

Telephone Inquiries:
MR B D GARDINER
File No: 25-2015-1-1
Parcel No: 22161
Your Ref: SSD5916

7th August 2015

KATE MACDONALD
DEPARTMENT OF PLANNING AND ENVIRONMENT
GPO BOX 39
SYDNEY NSW 2001

Dear Sir/Madam,

Re: **Proposed: Tourist Facility**
Property: LOT: 2 DP: 747399
4177 Nelson Bay Road ANNA BAY

With respect to the state significant development application SSD5916 (our ref. 25-2015-1-1) for an Eco-Tourist Facility – 'The Bay Resort' at the above mentioned property, Council has reviewed the proposal against relevant legislation and Council requirements. Council makes the following comments with regards to section 79C of the Environmental Planning and Assessment Act, 1979:

79C(1)(a)(i) Any Environmental Planning Instrument

SEPP (State and Regional Development) 2011 – (SEPP SRD)

The proposed development meets the precepts in schedule 1 to SEPP SRD of 'Cultural, Recreation and Tourist Facilities' and therefore constitutes State Significant Development. It is noted that pursuant to clause 11 of SEPP SRD, Port Stephens Development Control Plan 2013 does not apply to the development.

SEPP 14 – Coastal Wetlands

A portion of the subject site is mapped as containing SEPP 14 coastal wetlands. However it is noted that the proposed development is located outside the affected land. The application proposes a minimum 140metre buffer to the mapped SEPP 14 wetland which is considered an appropriate separation. It is also noted that the application proposes to restore regular drainage and tidal flows to wetland portions of the site which are considered beneficial to the locality.

SEPP 44 –Koala Habitat Protection

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) has been prepared under SEPP 44 and applies to the subject land. The lot is mapped as containing areas of preferred koala habitat, however the proposed development envelope is located outside of the affected land. The applicant does not propose to remove any koala habitat or feed trees and the development is not located within any koala movement linkages. It is noted however that the application does not address

the performance requirements of the CKPoM and consequently, additional information should be sought from the applicant in this regard.

SEPP 55 – Remediation of Land

The phase 2 assessment report submitted with the application is considered to adequately address the requirements of SEPP 55. The report addresses suitable remediation of the contamination identified on the land for the purpose of the proposed development. It is anticipated that any determination will include a requirement for compliance with the recommendations of the report.

SEPP 71 – Coastal Protection

The application adequately addresses both the objectives and the clause 8 assessment requirements of SEPP 71. It is considered that there will be no adverse impacts on the coastal environment, or public access to it, as a result of the proposed development.

SEPP (Infrastructure) 2007 – (ISEPP)

It is noted that the proposal constitutes Traffic Generating Development under Schedule 3 of ISEPP and that the RMS is a concurrence authority for the proposed development.

SEPP (Rural Lands) 2008 – (SEPP RL)

The applicants justification that the subject land is not prime agricultural land is accepted in this instance and the proposed development is therefore considered to be in accordance with the objectives of SEPP RL.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.1 – The subject site is zoned RU2 Rural Landscapes under the LEP. It is noted that the applicant has proposed the development as Eco-Tourist Facility, which is permissible in the RU2 zone. However it is noted the notification documentation from DP&E describes the development as Tourist Facility, which is also permissible in the zone. Council is satisfied that the development meets the definition of Eco-Tourist Facility and complies adequately address the requirements of clause 5.13 on the LEP.

Clause 4.3 – There is no maximum building height applicable to the subject land.

Clause 5.5 – The development is within the Coastal Zone and hence clause 5.5 applies. It is considered that the documentation submitted with the application adequately addresses the requirements of clause 5.5 and the development maintains protection of the coastal environment of the State.

Clause 5.13 – The justification submitted by the applicant is considered to adequately address the clause and demonstrates that the development maintains the environmental and cultural values of the land and minimises the potential impacts of the development on the site.

Clause 7.1 – The subject land is mapped as containing potential class 2 and 3 acid sulfate soils. It is noted that an Acid Sulfate Soils Management Plan (ASSMP) has been submitted with the application largely demonstrating acceptable methods of construction and works to address any identified acid sulfate soils. It is noted however that the ASSMP is a preliminary plan and does not include a geotechnical assessment

of the site. It is considered, given the potentially large volume of impacted material (Council estimates indicate the volume could exceed 25,000m³) that a geotechnical assessment should be requested from the applicant, to ensure the impacts of any remediation works can be appropriately assessed.

