



Report to Minister

Grounds for Gateway Review

Beilsdown River Seniors Living Development Dorrigo

The purpose of this report is to draw the Ministers attention to a LEP Planning Proposal by Bellingen Council that failed to represent the intention of the elected Councillors and to make the Minister aware of the documents that were withheld from the Minister in an attempt by Council Planners to stifle a Seniors Living Development that is well justified in terms of the Mid North Coast Regional Strategy, and other key strategic Documents.

It is the intention of this report to convince the Minister and the Department of Planning that there should be a Gateway review of the project and that Bellingen Council should be removed entirely from the planning process.

Prepared for the Cork Memorial Trust

by Climate Specific Architects,

October 2010

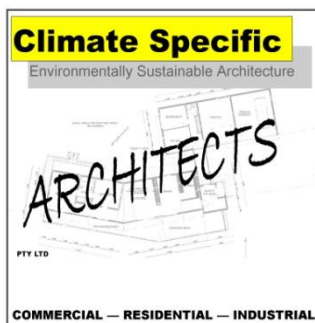
This report has been prepared for submission to
the NSW Minister for Planning

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Executive Summary

At the forecasted growth figures for Dorrigo as determined in the BSC Growth Management Strategy, 2008 and based on Councils own Industrial Lands Strategy, Dorrigo has a massive 516 years supply of available - unoccupied industrial land.

*" There is no demand for traditional industrial developments and they are locating to the larger more accessible centres of Coffs Harbour and Nambucca."*¹

*"the population aged 65 years and over will more than double"*²

*"Council acknowledges the need and enthusiasm within the community to establish an aged housing development in Dorrigo as well as the historic difficulty in locating a site that is not only suitable in size, gradient, proximity to town but is also commercially available."*³

On the 28th of July 2010, Bellingen Councillors determined to support a Planning Proposal to rezone industrial land in Dorrigo back to its original residential zoning for the purpose of developing that land for Seniors Housing.

The proposal was submitted in the form of various documents by the Cork Trust including a very significant "Response to Council Report" which formally challenged the Bellingen Council Planners own report. This report combined with a number of other documents formed the basis for the Councillors deciding to vote against the Council Planners recommendation to refuse the proposal.

The Response to Council Report identified a number of blatant errors and misleading information in Councils Report while at the same time re-iterating the justification for the project using Strategic Reports commissioned by the Department of Planning, Council and the Trust.

Unfortunately for the Community and the elderly people of Dorrigo, Bellingen Council Planners do not want this development to go ahead despite the overwhelming justification illustrated using Councils own strategic reports by the Trust, the support of the elected Councillors and the massive showing of public support for the project.

Bellingen Council Planners have failed to supply the relevant documents to the Minister and have failed to produce a Planning Proposal that represents the intent of the elected Councillors.

¹ Bellingen Shire Council Industrial Land Strategy, 2003, Page 41

² Mid North Coast Regional Strategy, 2006-2031, Page 6

³ BSC Letter to Cork Trust, RE: Potential Aged Housing Development, BSC

Bellingen Council Planners have failed to give reasonable consideration to the proposal by virtue of not having considered relevant strategic documentation as referred to in the reports submitted to Council by the Trust.

We submit that Bellingen Council Planners are consciously delaying the Planning Proposal by supplying misleading and incorrect information to the Gateway and that Bellingen Council Planners have failed to comply with their obligations with respect to the making of the proposed LEP under Section 54(2) of the EP&A Act with particular attention being drawn to LEP practice note PN 09-004.

This report clearly shows that the development proposal satisfies the objectives of the Mid North Coast Regional Strategy and in doing so will satisfy the Gateway Determination Process as the four points for refusal were all essentially based on that strategy and its requirements for employment lands.

This document clearly shows significant grounds for a Gateway Review and for having Bellingen Council removed from the planning process.

We submit that Bellingen Council Planners should be subject to severe disciplinary action for misleading the Gateway, the Department of Planning and the Minister.

Introduction

When Bellinghen Councillors considered the planning proposal by the Bellinghen Council's Director of Environmental Health and Planning they did so with a report commissioned to respond to the Council Report, "Response to Council Report"⁴ (commissioned by the applicant) which was read side by side with Councils own report. Council resolved to support the rezoning of the land having access to the correct information in the Response to Council Report, a set of drawings, letters of correspondents and other documents as well as a development proposal architectural site model.

Background

Bellinghen Council Planners have been pushing for this development to be located on a site proffered by them. The site preferred by Council Planners has been ruled out by the Site Comparison Study⁵. It would appear that the Council Planners would like to see the Cork Trust install significant infrastructure (at the Trusts expense) to that side of the town which requires sewer mains to open up other potential residential areas⁶, despite the fact that the land suggested by council was crown land under claim (this Native Title Claim was subsequently extinguished by Council claiming to be reviewing the Land for Seniors Housing and Affordable Housing, there is no published review) and was too steep a grade to develop for seniors⁷. When it became clear to Council that the Trust had found and purchased a superior site the Council Planners we submit began a campaign of misinformation and subterfuge to assure that the development not go ahead, this campaign has included misleading information in the press⁸, and most significantly a misleading and incompetent Planning Proposal to the Gateway.

The misleading information and subterfuge is evident throughout the Councils alleged "Planning Proposal" document, below are a few examples:

- The use of the term 'Vacant industrial Land' has been used in Councils "Planning Proposal" to mislead the Department of Planning and the Minister from the amount of un-used / un-occupied industrial zone land, for example: the old abattoir site is 4 Hectares in size on 2 titles, this land has been "un-occupied" since 2003, the structures on the site that take up less than 1 hectare, are unsuitable for other industry and are now derelict. This parcel of land has not been included in Councils calculations because it is by Councils definition not 'vacant' by virtue of containing structure. While this may seem a moot point, it forms part of a campaign of providing misleading information. For the purpose of this document we have used the Mid North Coast Regional Strategy intentions and have termed the un-occupied or vacant lands "available".

