Anna Bay Resort Objection

Review of the Environmental Impact Statement (EIS) has highlighted many areas of concern for the proposed Anna Bay Resort proposal. A summary of the key matters of concern are listed below. Included in many of the listed concerns are deficiencies in the EIS that must be addressed to meet at a minimum the DGR's and to adequately address the assessment requirements for the proposal. Accordingly, pursuant to Schedule 2 Part 2 Clause 3 (8) *Environmental Planning & Assessment Regulation 2000*, the EIS does not comply with all of the environmental assessment requirements.

In our opinion the EIS significantly fails to adequately describe and assess many critical environmental impacts of the proposal both from construction and operation of the facility. Accordingly, it seems impossible for the consent authority to adequately assess all matters for consideration pursuant to S79C of the *Environmental Planning & Assessment Act 1979*. Additionally, the proposal is defined as 'eco-tourism' and we challenge the validity of this definition for the proposal and hence suggest that the proposal is not of a type of development that is permissible with consent or without consent under the site zoning.

The Blanch family has ties to the proposed development site, dating back seven generations to the 1870's. This was not long after the initial establishment of Anna Bay. Throughout these seven generations the land has been used for market gardening, dairy farming, horse agistment and ultimately the rearing of all the Blanch families. The rural atmosphere and unique nature of the land has always been central to the way the Blanch families have lived, worked and played.

Our house is currently the third Blanch house on this site, the original being the site of the first Post Office in Anna Bay. Our grandfather Clarence Stephen Blanch was a market gardener and the first postman. We have lived on this parcel of land for thirty years, enjoying the quiet peaceful aspects of a rural lifestyle. There are currently four generations of the Blanch family enjoying the idyllic country lifestyle that this land provides, as it also did for the previous generations.

The construction and operation of the proposed resort will not only affect the lifestyle and general wellbeing of ourselves as residents, but also that of our elderly frail mother who resides in the attached duplex. Our children grew up with the chance to see and hear the native fauna that regularly frequent our backyard and surrounding area while they played, an opportunity that with approval of the proposed development would not be afforded to our grandchildren. The proposed resort will destroy the ambient amenity that we enjoy from our back verandah, as we often take in the sunrise and sunset across the beauty of the natural vista and surroundings.

A summary of concerns is listed below:

Acid sulphate soils (ASS)

The pertinent facts around ASS sourced from the EIS and supporting documents are as follows:

1. Field testing showed 74% of soil samples indicated PASS. All sampling locations are PASS.
2. Laboratory testing showed the majority is samples are PASS, with one sample being Actual ASS.
3. Laboratory tests showed average soil pH to be 5.2, and when oxidised, this was 3.1, or highly acid.

4. PASS occurs across the majority of the site
5. Numerous samples exhibit high to extreme reaction to field oxidation
6. Numerous samples results are above action criteria of 0.03% S. Calculated mean net acidity across all samples is 0.36% S, or ten times the action criteria.
7. In accordance with the Acid Sulphate Soils Assessment Guidelines, an exceedance of the Action Criteria triggers the need to prepare a management plan. A Preliminary ASS Management Plan is provided as an EIS appendix
8. The EIS notes that dewatering will be required during construction and that this water will be pumped onto the ground surface for disposal.

There is no ASS impact assessment provided in the EIS, simply a reference to a sampling programme that clarifies that Potential ASS and Actual ASS are present over most of the site. Given the sensitivity of the receiving environment, this lack of impact assessment is unacceptable.

The DGRs state the following in part "*The ASS management plan should ensure subsurface works are designed and constructed so that **tranches** (sic) do not act as a conduit for acid water potentially generated by the works*." This phrase has been sourced from the NSW Fisheries response to the PEA (Attachment B of the DPI response) with an inadvertent typographic error added by the Department of Planning and Environment referring to a tranch (a part payment of cash or security) instead of trench as written by NSW Fisheries. The regular repetition of this minor topographic error throughout the EIS reflects that the writer of the EIS was unaware of what a trench is and how it might affect the formation of acid leachate and the conveyance of such leachate into the downstream receiving waters. Given the critical importance of ASS, this lack of understanding is alarming. Of further alarm is that the issue of trench conveyance of acid is not discussed in the supporting specialist impact assessment reports (Contamination Report and Groundwater Report), and the question posed by the DGRs is simply and blindly reiterated in the EIS without any evidence being offered as to how the issue will be avoided. In other words, this important issue raised in the DGRs has not been addressed and therefore the EIS should have been considered inadequate and not exhibited.