Clause 7.2 – It is noted that significant earthworks are proposed to the site including the importation of up to 3metres of fill over the development site. The proposed fill is considered to meet the requirements of the clause, however is considered to present a potential significant impact to flood characteristics in the locality. Such impacts are discussed under clause 7.3 below.

Clause 7.3 – It is considered that an adequate flooding assessment has not been carried out for this proposal and the application has not demonstrated adequate compliance with clause 7.3 or the Director General's Requirements (DGR's) relating to assessment of flood impact. In particular, the following matters have not been adequately addressed:

- Consideration of the 2100 1% AEP flood level plus 0.5m freeboard;
- Mapping of hydraulic categories and flood hazards, and the effect of the development on these;
- Climate change sensitivities including sea level rise for 2100 and increased rainfall volumes;
- Basement carpark design which as currently designed is likely to go under water in the 1% AEP event in the short/medium term future;
- Ensuring that the minimum level of all non-habitable buildings, internal roads and driveways is at least RL 2.5 m AHD; and
- Raising of the crown road access to the development to ensure 1% AEP flood free access.

Data obtained from the Mallabula Point tide gauge (1992-2012) shows a highest water level recorded of 1.38 m AHD and a mean high water level of 0.57 m AHD – it is unstated where the "highest astronomical tide" level used comes from and the local levels should be used to assess the development.

The submitted Flood Emergency Response Plan is considered to insufficiently address how hotels guests will be accommodated in the event of an evacuation. The development comprises 363 rooms and potentially 1,164 guests (hotel rooms at two persons per room and tourist rooms at 4 persons per room). In the event of a flood it is not expected that alternative accommodation could be found in the Tomaree peninsular, so guests would have to be evacuated to other areas. In the event of a flood, areas outside the Tomaree peninsula may not be accessible and accordingly, the Flood Emergency Response Plan should consider this matter.

The flood study has indicated that a significant flood level impact is an increase of 50mm on developable portions of adjoining properties. Of note is the maximum increase in water surface elevations to the eastern side of the proposed development where the identified increase is 33 mm. It is noted that the existing house on No 4183 Nelson Bay Road, which is located approximately 150 m from Nelson Bay Road and which is sited on land with an approximate natural surface level of RL 1.5 m AHD, has not been evaluated in regard to its existing floor level, site specific impacts and hazard categorisation. A 33mm increase in flood height may be significant to the owner, depending upon their existing floor levels.

In the flood report recommendations it is noted that the raising of the Crown Road to the proposed level of RL 1.8metres AHD has the potential to become a hydraulic barrier with a resulting negative impact on adjoining upstream properties. However, for flood evacuation Council has previously recommended that the road be raise to a minimum level of RL 2.5metres AHD, to facilitate evacuation and to match the internal circulation road level. Raising the road level may have an unacceptable negative impact on adjoining properties and will also make it more difficult to provide for normal stormwater drainage within the available road reserve.

It is recommended that a revised flood study be requested which addresses the above matters.

Clause 7.6 – The applicant has provided sufficient evidence to demonstrate that essential services are available to the development. It is noted however that Hunter Water Corporation design guidelines require that the top of the sewerage pumping station wet well roof be 0.3metres above the 1% AEP flood level (2100 horizon) and the electrical cabinet be 0.6metres above. The proposal does not include information in relation to the respective levels and it is considered that such information should be sought from the applicant demonstrating adequate provision of sewer services.

Clause 7.9 – The subject site contains land mapped as being wetland, however it is noted that the proposed development is located outside of the mapped areas. Notwithstanding, the development proposes the retention of the wetland portions of the site and includes improvement works in increase the quality of ecosystems found on the subject site. It is considered that the proposed development meets the requirements of the clause.

79C(1)(a)(ii) Any Proposed Environmental Planning Instrument

There are no draft Environmental Planning Instruments relevant to the proposed development.

