



20 May 2021

Department of Planning, Industry and Environment

Cc: council@portstephens.nsw.gov.au

Objection: SSD 5916: The Bay Resort – Lot 2, DP 747399, 4177 Nelson Bay Road, Anna Bay, NSW – see <https://www.planningportal.nsw.gov.au/major-projects/project/12256>

Contents

Introduction	1
Objections	2
Zoning.....	2
Permitted Uses.....	4
Building Design.....	4
Staging.....	5
Environmental Concerns.....	5
Flooding.....	6
Location.....	7
Mosquito management	7
Commercial viability and potential for environmental impact of failure.....	7
Conclusion.....	8

Introduction

The Tomaree Ratepayers and Residents Association Inc (TRRA) represents the community on a range of issues which affects the Tomaree Peninsula in Port Stephens LGA, including planning and development, economic development, cultural infrastructure and resources, the built and natural environment, tourism and other grass roots issues.

We made a submission dated 7 August 2015 objecting to the original proposed tourist development for this site on a number of grounds, but primarily that being in a Rural zone, the development was inconsistent with the objective of maintaining the rural landscape character and that a hotel or motel accommodation and/or serviced apartments are expressly prohibited.

We submit that this latest proposal, whilst somewhat scaled down, with a 'lighter footprint', still does not meet the objectives of the Rural landscape zoning.



TRRA recognises the potential benefit of this type and scale of development for the area but strongly objects to it being built at this site.

We submit that the DA 'fails' on several of the 'matters' that Council is required to consider under s.4.15 of the EPA Act 1979, including not being, overall, in the public interests (4.15(e)).

Objections

Zoning

The site is zoned **RU2 Rural Landscape** which has the following objectives

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base
- **To maintain the rural landscape character of the land**
- To provide for a range of compatible land uses, including extensive agriculture

The amended EIS/EIA¹ states (p43) that:

'The Project is compatible with the RU2 objectives as the Project essentially maintains the rural landscape character by using a number of measures including:

- *Well designed and located eco accommodation on that part of the site to be restored to natural salt marsh. Eco accommodation will be provided as cabins on stilts with access via a series of elevated boardwalks.*
- *The remaining parts of the site being retained as a natural setting; and*
- *Extensive landscaping, salt marsh restoration and water sensitive urban design measures being incorporated throughout the development.*

The Project design provides a range of appropriate strategies including:

- *Use of sustainable design principles utilising natural energy generation and water saving measures.*
- *Interpretive systems along the buffer perimeter to adjoining wetlands and in an area in the south-east of the site relating to the traditional landowners and their respective visions and values and identification of activities that visitors can interact with.'*

We refer to the proposed site layout (EIS Figure 8 – reproduced below) and submit that the development will in no way 'maintain the rural landscape character of the land'. From every unit, the roadways and surrounding properties, the proposed buildings will be very visible, in stark contrast to the existing low density isolated housing and natural wetlands that currently exists on and adjacent to the site.

We challenge the assertion in the EIS that:

'Careful placement and physical separation of villas will ensure that the connection to the natural environment is dominant and encompassing.' (p19)

¹ RPS Group, March 2021

This is not a credible claim. We dispute that the extent of the development could be considered ‘connecting with the environment’ when the views are predominately looking over other villas.