Groundwater

Pertinent groundwater notes from the EIS are as follows:

- groundwater flows north to Anna Bay Main Drain
- dissolved oxygen in all bore samples indicative of anaerobic conditions
- TDS of some bores very high, 2160 mg/l
- Dissolved aluminium exceeds freshwater groundwater investigation levels in all bores.

The EIS notes that aquifer interference policy is not triggered, but how does this sit with groundwater dewatering required for construction? The groundwater impact assessment report (Appendix 11) does not quantify the proposed dewatering, nor does it provide a numerical prediction of the drawdown on adjacent household bores due to this dewatering. The EIS as result does not provide an impact assessment of the project on neighbouring groundwater users. Similarly, while the EIS notes the existence of groundwater dependent ecosystems, the failure to numerically assess groundwater drawdown, means that the EIS's assertion that no detrimental impacts are anticipated (page 12 of appendix 11) cannot be substantiated.

The Groundwater Impact report (Appendix 11) noted the following:

"*Dissolved aluminum (*sic*) concentrations exceeded freshwater guideline values in groundwater from all four monitoring bores. Elevations of copper in monitoring bore MB6 exceeded the guideline value for fresh and marine water quality, while groundwater from three of the four monitoring bores exceeded the guideline value for fresh and marine water quality for zinc*."

The EIS itself fails to mention these exceedances. Why is not clear. The Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZECC) provide toxicant guidelines for the protection of aquaculture species. ANZECC specifics an aluminium content of water of <10 µg/l in saltwater and the same level of freshwater with a pH <6.5. Appendix 10 of the EIS (Table 5) notes aluminium levels in the site monitoring bores ranging from 2,400 to 136,000 µg/l, or approximately 13 thousand times the specified level. By reference to the ANZECC and even allowing for dilution by surface water, there is a risk to aquatic species in the Nature Reserve downslope from the proposed hotel.

Further, acidification of soils or groundwater will generally make metals more mobile, and some metals, like aluminium, are toxic in high concentrations. ANZECC Volume 2 notes the following with regard to aluminium, "*Toxicity to fish and invertebrates is increased at low (e.g. <5.5) ph.*" Any acidification of groundwater or surface runoff due to the excavation of PASS material can be expected to increase the toxicity of the currently high aluminium levels.

Additional to the metal toxicity issue, the EIS refers to the disposal of groundwater due to dewatering, but does not consider the impact of highly de-oxygenated water on the receiving environment.

The EIS demonstrates a considerable lack of assessment and detail on:

- how groundwater with high metal concentrations will be managed when the proposal includes considerable drawdown of the groundwater for construction;
- how groundwater drawdown will also expose potential ASS to oxidation;
- how groundwater will be prevented from draining into the adjacent SEPP 14 wetland, EEC and Nature Reserve and Port Stephens Marine Park; and
- Any possible impacts on downstream oyster lease operations given the above matters pursuant to SEPP 62.

Air quality

Section 8.4 of the Vipac air quality report (Appendix 12 of the EIS) lists predicted emissions of PM10. We note that these predictions of PM10 range from 49.6 to 49.8 µg/m^3, or just slightly under the daily criterion of 50 µg/m^3. This result is fortunate for the developer, however, Vipac notes in Section 4 of their report, that exceedances of the criteria were excluded from the contemporaneous ambient data set. If they were retained as they should have been, the predictions would have been over the PM daily criteria.

Similarly, Section 8.5 of the Vipac report lists predicted PM2.5 results. Again, the predictions are just 2 µg/m^3 under the daily criteria, and again Vipac removed exceedances from the data set. Adding these back into the data set most likely will trigger exceedances of the criteria.

The air quality report by Vipac states that Wallsend monitoring station was used for PM2.5 and that Newcastle station was used for PM10 and other contaminants. While Vipac refers to a Newcastle air quality station, there is no such site, only Mayfield, Stockton and Carrington. It is therefore not clear which of these three stations Vipac used for its data set.