79C(1)(a)(iii) Any Development Control Plan

Port Stephens Development Control Plan 2014 applies to all land in the Port Stephens local government area. It is noted however that pursuant to clause 11 of SEPP (State and Regional Development) 2011 no development control plans apply to state significant development. Accordingly, no comments are made in relation to the controls of the development control plan.

79C(1)(a)(iiia) Any Planning Agreement or Draft Planning Agreement

There are no planning agreements or draft planning agreements under section 93F to which Council is a party.

79C(1)(a)(iv) The Regulations

Government Coastal Policy

The application is considered to adequately address the requirements of the Government Coastal Policy and provides a suitable balance between development and environmental impacts.

The Provisions of AS 2601 – The Demolition of Structures

The applicant has provided adequate details relating to the demolition of existing structures on the site, including processes for acceptable removal of asbestos containing material.

79C(1)(a)(v) Any Coastal Zone Management Plan

There are no Coastal Zone Management Plans applicable to the land.

79C(1)(b) The Likely Impacts of the Development

Access

The proposed development is likely to cater for a wide variety of customers including the elderly and those with accessibility impediments. It is considered that an Independent Access Audit should be requested from the applicant to ensure adequate safe and equitable movement can be provided throughout the development.

Earthworks

Council has reviewed the quantity of fill proposed to be imported to the site and notes a discrepancy between the nominated value and the volume required to reach the proposed finished level of approximately 25,000m³. The discrepancy could be attributed to the failure to calculate the required amount of fill from the stripped level (minimum 300mm proposed however also noted that a greater depth may be required in estuarine portions of the site), rather than the existing ground level. It is recommended that clarification of the amount of fill to be imported be sought from the applicant and relevant documentation (such as the traffic impact study) be revised to adequately address any revised figures.

In addition, the application does not address the existing uncontrolled fill within the Crown Road reserve which may require removal and replacement to achieve an appropriate standard.

Traffic, Transport and Car Parking

The subject site could potentially contain a large volume of acid sulfate soil (estimates indicate the volume could exceed 25,000m³ over the development site) which would require significant additional works and associated vehicle movements, which have not been accounted for in the Traffic and Transport Impact Assessment.

The submitted Traffic Impact Assessment does not appear to have taken full account of recent upgrades to Nelson Bay Road, in particular the report does not take into account the sheltered right turn lane for eastbound traffic or the upgraded indented bus stops in the vicinity of the site. The bus stop on the northern side of Nelson Bay Road is in close proximity to the site access and should be included in a revised Traffic Assessment. The Traffic Impact Assessment should also be revised to address the operation of the intersection of Nelson Bay Road and the Crown Road - Council considers improvements to left in and left out arrangements are warranted in this instance.

Council anticipates that the following matters will be assessed by the RMS and has not provided comment on the following matters:

- The anticipated traffic generation;
- The acceptable configuration of the intersection of Nelson Bay Road with the Crown Road and any required upgrades or changes to traffic management associated with that intersection such as left turn deceleration and acceleration lanes;
- Any requirements for upgrades or traffic management at other nearby locations;
- The acceptability of the configuration of the proposed left turn entry from Nelson Bay Road in relation to the existing bus stop and any deceleration lane;
- Any requirement to adjust the location of the bus stop in Nelson Bay Road; and
- Any requirements for pedestrian facilities to cross Nelson Bay Road.

It is considered that anticipated road upgrade works will warrant the installation of kerb and gutter, shoulder sealing and drainage works commencing at the start of any deceleration lane west of the site and extend along the full frontage of the site to Nelson Bay Road as well as the frontage to Lot 6223 Hunter Water Corporation 700904, No 4181 and join with the works proposed in the Crown Road. Additionally, for consistency with the standard of intersection works in Nelson Bay Road, kerb and gutter, shoulder sealing and drainage works should extend east of the intersection with the Crown Road to the limit of any acceleration lane or intersection improvement works required by Hunter Water Corporation.