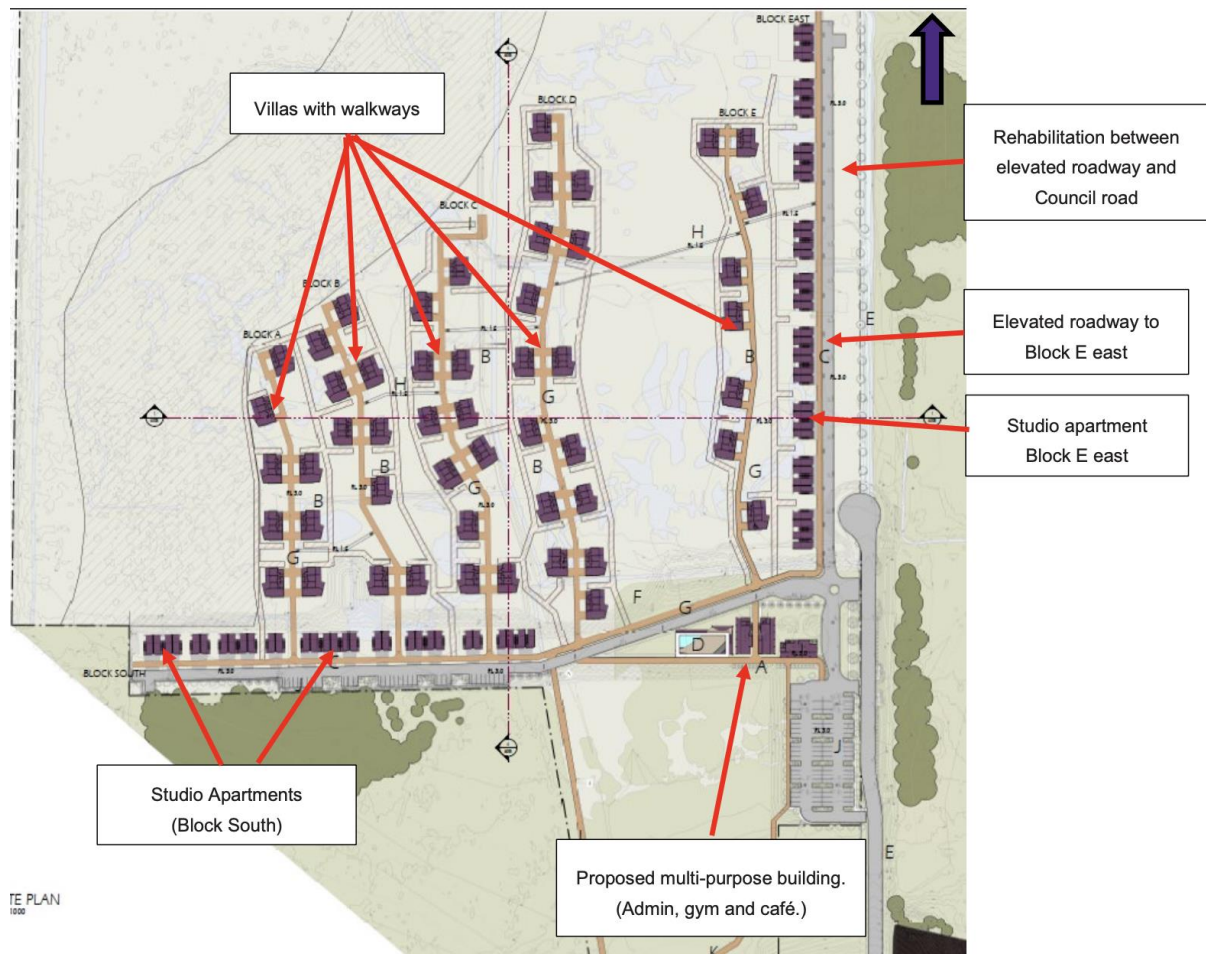


Figure 8 Proposed site layout

On page iv under ‘Visual’ the developer admits:

‘The Project will change the visual landscape to some degree however beyond this it will have little impact on the local area. The landscape character of the setting is largely rural and much of the existing natural landscape surrounding the site comprises a dense band of vegetation.’

It is simply not true that two long three storey unit blocks and five separate rows of villas can be considered as part of the rural landscape. The EIS further admits:

‘The landform of the area is generally flat with some rolling hills to the north around Nelson Bay. The site and surrounding area can be described as a semi-rural setting. Acreage lots comprise the dominant land use, while pockets of native vegetation fringe the lots. Nelson Bay Road transects the local landscape alternating between semi-rural and natural scenery. The majority of the residences on these lots are located to the south of the site adjacent to Nelson Bay Road, offering both access and elevation with views looking north towards Tilligerry Creek..’ (p13)

No degree of landscaping, sustainable design principles or interpretive signs will hide the sheer scale and bulk of the multiple buildings.

We also draw attention to the Site Layout and Urban Design analysis in the ‘revised designs – opportunities’ document (Appendix J to the EIS). Several of the figures in this document clearly anticipate future development on adjoining farmland sites, with the internal east-west road flagged for possible extension – an ‘opportunity to establish urban structure with second street’. One figure (neighbour context) even shows ‘Likely pattern of future built development (adjoining hotel).

This document reveals the applicant’s true intentions and perceptions and completely undermines the pretence that the applicant sees the development and future proposals as preserving the rural character. Council should not accept this obvious deception.

Permitted Uses

Under the RU2 zoning **Eco tourist facilities are permitted with consent** in the RU2 Rural Landscape zone.

Eco-tourist facilities are defined in PS LEP 2013 as:

“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.”

