodate the existing prohibited requirement under the guise of ***"Additional Permitted Use for the purposes of food and drink"*** is rejected.

Exclusion Flight Zone

The purpose and intent of the land and environment court determination for an exclusion zone is to protect the residents of the noise concerns and amenity impacts raised by the residents and users of Bardens Bay and in Sugar Bay.

RE-defining the helipad and the exclusion no fly aircraft area as ***"Additional Permitted Use for the purposes of food and drink"*** is an insult to:

- a) The judicial system.
- b) The hundreds of local homeowners who lodged objections against the helipad.
- c) LMCC's continued disregard for community input.

There is NO substantive evidence submitted by the developer or Lake Macquarie Council for these Local Environment Plan (LEP) Legislative changes.

Where is the Environmental Impact Study (EIS) from the developer to support a change in purpose and intent from the Land and Environment Court decision from helipad and designated no fly zones to ***Additional Permitted Use for the purposes of food and drink.***

Where is the Environmental Impact Study (EIS) from the developer to ***“permit a new land use of helipad to be carried out in the existing zones?”*** There are no documents or information submitted to the community by LMCC to substantiate this claim. What are the new land uses for the helipad? The community wants to know!

The Trinity Point helipad issue has, without doubt, been the issue which has upset local residents and organisations the most over the period since 2009. In seeking to have the Lake Macquarie City Council LEP of 2014 changed to allow this helipad, and presumably other helipads elsewhere on the Lake, would represent a knockout blow to the residents whose lives would be continually disrupted by helicopter noise.

There has been no convincing case presented to show the helipad is a necessary, integral part of the development. Rather, it has the hallmarks of a purely vanity project. Moreover, the community still contends that the noise testing conducted in 2016 was not undertaken correctly and the arguments presented at previous hearings were accurate but were dismissed by Lake Macquarie City Council without being adequately addressed.

Recommendation

Morisset Park and District Action Group (MPDAG) strongly urges the Minister for Planning to specifically deny approval for any amended Concept Plan which incorporates a helipad attached to the Trinity Point marina. The proposed Concept Plan, already incorporates an approved helipad, and any changes to the approved flight plans as determined by the decision of the Land and Environment Court is an insult to the judicial system.