Further it is unclear why Wallsend was used for PM2.5 baseline data when it is the station furthest from the hotel site and the furthest inland. Mayfield, Stockton and Carrington all measure PM2.5. Stockton station is much more likely to be representative of Anna Bay's air quality environment. Our suspicion is that the more representative Stockton data was not used as it records higher PM2.5 levels than Wallsend and this would have led to further predicted exceedances of the daily and possibly annual criteria.

The air quality modelling used AusRoads, which is a vehicle emission prediction model. It is not used to predict dust from construction activities and the EIS has not modelled construction impacts, notwithstanding the significant earthworks proposed. The health impacts have also not been considered.

Mosquitos

The EIS recommends the use of temephos for mosquito control. This is an organophosphorous insecticide which is non-specific to mosquitos and has acute toxic effects on a wide variety of aquatic organisms. According to the Queensland Government Natural Resource management Operational Policy, "*Its use in QPWS managed areas (including marine parks) should be generally prohibited except as a last resort*. Clearly for a development posing as an eco-tourism facility to use a chemical of last resort is contrary to the definition of 'eco-tourism'.

Living with Mosquitoes on the Central Coast region of NSW, 2007 also notes that "*it [*tempehos*] is not totally selective for mosquitoes and may have toxic effects on non-target organisms such as birds, fish and some invertebrates - particularly in estuarine habitats*." The idea of a hotel operator using a toxic and non-specific insecticide next door to a rural residential area, SEPP 14 wetland, Port Stephens Marine Park and the estuarine Tillgerry Nature Reserve is unacceptable.

Land heave and geotech

The DGRs make specific reference to the need for a Geotechnical Report, which has not been provided in the EIS as noted in Section 5.18.2. From a procedural view, the EIS should have been judged as inadequate rather than being placed on public exhibition, notwithstanding that the validity period of the DGRs was very close to expiry.

We have copies of geotechnical reports for the site, dated 2003 and 2005, both of which were prepared for an earlier iteration of a hotel development. The earlier assessment included drilling two holes to 43.5 and 48.6 metres below ground level, along with multiple standard penetration tests. The reports noted the following:

- the presence of wet and soft organic silts and clays
- tidally influenced groundwater just below ground surface
- that the 2 metre thick organic silt layer would require removal for foundations

- shallow footings would most likely fail unless founded on thick imported fill
- due to the high tidal water table and PASS, any piles would require cathodic protection or careful design to avoid long term corrosions
- excavations may prove challenging due to the impact of high possible tidal groundwater, soil erodibility, and odours released by exposure of organic silts
- natural batters will have low strength

The two-page Preliminary Earthworks Plan (Appendix 19) discusses fill only and fails to mention the important aspects of excavation of PASS material and perimeter drains. Clearly the previous geotechnical reports do not paint a favourable picture of the site. It is not understood why they were not appended to the EIS, notwithstanding the DGRs, given that the reports are addressed to the same proponent.

NSW Fisheries raised the potential issue of land heave due to the weight of fill. This has not been addressed in the EIS, even though the Preliminary Earthworks Plan (Appendix 19) and previous geotechnical reports confirm that the soils are likely to be plastic and have a consolidation risk. Given the expected oxidation and acidification of soils should land heave occur, this potential significant impact should be assessed prior to determination of the application.

Traffic

The Traffic report (Appendix 15 of the EIS) notes that "*90,000m^3 of fill will be required for the site which will be delivered using truck and dog combination that have a capacity to carry 30 tonnes (16.5m$_3$) per load and as such will generate approximately 5,500 loads or 11,000 truck movements during the site preparation period*" and that this operation would continue for 4 months five and a half days per week. However, Appendix 13, the Noise Report, fails to assess the effect of this operation particularly on our home as it is surrounded on three sides by the development and access road. We advocate that the noise impact from the construction works plus the truck movements for the fill works is going to have a significant impact on our amenity and well-being.

The EIS notes that there would be 1095 movements per day down our access lane that now perhaps has 10 movements per day. This equates to a hundred fold increase in traffic. Additionally we will be subjected to noise and activity from the carpark, as we are sandwiched between the lane and the proposed carpark. The EIS notes that access to and from the hotel will peak on Fridays and weekends, just when we are quietly enjoying our home and land. It is not clear from the EIS if the 1095 movements are averaged or if they account for this peak. If the peak has not been considered, the daily movements will be significantly higher, further increasing the impacts on our quiet enjoyment over the weekends. Again the operation of the facility will result in a significant impact on our amenity and well-being.

