

PLANNING PROPOSAL – Rezoning of Various Caravan Park Sites to SP3 Zone.

INTRODUCTION.

On 4th February 2014, the Development Committee of SCC recommended that Council resolve to exhibit, for a period of 21 days, a Planning Proposal to rezone various Caravan Park Sites to an SP3 Tourist Zone. One such site, the Racecourse Beach Caravan Park, falls within our area.

Subject to the actual date of public notification of Council's resolution, it is unlikely that this matter will come before the Community Association for determination of a community attitude prior to the closing of submissions on the proposal. The following is therefore provided as a summary of planning events leading up to the Planning Proposal in question, in order to assist residents in crafting their individual responses to Council.

HISTORY.

This matter arose out of deficiencies in the process adopted for converting Shoalhaven Local Environmental Plan 1985 (SLEP 1985) to the Standard Template as required by the NSW State Government. The new plan, to the Standard Template, is to be known as SLEP 2013, a draft of which is currently before the Minister for approval.

In the government's view, the state-wide introduction of a Standard Template will simplify the planning process. This certainly has not proved to be the case.

Before the introduction of the Standard Template, each Local Government Area (LGA) could effectively customise its own Local Environmental Plan (LEP). Between the various LEP's there was no requirement for uniformity across NSW in regard to such features as the names attributed to the various Land Use Zones, the maximum or minimum number of such zones, nor the permissible/prohibited land uses applicable to such zones.

One objective of the Standard Template was to set a specific limit on the number of Land Use Zones and to allocate standard names to those zones. The Standard Template also mandated a list of possible land uses which Council could not vary. It is these two features which were at the heart of many community submissions to draft SLEP 2013 and which are central to this Planning Proposal.

For example, in SLEP 1985, there are nine (9) "Environmental" zones comprised of eight (8) "Environmental Protection" zones (Zones 7[a], 7[c], 7[d1], 7[d2], 7[e], 7[f1], 7[f2] and 7[f3]) and one (1) "National Parks" zone (Zone 8[a]). In converting SLEP 1985 to the Standard Template (draft SLEP 2013), these nine (9) zones have been compressed into 4 "Environmental" zones (E1 to E4). In so doing, almost all of the planning logic used to determine the original Land Use Zones has been lost and has been replaced by an almost random allocation of zones and accompanying permissible/prohibited land uses.

In SLEP 1985, each Land Use Zone was determined on the basis of relevant planning studies which were undertaken specifically for that purpose. The "National Park" zone applied where such studies deemed it necessary that the land in question be held in public ownership consistent with the ability of the public to fund acquisition from the public purse.

Whilst the planning studies (including environmental studies) concluded that land in the eight "Environmental Zones" of SLEP 1985 were not worthy of public acquisition, those studies nevertheless formed the basis for crafting development restrictions to be applied to those zones such that their environmental qualities could be preserved without the public cost of outright acquisition.

From the planning studies, “Zone Objectives” were developed for each “Environmental Protection” zone depending upon the environmental qualities of the site to be protected. With zone objectives set, the LEP specified a list of permissible/prohibited land uses for that zone together with any additional land use restrictions applicable to achieve an outcome consistent with the recommendations of the various planning studies. In short, a logical planning process was followed in SLEP 1985 where zone boundaries and resultant land use restrictions were determined on the basis of relevant planning studies.

In converting SLEP 1985 to the Standard Template of draft SLEP 2013, the 9 existing zones were converted to 4 proposed new zones, not in accordance with relevant planning studies, but by a methodology called the “best fit” principle. In effect, there has been a random culling of 9 logically determined zones into 4 new zones which are now devoid of any planning justification.

By the “best fit” process, the existing content of 9 metaphorical planning boxes, each logically allocated and in purposeful order, has now been randomly stuffed into 4 new planning boxes. Any resultant planning anomaly which happened to hang out over the sides of any of the 4 new boxes has been merely chopped off and discarded.

Whatever the “best fit” process is, it certainly is not a proper planning process and is primarily responsible for the current Planning Proposal relating to Racecourse Beach Caravan Park.

