

Shoalhaven City Council  
P.O. Box 42  
Nowra NSW 2541 Australia

Attn: General Manager

By Email: [mcloughlin@shoalhaven.nsw.gov.au](mailto:mcloughlin@shoalhaven.nsw.gov.au)

**Re: – Notice of Objection to DA13/1500**

Dear Mr McLoughlin

As Chairman of the Benton Sands Community Association (DP 270327), I wish to present an objection to the proposed DA (13/1500) on behalf of the 94 lot owners which make up the Benton Sands Community Association.

The proposal is considered to be out of character with the Benton Sands Community, all of which is located to the north of Griffin Street. All residents of this Benton Sands were of the belief the foreshore south of Griffin Street was a proposed bushland reserve. This was partially confirmed by Council which enforced the sale of these lots stating;

**“In the current difficult economic climate the owners of properties within these estates have parcels of land which cannot be developed but are still required to make rate payments.”** Extracted from

SHOALHAVEN CITY COUNCIL

**COUNCIL PROPERTY STEERING COMMITTEE**

to be held on Monday 2<sup>nd</sup> August, 2010  
commencing at 4.00 pm

I also wish to object to this Development Application as it does not comply with the objectives of Zone 7(f3) within the Shoalhaven LEP 1985, namely *“to protect the foreshore environment and the visual amenity”*.

The proposal is also inconsistent with a number of the objectives of the proposed E3 zone, these being:

*“To protect, manage and restore areas with special ecological....or aesthetic values”;*

*“To protect the natural and cultural features of the landscape, including coastal and foreshore areas, which contribute to scenic values and visual amenity; and*

*“To maintain the stability of coastal land forms.....”*

The reasons for this objection are stated as follows:

**1. Non-compliance with DCP91.**

The Statement of Environmental Effects (SEE) identifies that the front building setback does not comply, and argues that the proposed 7.5m setback *“will not be out of character with that*

*resulting from the development of the locality*". This argument is not valid as the proposed development is set centrally within a street frontage of approximately 800-900 metres of pristine endangered Bangalay – Banksia Sand Forest. Given the prevailing bushland character of the street frontage, any proposed development should be set back from the street sufficiently so as not to be readily visible from the street. Consequently, not only should the minimum 12.5 metre setback be enforced, but the development should provide a screen of mass indigenous planting within the setback to screen the building from the street.

The proposed (non-compliant) 1.8m high fence to the street boundary does not comply and is totally inappropriate for the location, where typically dwellings have no front fence (except in only one instance where it is allowed in favour of Lot 84 being the lot immediately in front of the Community Centre/pool). This is significantly lower (1.2 metres) and constructed from discreet materials. Some 13.9m of the proposed street frontage will present as a solid 1.8m high masonry barrier.

The applicant confirms that the proposal does not comply with respect to the front setback requirement of 12.5 metres, and cannot support the conclusion that "in this instance, the proposed setback is reasonable and appropriate." It does not comply with the required 12.5 metres. *SLEP 1985 - Clause 26(4) the council must not consent to the erection of any building within the setback (Zone no 2(c)).*

The applicant states that the proposed dwelling (DA 13/1500) and "proposed setback is considered reasonable and appropriate" (Statement of Environmental Effects – page 31). The applicant misrepresents his proposal in that "the locality is one that is residential in nature, characterised by the development associated with Benton Sands". As the proposed development is located within an environmental protection zone and is not adjacent to the Benton Sands Estate, it can hardly be characterised as being "within" the character of the surrounding estate.

The same document then refers to the proposed development adjoining public land which will remain undeveloped. It is convenient to be part of an estate when it suits and separate when required.

In summary, the proposal does not "*protect...the visual amenity*" of the foreshore.

## **2. Coastal Hazard Mapping.**

There has been no coastal hazard study carried out in this area of Callala Beach to determine whether new development should be permitted. Annexure 1 of the SEE states that "*conditions are similar*" to the more densely developed sections of the foreshore and that "*it is considered reasonable therefore to extend the various hazard zones past the subject lands to identify potential hazard*". This assumption is clearly not reasonable as even a cursory visual inspection of the dunes in this area reveals that their character is very different from the rest of the beachfront. The dunes close to the subject site vary significantly in height & thickness, some

sections providing only a few metres of protection from the increasingly high tidal & storm surges. Consequently they are more at risk from tidal erosion. Local residents have recently experienced the loss overnight of several metres of beach depth during a storm surge. Consideration of this application should not progress until an independent coastal hazard study for this section of Jervis Bay has been carried out.

### **3. Ecological Assessment.**

The ecological assessment provided with the application appears to be little more than a cursory walk-through, identifying the European Red Fox as the only mammal sighted. Local residents however are very familiar with the presence of wallabies, bandicoots, gliders, echidnas, and possibly spotted quolls (unconfirmed), whilst sea eagles, fairy wrens & whip birds also proliferate. If the ecological assessment can miss all these species, how can it possibly conclude that *“the proposal will not have a significant impact on any threatened species or their habitat”*?