While the EIS is oddly silent on the date of background noise monitoring, the Vipac report (Appendix 13.1) shows that monitoring was undertaken during major roadworks being undertaken on Nelson Bay Road in May 2014. We assume therefore that the calculated rating background levels, the resulting project specific noise levels and the predicted impacts are all incorrect. Interestingly the EIS predicts a drop in noise levels, even though the traffic flows are predicted to increase by 7% due to the hotel. The reason given is the lateral movement of Nelson Bay Road by a few metres due to recent widening. More likely though the predicted reduction is due to the incorrect and higher rating background level that was calculated from background monitoring undertaken during roadworks.

Heritage

Reference to Figure 4, Figure 18 and the heritage report shows that a portion of the front car park is proposed over an area purported to be a "protected Aboriginal midden interpretive area". There is a clear discrepancy between Figures 18 and 4.

The issue of this site, (AHIMS 38-5-0250) is unclear. The EIS refers to the area (notwithstanding the error on Figure 4) as a protected Aboriginal midden interpretive area, in keeping with the purported eco-tourism focus of the development. However, the supporting heritage report makes it clear that the site has low significance (with two shells), is at risk of disturbance by construction and is to be salvaged and destroyed.

Clearly the heritage consultant does not consider site 38-5-0250 as suitable as an interpretive site, and we suspect that this concept was disingenuously invented by the proponent to attempt to meet the LEP requirements for an eco-tourism facility. With a recommendation to salvage and destroy the site, it is unclear what remnant heritage value the site will hold as an Aboriginal midden interpretive area.

Flooding

The DGRs (OEH attachment) require a sensitivity assessment of an increase on rainfall intensity of 10%, 20% and 30% due to climate change for the 1 in 100 year event in conjunction with the projected sea level rise. The EIS (page 59) has considered only the 10% increase, clearly indicating that the EIS is inadequate with respect to this aspect of the DGRs.

Ecology

The EIS confirms that the Project would destroy several hectares of endangered ecological communities. What the EIS fails to address though is a clear requirement from the DGRs (OEH attachment page 10) to consider the capacity for ecosystem migration due to projected sea level rises of up to 0.9m above 1990 levels.

An examination of the spot levels on the Preliminary Earthworks Plan (Appendix 19 of the EIS) shows that the upslope level of the high quality Swamp Oak Floodplain Forest Endangered Ecological Community approximates 0.6 m (note that the datum is not specified). If one adds the required 0.9 m to account for projected sea level rise, the Endangered Ecological Community could reasonably be predicted to migrate to an RL of 1.5 m. The 1.5 m RL is shown in the Preliminary Earthworks Plan to the south of the most southerly wing of the proposed hotel. In other words, should the projected sea level rise occur and should the Endangered Ecological Community migrate as discussed, the entire footprint of the hotel would be within Endangered Ecological Community. The lack of this assessment as required by the DGRs is yet another inadequacy issue and suggests that the offered biodiversity offsets do not account for sea level rise induced migration of Endangered Ecological Communities.

Visual Impacts

The EIS summarizes a visual impact assessment provided in full in Appendix 14. This report provides a somewhat bizarre assessment of visual impact, including viewpoints more than 5 km away that are entirely shielded by topography. Not surprisingly the assessment concludes that visual impacts from these viewpoints are insignificant in most cases.

Most notable is the lack of an analysis viewpoint provided from our house, which is the closest house to the proposed hotel. The reason for this lack becomes obvious when one applies the consultant's own visual impact methodology. Applying Table 4 of that report to our situation will show even the most casual observer that we will have a **high visual exposure** and would be subject to a **large landscape prominence**. According to the RPS methodology, and using their terminology, this will result in a **major significance** (sic) **impact.**

The DGRs require the following with regards visual amenity:

> *Visual impacts of the proposal should be considered particularly upon view (*sic*) from Nelson Bay Road and immediately adjoining rural residential areas. The use of visual aids such as photomontages should be used to demonstrate visual impacts of the proposal.*

The appended visual impact assessment report neither considers adjoining rural residential areas nor does it contain any photomontages. We note that the EIS does refer to supposed photomontages provided in Appendix 1 of the EIS. However, this is an 80 mb file, which, with the limited internet

speed on the Tomaree Peninsula means that we cannot download the file to see these supposed photomontages.