TRRA submit that the bulk and scale of this proposal do not sufficiently minimise the visual impact, and therefore fails to meet condition (c).

Building Design

The two storey apartments, comprising of a mix of 68 one and two bedrooms along the eastern and southern boundaries of the site, are elevated on stilts raising the height to effectively that of a 3 level building, significantly taller than the surrounding single storey dwellings and rural sheds.

The EIS states:

‘Two storey apartments will provide the buffer between the villas / rehabilitating wetlands and the un-named Council road and the east-west vehicle accessway.” (p19)

We question why a ‘buffer’ is necessary – for the project to be suitable to meet the objectives of Rural landscaping zoning there should not need to be a buffer. The apartments are totally out of place and should be removed. To satisfy condition (c) of the definition for eco-tourist facilities, a smaller number of villas spaced out may be appropriate for the site, but 51 is too excessive.

The boardwalk villas all being 3 bedrooms would suggest that it is targeted for the family market. We question how child friendly the site actually is, since with no direct connection to the ground from the villas, there is no area for children to run around apart from up and down the boardwalks. With only a gym onsite no thought appears to have been given to keeping children occupied and active outdoors. Any guests expecting a quiet eco back-to-nature holiday would likely be very disappointed.

Staging

We are concerned that the proposed staging has the two totally unsuitable apartment blocks to be built first, this could result in the villas, which can be more plausibly regarded as ‘eco’, possibly never being built. If anything, the staging should be reversed.

Environmental Concerns

We note that the actual development has been placed outside the mapped SEPP 14 wetland region but reaffirm our earlier comments that the proposal is too large for the sensitive site.

If the project was scaled back to a few ‘eco’ villas towards the southern boundary of the site the admitted environmental impact could be avoided:

‘A total of approximately 8.58 ha of direct and indirect impacts to native vegetation are predicted to occur via a combination of vegetation removal, filling, changed hydrological regimes and shading of saltmarsh by elevated dwellings.’ (EIS p1v).

Over 8ha of impacted native vegetation is unacceptable.

Another admitted impact is:

‘HU 960 Saltmarsh (deficit of 373.1 credits) and HU 563 Mangrove Forests (deficit of 42.72 credits). The proponent is committed to providing the necessary Saltmarsh and Mangrove Forest Ecosystem Credits to offset the development and has commenced investigating several possible solutions to meeting this requirement.’

These credits should be applied onsite.

The applicant’s consultants (RPS) summarise the findings of their October 2020 Biodiversity Inventory Report (Appendix A within Appendix M to the EIS)

*‘Five fauna species listed on the TSC Act were observed within the study area including the White-bellied Sea Eagle (*Haliaeetus leucogaster*), Little Bentwing Bat (*Miniopterus australis*), East-coast Freetail Bat (*Mormopterus norfolkensis*), Koala (*Phascolarctos cinereus*) and Grey-headed Flying-fox (*Pteropus poliocephalus*). The latter two species are also listed as vulnerable under the EPBC Act. Three EPBC Act listed migratory species were recorded, being the White-bellied Sea Eagle (*Haliaeetus leucogaster*), Eastern Great Egret (*Ardea modesta*) and Latham’s Snipe (*Gallinago hardwickii*). Habitat suitable for at 19 threatened fauna species listed on the TSC Act was identified although none were observed despite the completion of appropriately timed targeted surveys.’ (Appendix M p54)*

We submit that there is a significant discrepancy between these findings and the recorded sightings in the development footprint as recorded in SEED database (DPIE Data from Scientific Licences dataset/ BioNet Atlas of NSW Wildlife (8/02/2021)). In particular there

are several recorded sightings of vulnerable species that are not mentioned in the consultant's report.

Analysis of the SEED layers shows that there is significant vegetation relevant to koala feeding, movement and habitat. The Central Coast Koala Tree Index indicates pockets of mid to high range koala trees (...07.50.47.png), a high likelihood of koalas (...07.49.50.png), at high confidence (...07.50.18.png), and the habitat suitability is at the top of the scale (...07.49.07.png). The site also borders the Tilligerry Nature Reserve.

SEED maps show historic koala sightings. Given that this is an area of private land where people are unlikely to go and report sightings, we submit that it would benefit from a full ecological survey to fully assess the site.