The recommended design specifications for the constructed portion of road in the Crown road reserve are:

- In accordance with previous advice submitted to inform the DGR's for the development, the minimum finished surface level should not be less than RL 2.5m AHD;
- The road should be a 'local street' with a minimum 9metre carriageway and 2metre wide dual use path on the western side of the road;
- A turning head is required on the northern side of the second site access and should be offset into the development site to accommodate a 30metre diameter road reserve and turning head with a minimum turning radius of 12metres. The additional road reserve should be dedicated to Council as public road;
- The dual use path should connect with the on road cycleway and bus stop in Nelson Bay Road. It should be constructed along both frontages of 4181 Nelson Bay Road, Lot 6223 Hunter Water Corporation 700904;
- Upgrade of any existing connecting driveways to the new road; and
- Piped stormwater drainage which caters for the road runoff as well as drainage of land on the eastern side of the Crown Road – it is noted that properties to the east of the existing crown road currently experience drainage issues and may require upgraded facilities to adequately drain those properties.

It is noted that proposed car parking provision detailed in the Traffic and Transport Impact Assessment does not align with the numbers and locations shown on the development plans and other documentation. Further, the assessment is considered

deficient in relation to onsite car parking and vehicle movement in the following matters:

- The 'large vehicle parking spaces' nominated on the development plans would not be suitable to cater for bus or coach parking as described in the traffic assessment, and no other bus or coach parking spaces have been described on the plans.;
- The main entry roundabout has an approximate diameter of 20metres, however a minimum diameter of 30metres is required to accommodate buses and tourist coaches;
- There is insufficient road width adjacent to the hotel front entry doors to allow other vehicles to pass whilst a bus or coach is loading or unloading passengers;
- Some car parking spaces are described as smaller than those recommended by Council. Council recommends minimum car park space dimensions of 2.5metres and 5.5metres long with a 6.7metre associated aisle width for 90 degree angle parking;
- AS2890.6 requires a minimum dimension for disable spaces of 2.4metre wide with adjoining 2.4metre wide accessible area.
- AS2890.1 requires additional width for car parking spaces adjacent to walls which has not been shown on the submitted plans;
- Internal intersections are of insufficient width to allow for bus and coach circulation;
- The hotel loading dock appears to achieve the required 4.5metre vehicle clearance required for a Heavy Rigid Vehicle (HRV), although this measurement has not been stated on the plans. Additionally, it appears that there is insufficient turning area and that internal roads and intersections cannot be safely navigated by HRV's;
- There is insufficient provisions of parking and associated plant and storages areas to allow adequate servicing of each building within the development;
- Internal roads do not appear to provide sufficient turning circles for standard vehicles including on the perimeter road and to access the car park under Block C;
- It is recommended that an internal road be provided to allow movement between the hotel and accommodation buildings. The current proposal will require additional use of the crown road to travel between the accommodation building and hotel, resulting in an increased traffic impact on other properties;
- The service road shown on the plans between the perimeter road cul-de-sac and service road linking to the loading dock under the hotel building should be constructed as part of a perimeter road to allow appropriate movement of emergency services, patron and service vehicles to prevent unnecessary use of the crown road. Additionally, the road design should allow a right turn from the loading bay for servicing vehicles;
- Traffic management devices should be incorporated into the direct access from Nelson Bay Road to prevent excessive speed along this road;
- The proposed shared pedestrian/vehicle zones on internal roadways are not supported given the lack of pedestrian refuges and verges;

- There is insufficient detail for the intersection with the crown road which appears to be insufficient to cater for required vehicle usage; and
 - It appears that the building width of tourist accommodation buildings is insufficient by 1metre to accommodate required car parking space dimensions;
- A revised traffic assessment and revised plans are recommended which demonstrate adequate provision of car parking and manoeuvring areas.

Waste Management

It is considered that the centralised waste storage area under the hotel building should be supplemented by waste storage areas for each building.

It is also recommended that a condition be imposed on any consent that requires the site to be serviced by a commercial waste contractor – Council waste vehicles are not equipped to service the proposed waste storage bins detailed in the application.

Bushfire

The 6metre wide perimeter road does not meet the minimum 8metre road width described in the Bushfire Hazard Assessment. Additionally, the cul-de-sac on the internal perimeter road is not sufficient to allow RFS fire-fighting vehicles to run around and should be increased to a minimum diameter of 24metres.

Stormwater

The Concept Stormwater Management Plan indicates that a surface drain will be required to ensure stormwater from 4181 Nelson Bay Road (lot 6223 DP700904) will not be prevented from draining from that property. An easement is necessary to protect the right of use of the drain and any consent should include a condition to effect such protection.