Given that one of the objects of the *Environmental Planning and Assessment Act* is to "*to provide increased opportunity for public involvement and participation in environmental planning and assessment of the approval process*", the provision of such large files that cannot be reasonably downloaded by the public or the nearest affected landholder, means that the EIS does not comply with the Act.

The EIS does not address the crucial aspects of the DGRs, does not comply with the objects of the Act and the provided visual assessment is misleading at best. Even a perfunctory assessment of the hotel, using the EIS consultant's methodology shows that the visual impact is significant.

Considering further the visual impact on our lives, the landscaping proposed would do little to mitigate the impacts and in any event there is no commitment to planting advanced specimens or allowing time for growth. Review of the landscape master plan shows some trees proposed along our two boundaries that are contiguous with the proposal will be at existing site grades. We note the fill batters start several metres away from the boundary and the areas proposed for landscape screens are also identified as drainage swales. This further complicates the possibility of planting screening trees along the site boundary.

No cumulative impact of the proposal on our property and on our privacy has been assessed nor has any reasonable attempt been made to mitigate any impacts including light spill. No consultation from the proponent has occurred in the last 6 years regarding the development and the impact on our lives. The visual impact statement (pg. 26) identifies that no community engagement had commenced at the time of preparing the report (dated March 2015).

The visual impact assessment concludes that the perception of the visual impact is based on the actual residents that view the proposal but no assessment of residential views or perception has been assessed although it states that the neighbouring properties were considered to most significantly impacted.

No discussion of height bulk or scale with regards to the existing environment is considered. The view from our house at present is shown below. Post construction our view will be 100% lost as shown in the photo and we will be directly impacted by a 24m high building located 50m away.

The visual impact assessment is at best misleading and fails to adequately address the visual impacts of the proposal on the local area or our home.

ESD

One of the key determinates on eco-tourist credentials as clarified by Clause 5.13 of the Port Stephens LEP is that power and water sources should be renewable and efficient. A preliminary ESD assessment is provided. However we note the following serious gaps in ESD in the EIS in this regard:

- there is no detailed energy assessment
- there is no guarantee of renewable energy usage – it is intended to explore the potential for solar panels (pg. 5 preliminary energy assessment)
- there is a recommendation to use a Green Star tool as a design guide but no assessment is provided
- there is no energy modelling
- the bulk and scale of the hotel means that on-site water supplies cannot be sufficient
- the provision of 588 carparks alludes to the fact that individual private car transport will be used for access.

The preliminary ESD assessment provides a cursory attempt at justifying the proposal with the principles of ESD. Following is a summary of the matters listed:

- The assessment list that the precautionary principle has been met by creating a 100m buffer around the hotel although the area proposed for the buffer is already identified as EEC and the proposal include the removal of ~5ha of EEC.
- The response in regard to intergeneration equity states that the proposal will not impact on the health, diversity and dynamics of the adjoining natural environment. Considering our

seven generation family history with the site, it is considered that intergenerational equity is not achieved for the benefit of future generations through the development of a proposal out of character with the rural environment.

- Conservation of biological diversity in the report is responded by referring back to the precautionary principle response. The principle states that conservation of biological diversity and ecological integrity should be a fundamental consideration. The proposed clearing of EEC clearly fails to meet this principle, particularly when the proposal is claimed as an 'eco-tourism' proposal.
- The response to pricing and incentives discusses the need for reducing energy consumption and principles of ESD, although the report fails to comment on the proposed 365 individual air conditioning units proposed for each room or additional larger units for the hotel and apartments as listed in the noise assessment (pg16).