The assessment also identifies that an endangered ecological community (EEC) is present within & around the subject site, but concludes that there will be *“a relatively small loss of vegetation”* which will not have a significant impact. This is unacceptably dismissive and misses the point, as the removal / retention of vegetation within the site does not tell the whole story. The development may result in the removal of up to 3,100 square metres of EEC and effectively cuts the existing stand of vegetation in two.

The location of the proposal also makes it very likely that exotic and non-indigenous species & grasses will spread beyond the boundaries of the site, compromising the EEC well beyond the site boundaries.

The introduction of household pets to the site, especially cats & dogs during both construction and occupation, could have a disastrous effect on the local native fauna. Strict self-imposed controls apply within the adjacent Benton Sands Estate to address this (no cats, small dogs only).

Finally, local residents can attest to the significant damage that inevitably occurs to adjacent areas during the construction of any new dwelling. Without constant scrutiny by Council's enforcement officers, it is likely that adjacent areas of EEC will be destroyed or damaged.

In summary, the proposal will not *“protect the foreshore environment”*.

### **4. Bushfire Protection Assessment.**

The assessment proposes an Asset Protection Zone that does not comply with the requirements of 'Planning for Bushfire Protection' (RFS 2006).

The assessment's premise that the proposal is 'infill development' is incorrect as the subject lots are currently not serviced, do not form part of the existing adjacent residential development, and therefore require *“the spatial extension of services”*.

Furthermore, the APZ proposed of 5.1 metres along the side boundaries surely could not be considered *“defendable space”* in the event of a bushfire within the extensive forest areas adjacent. Other elements of the proposed APZ are vague as to the extent of vegetation required to be removed or retained.

Council should therefore not consent to this development as cl.28, sub cl. (2) and (3) state:

*"(2) The Council must not grant consent to the carrying out of development on bush fire prone land unless it is satisfied that adequate measures are proposed to avoid or mitigate the threat from bush fire, having regard to:*

- (a) the siting of the development, and*
- (b) the design of, and the materials used in, any structures involved in the development, and*
- (c) the clearing of vegetation, and*
- (d) the provision of asset protection zones, landscaping and fire control aids (such as roads and water supplies).*

*(3) Before deciding to grant consent to any development on bush fire prone land, the Council:*

- (a) must have regard to the requirements set out in Planning for Bushfire Protection, ISBN 09751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006, and*
- (b) must be satisfied that those requirements will be met as far as is practicable in the circumstances."*

## **5. Disposal of Sewage.**

Due to the existing ground levels, gravity connection to the existing sewerage system is not possible. Consequently the proposal will rely totally on a pump out system for disposal of untreated sewage. This is totally inappropriate for such an ecologically significant site, and does not represent a sustainable solution to the disposal of sewage.

## **6. Disposal of Storm water and Ground Run-off**

The Allen Price document states that all storm water is to be connected to the existing town reticulation system. Firstly, there is none. Benton Sands residents harvest the first 10000 litres and any surplus is directed to slow release pits. As this development does not have to comply with our architectural standards, the applicant cannot connect to town reticulation because it does not exist.

I refer to page 23 SLEP 1985 Clause 26(1). There is no provision for the drainage of storm water and other surface water from the land on the south side of Griffin St. Clause 26(1) A person must not carry out development unless and until arrangements satisfactory to council (none provided) for the provision of drainage of storm water and other surface water from the land.

Clause 26 (2) There are no proposed systems for (c) protection of surface water and (d) protection of ground water

## **7. Non-compliance with the Architectural and Landscape Standards that apply to the residents of Benton Sands.**

The Benton Sands community is subject to strict architectural guidelines and Terms of Restriction on the Use of Land which was approved by the Council of The City of Shoalhaven (dated 20/06/03). The Community Management Statement for the Benton Sands Estate was also approved by the Council of The City of Shoalhaven (dated 4/10/02). These documents formed part of the Contract of Sale of Land to each lot owner within the estate. The objectives of

which place restrictions on the type of dwelling, it's design and materials in the form of By-Laws to which each lot owner is a party to. All 94 lot owners are subject to the Architectural Standards and By-Laws which require compliance to Terms of Restriction on the Use of Land which include:

- No development application for a two storey dwelling house shall be submitted unless accompanied by a shadow diagram,
- No driveway shall be constructed within the lot and across footpath reserves ...unless constructed from 'BG' blocks, Rocla 'Ecoloc' or similar permeable paving materials,
- No dwelling shall be constructed on any lot unless provided with a roof water tank having a minimum size of 10,000 litres ...and the overflow from which is contained,
- A maximum of one domestic dog which shall not be of aggressive hunting ability,
- No domestic cats shall be kept on any lot,
- Maximum lawn area of 25 square metres,
- All plantings must be indigenous to the area,
- No fence shall be constructed along or adjacent to the principal street frontage or along or adjacent to the side boundaries between the principal street frontage and the front building alignment of any building,
- A garage or carport roof must be constructed of the same material and colour as the main roof and the front of any garage under the main roof must be recessed at 400mm from the edge of the main roof.
- Habitable buildings must have at least 50% of the footprint built at least 300mm above ground level on posts, piers, poles, stumps or similar,
- The area of external wall cladding of the main building, must be at least 60% painted timber, painted hardiplank or similar lightweight material,
- Windows must be white powder coating aluminium frame or painted semi or full white gloss timber.