EXISTING USE RIGHTS

Racecourse Beach Caravan Park was already in operation prior to the date at which SLEP 1985 came into effect. As such, it would have been entitled to Existing Use rights on introduction of SLEP 1985.

Alternatively, the site could have retained its right to operate as a caravan park by a listing in Schedule 1 to SLEP 1985. Schedule 1 comprises a list of properties which retain a legal right to operate, or have the right to apply for consent to establish, a specified land use on the site, which land use is otherwise prohibited by the LEP.

As happened, the site was allocated the 7[f1] Coastal Scenic Protection Zone under SLEP 1985. Caravan parks are a permissible use in the 7[f1] Zone. No reliance on Existing Use rights or on a Schedule 1 listing was therefore required.

In SLEP 1985, all of the coastal land between the Kioloa Caravan Park and the rear boundary of properties on the southern side of Sanderling Place was zoned 7[f1], as was part of Merry Beach Caravan Park. With the exception of Merry Beach, all these sites are proposed to be zoned E3 in draft SLEP 2013. Caravan parks are a prohibited use in the E3 Zone. As a result, the Racecourse Beach Caravan Park will henceforth need to rely on its Existing Use rights to continue in operation under SLEP 2013.

Rights gained as a result of existing use, as opposed to Schedule 1 rights, are subject to Regulation and are vulnerable to change without notice. The appeal process to a change in Regulation is likely to be tortuous. The value of any existing caravan park, particularly any bank valuation, would be seriously decreased were it necessary for the existing caravan park to rely on existing use rights.

PROVISIONS of draft SLEP 2013

Under the “best fit” principle of converting to the Standard Template, land in the former 7[f1] Zone of SLEP 1985 was randomly allocated an E3 Environmental Management Zone under draft SLEP 2013. Caravan Parks are listed as a “prohibited use” in the E3 zone of draft SLEP 2013 even though, on the basis of planning studies undertaken for SLEP 1985, the site was determined as suitable for a caravan park consistent with the objectives of the 7[f1] Coastal Scenic Protection Zone. There were no

environmental or planning studies undertaken to justify this random determination of the proposed E3 Zoning.

As exhibited, draft SLEP 2013 did not list the site of Racecourse Beach Caravan Park in Schedule 1. As a result, the owners would have had to rely on existing use rights to continue in operation once SLEP 2013 came into effect, with the resultant vulnerability to asset valuation. Whilst it may not be that the owners of Racecourse Beach Caravan Park are sensitive to such a downgrading of asset valuation, it no doubt has had a significant negative effect on the owners of other caravan parks included in the Planning Proposal and this is likely to be the principal reason for the rezoning application.

All of this was avoidable by the simple inclusion of the affected properties into Schedule 1 of draft SLEP 2013. There would appear to be little justification in conferring on these properties the additional development rights which will attach to the SP3 Tourist Zone. This is particularly so having regard to the fact that no planning studies have been undertaken to justify such up-zoning.

SP3 TOURIST ZONE.

There is no doubting that tourism is vital to the economy of Bawley Point and Kioloa. As residents of two villages with a combined total permanent population of about 800, we must surely accept that our local shops, cafes, restaurant and local employment are ultimately dependent for their existence on the tourist dollar. What we need to consider is whether it is to be tourism at any price.

Under the Standard Template, the SP3 Zone will represent the most intensive tourist zoning in the whole of NSW. We need to pause and reflect on whether the most intensive tourist zoning is appropriate for our villages and, indeed, for the City of Shoalhaven as a whole.

The South Coast has now overtaken the North Coast in terms of tourist visitation. This has happened because the demand for environmentally sensitive tourism is starting to grab and it is environmentally sensitive tourism that our area provides. We should remind our Council of these changes in tourist preference and insist on a planning scheme which is sympathetic to them.