Crucially the EIS states the following:

> *To ensure credibility as being a genuine eco resort the Project will demonstrate energy efficiency/sustainability using recognised and reliable rating systems such as NABERS and/or Green Star. Likewise, carbon neutrality will also ensure strong identifiable ESD outcomes.*

We agree wholeheartedly that this is a critical test of the project credentials. Unfortunately the EIS states that a model will be completed later to see "*what may be realistically achieved for this type of development*". In other words, this critical test of project credentials has not been undertaken. We fully expect that should this modelling be undertaken for this large hotel complex, that it would not meet this critical test. The preliminary energy assessment states:

> *Resorts do not always rate well using NABERS energy as they fall into the same category as Hotels which have significantly reduced facilities. The additional energy consumption resulting from facilities common to international resorts makes it difficult to rate well in this category. (pg. 3) &*
>
> *Green star is a more holistic rating tool than above as it addresses not only energy use but other key factors such as land use and ecology, indoor environment quality, transport, water, materials and emissions. This tool is effectively a tick box process, ensuring that the building design and construction includes sustainable features. (pg. 6)*

The preliminary energy assessment suggesst on pg. 7 that the Green Star tool will only be used as a guide:

> *A high green star rating should ensure an ecologically sustainable and comfortable outcome is achieved. There is significant Green Star paperwork required to achieve compliance however. This will result in additional costs. Regardless of this we suggest the Green Star tool should be used as a design guide to help push the development towards achieving the ecologically sustainable design initiatives and outcomes considered critical for an international eco resort.*

As stated in the preliminary energy assessment, to ensure an ecological sustainable outcome a high Green Star rating is required. Due to the requirements of the Green Star rating to avoid areas of

ecological significance such as EEC area, the proposal would have great difficulty in achieving a high Green Star rating, hence the assessment suggests to avoid this and use it as a tool only. If the proposal is required to fit the definition of an international 'eco-tourism' resort, then surely international standards to define such a claim should be justified by a high Green Star rating. Failure to achieve this undermines the 'eco' aspect of the proposal and hence the definition of the proposal as 'eco-tourism'.

The EIS consultant most likely has predicted this outcome as the EIS notes that the hotel "*will be afforded reticulated water, sewer, electricity and communications"* with no commitment to renewable energy, or comment on air conditioning units for each room. In other words, just the type of services a standard hotel would be afforded, and no commitment to eco-friendly services.

The EIS notes that hot water will be partially generated by gas burners, but given that there is no reticulated gas in the area, we presume this will involve truck delivered bottled gas, another traditional and inefficient energy system. No commitment to solar hot water is noted but would be expected from a proposal claiming to be an international 'eco-tourism' resort.

Alternatives

The EIS contains a very poor, three paragraph, and consideration of alternatives. While one of these three paragraphs refers to 10 years of design refinement, these refinements are not discussed. Notably there is no discussion about alternative designs that would reduce impacts on: adjoining landholders' visual amenity; traffic flow in the laneway; biodiversity; water quality; or loss of groundwater supplies to adjacent users.

Further the consideration of the "do nothing option" fails to admit that this option would actually result in none of the significant environmental and social impacts that the hotel will cause. This three paragraph consideration of alternatives is clearly an inadequate response to the DGRs.

Community engagement

Chapter 4 of the EIS refers to Government agency engagement. The EIS is silent on community engagement notwithstanding the clear requirement in the DGRs (page 6) to consult with affected landholders. Certainly neither the proponent nor the EIS consultant has engaged with us as the most obviously affected landholder, and to our knowledge no other adjacent landholders have been engaged with. No attempt to engage or understand our connection with the land or our history has been part of the EIS process. We feel that if this development is allowed, we will lose more than just a beautiful outlook that we enjoy. The destruction of the natural habitat, which the Blanch's have lovingly tended to for seven generations, is effectively a destruction of the connection to the Blanch family heritage, which deeply saddens us and our family.

Curiously we note the following quotation in the Conclusion chapter:

> *The environmental impacts of the Project have been carefully considered during the preparation of this EIS. The assessment has been multi-disciplinary and has involved consultation with various government agencies and Aboriginal and* ***community groups****. Emphasis has been placed on anticipation and prevention of potential environmental and*

social impacts, with management strategies and mitigation measures identified to keep potential impacts to a minimum.

Community engagement has not occurred and there has been no emphasis on anticipated social impacts. The failure of the EIS consultant or the proponent to engage with the local community is clearly an adequacy issue and the statement in the EIS that the consultant engaged with community groups is misleading at best.