The proposed development is not compliant with the Benton Sands Community as to;

- (a) harmony of the external design with existing structure;
- (b) harmony with existing landscaping; and
- (c) adherence to Architectural and Landscape Standards that apply to the residents of Benton Sands.

## **8. Statement of Environmental Effects and Planning Report**

The applicant states that "the proposed development is situated adjacent to existing residential areas and is considered to be suitable development given its type, scale, location and design".

Nothing could be further from the facts in that:

- a) The proposed development is not adjacent to existing residential areas as it is located opposite a discreet estate, bound by regulated Architectural Building Guidelines and By Laws with an average lot size below 600 m<sup>2</sup>. It is not within or alongside the Benton Sands Estate, which is separated (south of Griffin Street) by a strip of pristine endangered Bangalay – Banksia Sand Forest.

b) Its type is not similar to any house within the Benton Sands estate and nor will it conform to the Architectural Guidelines imposed on the residents of Benton Sands, and

c) Its scale is a massive house built over 3 lots each exceeding 1000 m<sup>2</sup> which neither blends with the housing estate opposite, not in design, materials, size (either lot or houses size) or location.

Page 13 of the SEE (Cowman Stoddart report) states that;

- The proposal does not affect any local views or vistas and is of a suitable scale and bulk for its location and intended use.

I disagree in that the proposal does affect local views. It replaces natural forest with views of a brick fence and steel shutters.

Page 13 of the SEE (Cowman Stoddart report) states that;

- The proposal responds to its surrounds and environment by capturing the northern sun and light while also taking advantage of the view of the beach, bush and bay to the south.

I disagree in that the proposed development (behind a 1.8 metre fence) can “take advantage of the view of the beach, bush and bay to the south” which can only be achieved by the removal of the natural forest which will leave a permanent hole in the coastal forest, effectively separating the foreshore view (viewed from the beach and bay).

Page 14 of the SEE states that “the proposal is consistent with the objectives of SEPP No. 71 – Coastal Protection. However,

Part 4 of the SEPP provides that a consent authority must reject development applications that will:

- impede or diminish access to coastal foreshores;
- result in effluent discharge that negatively affects water quality; or
- involve a discharge of untreated storm water into the sea, a beach, an estuary, or coastal lake or creek.

Page 15 of the SEE states that;

- The development will not impact upon local stormwater quality.

However, the failure to connect or manage the storm water run-off will lead to a discharge within the vicinity of the coastal dunes and beach area, as they are located below the level of the proposed development.

Page 31 of the SEE states that “the site is subject to ecological constraints which determine that development is more appropriately sited towards Griffin Street frontage”. I disagree with this unsupported conclusion and offer a more reasonable solution is that any development on the south side of Griffin Street should be rejected, in that it is not in keeping with any adjoining properties in either nature, kind, shape, size, design, location or the intent of the designated zoning.

Page 33 of the SEE states that “The development is unlikely to significantly impact on the local amenity”. The proposed development does not comply with the architectural standards enforced within Benton Sands, (in regard to slab construction, solar design, landscaping, storm water handling, pet policy, finishes, fencing, etc.); therefore, it will significantly stand out from the estate opposite.

## 9. Conclusion.

Council is requested to discontinue further assessment of the application until the findings of an independent coastal hazard study of the subject section of Callala Beach are available. In the event development on the site is to be permitted, Council is asked to:

- 1) Impose a condition requiring lot consolidation to minimise the potential for surrounding land to be developed in a similar way, and
- 2) Impose a condition that a covenant is placed on the title to restrict the clearing of vegetation to what is proposed in the application, and
- 3) Impose a condition that the proposal is amended to include compliance with the By-Laws and Architectural Standards imposed on the residents of Benton Sands in respect of materials, fencing, pet policy, storm water harvesting and treatment, colours, no slab construction, landscaping, solar design, driveway materials, setbacks, lawn, etc.

For all the reasons stated in this submission, the proposal does not satisfy the core objective of zoning 7(f3) *“to protect the foreshore environment and visual amenity”* neither does it satisfy the objectives of the future E3 zoning of the draft LEP *“to protect....areas with special ecological....values”* and *“provide 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 values and visual amenity; and “To maintain the stability of coastal land forms.....”*

Furthermore, given that the proposal has been unable to achieve the required APZs and could potentially give rise to significant ecological impacts, it is not considered to be an appropriate development of the site.

Should Council disagree with this submission and see fit to approve the proposal, it will set an undesirable precedent that could render further development within this endangered ecological community more likely in the future.

Accordingly, Council should reject this application.

Eric Byrne (Chairman)  
Benton Sands Community Association  
(DP 270 327)

Dated: June 19, 2013

CC: Focus Strata Management  
Via Email

Attention: Tom Gablonski  
[t.gablonski@focusstrata.com.au](mailto:t.gablonski@focusstrata.com.au)