SCHEDULE 1

The 11 caravan park sites which are the subject of this Planning Proposal were initially not listed in Schedule 1 of draft SLEP 2013. That situation was intended to be corrected by Recommendation 4.2 of the Special Development Committee Meeting of Council held on 17th July 2013 whereby the sites were proposed to be included in Schedule 1. Ultimately however, an alternate option, that of up-zoning to the SP3 Zone, was decided.

The push for Council to propose an up-zoning to SP3 Tourist Zone for these 11 sites appears to have come from some of the proprietors of those caravan parks who may have been spooked by their initial exclusion from Schedule 1 and at the resultant prospect of having their asset value downgraded at a time of tight credit during the global financial crisis. This would have been a valid concern for them at the time.

It is not uncommon for such businesses to operate on a line of credit from their bank which has a limit set at a specified percentage of the bank valuation of the business. Any decrease in bank valuation will reduce that limit and may require an injection of funds by the owner. Such funds may not be available when credit is tight.

These circumstances are not uncommon for businesses where income is seasonal. They can combine to destroy an otherwise viable and healthy business.

In that light, it is hard to justify an arbitrary change to the planning scheme, based on the Standard Template, which rendered these businesses a prohibited use without the protection of Schedule 1. It would surely have been preferable for these sites to have been earlier included into Schedule 1, as was ultimately proposed by Council at Special Development Committee Meeting 17th July 2013, thereby protecting their existing use rights before panic set in over a potential downgrade in asset valuation.

These Schedule 1 rights would not have spread to any other site in the proposed new zone which did not have an approved caravan park. For those other sites, caravan parks would have still become a prohibited use under SLEP 2013.

The initial opposition to inclusion of existing caravan park sites into Schedule 1 appears to have come from the Department itself which was reported to have advised Council to “keep Schedule 1 listings to a minimum”. If such direction was given, it was beyond power and extremely unwise. It would not have withstood appeal.

Given all the above, and in the interests of a fairer and more transparent planning process, it is suggested that Council should abandon the current Planning Proposal and merely list the 11 properties in Schedule 1, as was proposed by Council at its Special Development Committee of 17th July 2013.

UP-ZONING to SP3 TOURIST ZONE.

Section 4.1.2 of the report submitted to the Development Committee of 4.2.12 – Item 3, states: “However the proposed rezoning (to SP3) is somewhat inconsistent with the draft SLEP2013 transfer approach (the “best fit” transfer) and could in turn widen the range of permissible uses for these particular sites including some that are incompatible with the existing locations. e.g. serviced apartments. It is however noted that most of the sites have physical or locational constraints that would limit this form of development”.

With respect, that statement does not adequately acknowledge the inventiveness of some entrepreneurs who often have little regard for environmental values.

A better test of whether the SP3 Tourist Zone is appropriate for these sites is to be found in the stated Objectives of the two alternate zones which are detailed below:

Zone E3 Environmental Management – Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect the natural and cultural features of the landscape, including coastal and foreshore areas, which contribute to scenic value and visual amenity.
- To maintain the stability of coastal land forms and protect the water Quality and ecological values of estuaries and coastal streams.

Zone SP3 Tourist – Objectives of zone

- To provide for a variety of tourist-oriented development and related uses.
- To enable other compatible residential and recreational uses.
- To provide for dwelling houses that form part of a tourist orientated development.

In good planning practice, the Objective of a zone is derived from planning studies including environmental studies of the site. On the basis of those studies, the Racecourse Beach Caravan Park was

zoned 7[f1] Coastal Scenic Protection. Whilst the Objectives of the 7[f1] Zone would not have been identical to the E2 Environmental Management Zone, they would certainly have been closer to those objectives than those of the SP3 Tourist Zone. The zoning of this site to E2 Environmental Management, with Schedule 1 listing, is the only zoning that can be justified on planning grounds even allowing for the gross deficiencies in the Standard Template and the “best fit” principle.

OWNER SUBMISSIONS.

Council has not received a submission, on behalf of the owners of the Racecourse Beach Caravan Park, to have that site included in the Planning Proposal for rezoning of the site to the SP3 Tourist Zone.