Town Planning Issues

The EIS consistently refers to the proposed hotel as an eco-tourist facility, which would be permissible with development consent in the RU2 Rural Landscape zone. We note that backpacker accommodation, hotels, motels and serviced apartments are prohibited. We also note that the EIS and assessment reports refer to the proposal as hotel and apartment units but add the word 'eco' before each. This unsupported use of the term 'eco' does not justify the proposal as an eco-tourism development. The failure of the proposal to meet the principles of ESD and a Green Star or NABERS rating also undermines the ability to claim a definition as 'eco-tourism'.

Port Stephens LEP, 2013 defines an eco-tourist facility as follows:

Means a building or place that:
(a) provides temporary or short-term accommodation to visitors on a commercial basis, and
(b) is located in or adjacent to an area with special ecological or cultural features, and
(c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.
It may include facilities that are used to provide information or education to visitors and to exhibit or display items.
Note. *See clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.*

Table 1 below provides a brief consideration of the hotel/apartments versus the definition of an eco-tourist facility and the Clause 5.13 requirements.

Table 1: Eco-tourist Facility Compliance

Item	**Consideration**	**Compliance**
Definition		
provides temporary or short-term accommodation to visitors on a commercial basis	Provision of 365 accommodation units.	Yes
is located in or adjacent to an area with special ecological or cultural features	The hotel will be built on top of special ecological features, namely Endangered Ecological Communities. The proponent would appear to be intending to destroy part of the midden in the south of the site.	No

is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact	The hotel will be three stories high and cover approximately 5 hectares. The development footprint will be 14 ha. The bulk and scale is significant as is the ecological and visual impact.	No
Clause 5.13 requirements		
to maintain the environmental and cultural values of land	The hotel will be built on top of Endangered Ecological Communities	No
to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site	The development footprint will be 14 ha and will involve clearing of Endangered Ecological Communities. No assessment of possible groundwater and ASS issues downstream have been considered.	No
there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area	The hotel will be built on top of an Endangered Ecological Community, so this cannot be considered a connection as such. The hotel will be built in four very large apartment blocks, much as any standard hotel, rather than the low impact and small scale cabins one would expect form an eco-tourism facility. The apartment buildings will have little to no connection to, or contact with, natural values. The preliminary energy assessment fails to provide any assurances the proposal will meet the standards required for Green Star or NABERS ratings and no commitment to renewable energy for power or hot water or other measures is defined. The use of over 365 individual air conditioning units does not relate to eco-tourism. A true eco-tourism facility is built at a low scale, with an intimate contact with the natural environment.	No
the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment	The hotel will clear Endangered Ecological Communities as well as the social impacts on the adjacent neighbours.	No

the development will enhance an appreciation of the environmental and cultural values of the site or area	The hotel will clear Endangered Ecological Communities and offer no connection to the environmental and cultural values. The project appears to be intending to destroy part of the midden for car parking. An interpretive sign on a pathway over the EEC that the proposal has also removed does not constitute enhancing the appreciation of the environmental and cultural values of the site or area.	No
the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal	The hotel will clear Endangered Ecological Communities and potentially impact on water quality by way of acid sulphate leachate and metal toxicity. There will be no positive environmental outcomes.	No
the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment	There is no proposal to maintain or regenerate natural resources. The biodiversity offset proposal is just that, an offset against the proposed ecological impact, and cannot be double counted as enhancement.	No
waste generation during construction and operation will be avoided and that any waste will be appropriately removed	Sewage will be pumped to Boulder Bay STP for ocean disposal and acid sulphate soil will be trucked to landfill. It is unclear how groundwater will be managed given the extremely sensitive downstream environment.	Unknown
the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora	The hotel and its "iconic entrance" would be entirely visible from adjacent houses and by motorists on the ridgeline on which Nelson Bay Road is situated. The proposal will 100% block the rural vista views from our dwelling.	No
any infrastructure services to the site will be provided without significant modification to the environment	The EIS notes that the Anna Bay No. 9 waste water pumping station will require an upgrade due to the additional load posed by the hotel. It is unknown what impact this would have on the environment.	Unknown