The applicant admits that the development would involve a loss of secondary koala feed trees including 0.25ha of Melaleuca and 0.25ha of swamp oak forest. The EIS concludes that:

'the loss of two hectares or less of marginal quality habitat critical to the survival (habitat score of 5) is highly unlikely to have a significant impact on the koala.' (p.40)

Assessments must consider the cumulative impact of many small area habitat losses. TRRA remains concerned at the incremental loss of koala habitat across the Port Stephen region, we assert again that if the project was reduced to a more appropriate scale for the site, these trees could be retained.

Flooding

TRRA is not in a position to comment in detail on the technical aspects of the hydrology assessment and leave that to others. We understand that the units and walkways will be above flood levels, but we have significant concerns that the Administration buildings, carpark and we assume parts of the access road are positioned only at the 1% AEP and PMF 2100 level. The requirement for a Flood Emergency Response Plan (Appendix O) confirms that there is a real risk of flooding on the site. We submit that with such a large-scale development it is unlikely that a single owner/operator manager will be on-site at all times and a series of duty managers, probably employed as casuals will be unlikely to have the experience or knowledge to properly implement the plan.

We suggest that it is unrealistic to rely on the proposed management of this risk:

'Cancellation of operations is preferable prior to major and extreme events to eliminate community exposure to flood hazards'

We submit that it is hardly credible that this would ever occur in advance - we cannot foresee bookings being cancelled the day prior to heavy rain being forecast. By the time a major flood event was confirmed as imminent, it would be too late to ensure the accommodation was vacant and the risk avoided.

The off-site refuge point at the Baylife Church on the opposite (southern) side of a dual carriageway section of Nelson Bay Road depends on continued availability, an ongoing written agreement and logistics such as getting access into the building and conflict with

church activities. There is also a danger of guests travelling in the very heavy rain to the Church.

Appendix O states that:

‘It is recommended staff and visitors capable of driving proceed to the nominated off-site evacuation centre. Driving to the facility will remove the potential for the vehicles being flooded and potentially becoming floating debris, creating issues on-site and downstream’, (p22)

The fact that this issue is even being considered suggests to us an unacceptable risk for the guests, staff, neighbours and emergency services.

Location

TRRA believes that apart from the zoning and environmental issues previous discussed the remote nature of the site from the beaches and other tourist attractions will result in a significant number of vehicle movements, making this site totally unsuitable for truly sustainable large scale tourist accommodation. Tourists in the Tomaree peninsula should increasingly be located in areas where they can either walk or cycle, or be more readily serviced by public transport.

Mosquito management

We note that DP&E letter dated 24 April 2019 requested information to demonstrate that the proposed mosquito management approach will be effective. The proposed management plan accepts that mosquitos will always be present. We submit that while some measures may have a small impact, the existence of an ongoing mosquito problem on this site is a further reason why it is not suitable for large-scale tourist accommodation, aimed at markets of visitors with no or limited local knowledge that could support an ‘at your own risk’ approach. The increased prevalence of Ross River Virus in our region should be taken into account in assessing the risk of allowing tourist accommodation on this site.

Commercial viability and potential for environmental impact of failure

We understand that the question of commercial viability is one for the proponent rather than the consent authority. However, we submit that the assessment of whether the proposal is in the public interest (s4.15(e) of the EPA Act) must take into account the implications of failed development. The Anna Bay community has already been living for over a decade with the appalling environmental consequences of the failure of the Birubi Beach Resort at 74-84 Gan Gan Rd, not far from the site of this proposal (image below).

We submit that the Department can legitimately consider whether, given all the constraints mentioned above, a significant tourist accommodation development on this site may run a high risk of commercial failure, either during or after construction, and the environmental consequences of failure.



Caption: Derelict accommodation units at site of Anna Bay Resort (was Birubi Beach Resort) 74-84 Gan Gan Road, DA 2009-160

Conclusion

TRRA in principle supports investment in new tourist facilities and accommodation on the Tomaree peninsula but it must be in appropriate locations and genuinely ecologically sustainable. We cannot support such a large scale development on this site. The proposal is not in the public interest.

The proposed development would fail to maintain the rural landscape character of the RU2 zoned land and does not meet the definition of Eco-tourist facilities which is the only significant accommodation type permitted with consent in an RU2 zone.

The proposed design and layout fail to minimise bulk, scale, overall physical footprint and ecological or visual impact.

The overdevelopment of this site was rejected in 2006 and again in 2020, TRRA submits that it should be refused once again.

We have no objection to this submission being made public, in full and unredacted.

Nigel Waters
Convenor, TRRA Planning Committee
planning@trra.com.au
0407 230 342