The proposed open drain along the length of crown road is not supported. Rather, stormwater should be conveyed via pipe for the length of the portion proposed to be dedicated as public road, and should include end of line water quality treatment devices to protect the downstream SEPP 14 wetland. The discharged water quality should comply with Council's Urban Stormwater and Rural Water Quality Management Plan.

Additional details are considered necessary to demonstrate that stormwater runoff from roads (particularly the surrounding ring road) is sufficiently detained for water quality treatment before discharge to the surrounding land.

Flooding

Considering that a number of areas including car parks, storage areas and plant rooms are located below tidal and flood inundation levels, it is recommended that a condition of consent be imposed to ensure the structures are water tight and fitted with a sump and pump to reduce the opportunity for flooding of those structures. It is also recommended that the condition require adequate pumping capacity to cope with major flood events, and emergency power supplies be available to enable continued operation in the event of a power failure.

Natural Environment

It is noted that the proposed development represents a far smaller development footprint than previous proposals. This approach is supported by Council. However it is considered that the following information is required in order to adequately assess the environmental impacts of the development:

- A detailed plan of management for the bio-banking offset land. The plan should demonstrate how the environmental and ecological value of the land can feasibly be maintained and should address potential future developments on adjoining land;
- Commonwealth concurrence/approval should be obtained under the Environment Protection and Biodiversity Conservation Act 1999 (Comm) prior to the issue of any consent;
- The application does not address the adverse impact on the local corridor link for Fishing Bats which will be inhibited by the proposed development. Relevant details are required in order to assess the impact in this regard;
- A Flora and Fauna Management sub-plan should be required as part of the Construction Environmental Management Plan. The sub-plan should address mitigation measures and commitments relating to vegetation clearing, fauna management and weed control;
- Additional details are required that address the removal of vegetation within the crown road reserve; and
- Additional information is required in relation to impacts to the Riparian buffer to the estuarine area.

79C(1)(c) The Suitability of the Site

Anna Bay Strategy

The subject site is not located on land to which the Anna Bay Strategy applies, however is in close proximity to such land. It is considered that the applicant should demonstrate that the proposed development will not have a decentralising effect on the Anna Bay local centre, and that the development will support the objectives of the strategy.

Lower Hunter Regional Strategy

It is considered that additional information should be sought from the applicant regarding the suitability of the site in the context of the Lower Hunter Regional Strategy, particularly in relation to section 5.2.2.

Other Matters

Other matters pertaining to the suitability of the site has been discussed elsewhere in this submission.

79C(1)(d) Any Submissions

No submissions have been forwarded to Council that relate to the proposed development.

79C(1)(e) The Public Interest

It is considered that the proposed development is capable of being within the public interest, however additional information is required in order to determine the full extent of any impacts and compliance with relevant legislation. Given the economic input to the local economy afforded by the development, Council is in support of the proposal should adequate additional information be received by the department to address the concerns raised in this submission.

94A Fixed Development Consent Levies

Port Stephens Section 94A Development Contributions Plan applies to the proposed development. Accordingly a condition is recommended for any consent that requires payment to Council of levies in accordance with the plan.

Recommendation

Council does not have any in principle objection to the proposed development. However, Council recommends that the assessing officer requests additional information to address the matters described above and enable an assessment against the relevant legislation. Additionally, Council recommends the following conditions be imposed on any consent:

- Prior to the issue of a construction certificate, the following information be submitted to the certifying authority:
 - a. Pavement construction design details;
 - b. Stormwater quantity and quality device design details;
 - c. An Operational Stormwater Maintenance Plan; and
 - d. Detailed construction plans and documentation.
- All works within a public road reserve must be separately approved under s.138 of the *Roads Act 1993*. The works must include heavy duty vehicle crossings in accordance with AS2890-2.

Should you have any questions relating to the assessment or Council's recommendation, please contact me on 4980-0213 or at brett.gardiner@portstephens.nsw.gov.au and I will be happy to help.

Yours faithfully



Brett Gardiner
Senior Development Planner

Phone: 02 4980 0213 Mob: 0417 474 901

Email: brett.gardiner@portstephens.nsw.gov.au

Web: www.portstephens.nsw.gov.au