any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design	The proposal does not commit to passive cooling or heating and nor does it commit to renewable energy sources or water efficient designs. The 365 hotel/apartment rooms will each have their own air conditioner and counter the requirement to operate with renewable resources and passive designs. This requirement is more aligned with traditional low-scale eco-tourist facilities.	No
the development will not adversely affect the agricultural productivity of adjoining land	The site has minimal agricultural value.	Yes
measures to remove any threat of serious or irreversible environmental damage	The hotel will clear Endangered Ecological Community, which while being offset in accordance with a biodiversity offset plan, will result in irreversible environmental damage.	No
the maintenance (or regeneration where necessary) of habitats	There is no proposal to maintain or regenerate natural resources. The biodiversity offset proposal is just that, an offset against the proposed ecological impact, and cannot be double counted as regeneration.	No
efficient and minimal energy and water use and waste output	The proposal does not commit to efficient or minimal energy or water use. The preliminary energy assessment even states the proposal may not achieve NABERS or Green Star ratings or meet the levels of ESD suitable for an eco-tourism facility. It would rely on a traditional sewer option for human wastes.	No
mechanisms for monitoring and reviewing the effect of the development on the natural environment	Information not provided in EIS.	Unknown
maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control	Information not provided in EIS.	Unknown

In summary the development complies with only two definition and requirements, that is that it provides short term accommodation and that it will not impact on agricultural values. The fact that it fails to comply with the other crucial requirements suggests that it is in fact a hotel, which is a prohibited development. It is clear to us that the proponent has chosen to call this hotel an eco-tourism facility to get around the zoning issue.

The then Department of Planning's Environment Protection Zone LEP Practice Note of 2009 defined eco-tourism development as follows:

> *"…nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable."*

The EIS does not mention education in any way. Interpretation is limited to the construction of a walkway with signage, although it appears this walkway will require clearing of Endangered Ecological Community. According to the EIS, in some way the hotel will allow a "re-interpretation" of the Stockton Dune system, apparently by way of putting a wavy roof on the three story hotel blocks. We argue that this is not a genuine example of interpretation of the natural environment.

The EIS makes a single reference to the construction of a cultural function center in the western end of the uppermost hotel block. What exactly is meant by a cultural center is not clear, although EIS plans actually label this area as a theatre. We doubt that the Practice Note would consider a 700 seat theatre to have any focus on the natural environment. Again it appears obvious that this hotel is not an eco-tourism facility but a hotel with ancillary attractions.

The NSW Rural Fire Services has recently released Factsheet 1/14, with specific reference to ecotourism. The Factsheet notes that "*Ecotourism focuses on socially responsible accommodation located in natural areas that is environmentally sustainable. It typically involves travel to destination where flora, fauna and cultural heritage are the primary attractions. Due to the focus of a minimal impact to the natural environment, conflicts often arise between the principles of ecotourism and bush fire mitigation measures*."

The clear inference in the RFS document is that ecotourism developments are placed in the natural environment. The fact that to build the proposed hotel requires the clearing of significant areas of Endangered Ecological Community shows that it is not an ecotourism development, but simply a hotel.

Section 1.3 of the EIS (and elsewhere) asks for approval of *"Construction of three 3-storey tourist accommodation blocks incorporating a total of 219 units with subfloor parking and common areas."* However, analysis of the EIS shows that in fact 365 rooms are proposed. This summary is misleading at best. The fact that the EIS separates the 219 tourist rooms and the 150 hotel rooms is intriguing. By the admission of the EIS consultant, the 150 room hotel is just that, and even the consultant does not appear to consider this part of the development to be an eco-tourism facility. The hotel-associated theatre and convention centre is likewise not an eco-tourism facility.

Reference to the relevant zone objectives shows that hotels are prohibited development. Likewise theatres and convention centres are not listed as either permissible without consent or permissible with consent. Included in prohibited development in this zone are any developments not listed as permissible; accordingly theatres and convention centres are prohibited development. An analysis of other zone objectives in the LEP shows that this listing is not merely an oversight, as "entertainment facilities" and "function centres" are permitted in other zones, for example B2 Local Centre. Quite

clearly the land is not appropriately zoned for a hotel, theatre or function centre and the proposed development is considered prohibited.

On balance, it is considered that the proposed development is unacceptable and therefore should be refused for the reasons outlined in this submission.