"The Primary purpose of the Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs"

⁴ Response to Council Report, Climate Specific Architects, 2010

⁵ Site Comparison Study, , Schimminger Architects & DSDS, 2009

⁶ Site Comparison Study, , Schimminger Architects & DSDS, 2009. Page 8

⁷ Site Comparison Study, , Schimminger Architects & DSDS, 2009. Page 7

⁸ Bellinghen Courier Sun, 6th July 2010. P1, 27th July 2010. Page 1

- Councils Planning Proposal alleges that there is no strategic basis on which to support the project and that the decision be held over until the Employment Lands Strategy is complete in a bid to stall the project when there are ample "in-date" strategic documents available to make a logical and strategic justification. As late as 18th October 2010 Bellingen Council was still referring to the Industrial Lands Strategy as part of councils "Strategic Framework."⁹ Note that the original part 2 motion by Councillor David Scott which calls for the Department of Planning to be notified of Councils intention to conduct a review of its Employment Lands Strategy in 2010-2011, we submit that this direction came directly from the Planners.¹⁰
- Council also refused to address the project as part of the BLEP2010 despite the submission being accepted by the Council on time.
- Council Planners have used the ambiguous wording of the Councillors Motion to support the project to make a mockery of the Councillors intentions and assure that the Planning Proposal never made it through the Gateway, while the Councillors voted to support the proposal to rezone the land the Council Planners have used semantics to attempt to justify sending in the 'Report to Council' which does not support the proposal as the 'Planning Proposal to support the rezoning of the land'.

Council determined:

*"To support the Planning Proposal to rezone land, comprising lot 710 DP 706735 Railway Street Dorrigo, to allow a seniors housing development and to refer it to the Minister for Planning for consideration."*¹¹

Bellingen Council Planners forwarded the document that they produced for Council which recommended that the proposal **not proceed** as the 'Planning Proposal' to the Gateway. We submit that the Councillors were in fact resolving to support the rezoning of the land based on our documents (primarily the Response to Council Report) not the council report which should stand to reason given that had council voted to support councils document they would have voted against the rezoning.

Council was supporting the "Planning Proposal" **to rezone land**. We submit that:

It was expected that a 'Planning Proposal' would be formulated from all information as set out in the Department of Planning's documents "A guide to Preparing Planning proposals" this would have included justification for the development based on Councils Strategic Reports as outlined in the Response to Council Report. We submit that Council Planners resolved to make a mockery of the process and name their own document a "Planning Proposal to rezone land". Councils document as mentioned above was in fact a report to Council advising Council not to support the project or rezoning.

Councils report on this proposed development contained many errors and misleading comments (errors and misleading comments that the Council Planners were happy to later

⁹ BSC, Strategic Framework, Council Website, <http://www.bellingen.nsw.gov.au/council/7193/7194.html> (BSC, Strategic Framework, page 2 in appendix)

¹⁰ BSC, Councillors Motion, Minutes of Ordinary Meeting, 28th July 2010. Page 25

¹¹ BSC, Councillors Motion, Minutes of Ordinary Meeting, 28th July 2010. Page 25

pass on to the Minister as the "Planning Proposal" to make a new LEP). The Cork Trust engaged Climate Specific Architects to respond to this document to inform Councillors of these errors and misleading comments prior to their rezoning proposal being determined by the Councillors vote.

This Response to Council Report was included in the documents that went to Council and helped form the basis for the Councillors to turn down the recommendation of Council staff and forward the project on to the Gateway Process. It was expected that this document would have formed part of the Planning Proposal. It has now become clear that the Gateway Determination was based solely on the Council's report to not rezone the land. The Gateway Determination has not referred to a single document submitted to Council by the Trust.

Scope

This report has limited the information and response to the four key points in the Gateway determination. The Response to Council Report can be found in the appendix. This report references a number of State and Local Strategies which are also included in the appendix. The Gateway Determination Points for refusal are followed by our response.

Gateway Determination

1. Adequate strategic assessment of the future employment lands needs for Dorrig has not been undertaken.

Contrary to the Gateway Determination decision above, a number of studies have been undertaken to assess the future employment lands needs for Dorrig and the Bellingen Shire. These reports have been commissioned at both local and state level. The following reports were referred to in the documents submitted to Council as follows:

Bellingen Shire Council Industrial Lands Strategy 2003-

This project was jointly funded by the then NSW Department of Regional Development and Bellingen Shire Council (BSC) under the Regional Economic Transition Scheme.

The purpose of this BSC report was to *"investigate the need for additional industrial land within the Bellingen Shire"*. The Outcomes of this report were referred to in both the Response to Council¹² and the Site Comparison Report¹³ and are also referenced below in addressing the other determination points.

The Bellingen Shire Growth Management Strategy 2007-

¹² Response to Council Document, Climate Specific Architects & Schimminger Architects, 2010

¹³ Site Comparison Report, Schimminger Architects & DSDS, Dec. 2009

This strategy was commissioned to *"provide an integrated framework for Council decisions relating to planning and services for the future development of the Bellingin Shire up to 2026"*.¹⁴

On the subject of Industrial development in Dorriggo this strategy references the BSC Industrial land Strategy 2003, this strategy was also referred to in both the Response to Council Document and the Site Comparison Study; it is also referred to below.

Mid North Coast Regional Strategy- 2006-2021

The Primary purpose of the Regional Strategy is to *"ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the region's population over the next 25 years"*¹⁵. This report is referenced below in relation to employment lands requirements and population forecasts.

Bellingin Shire Council Community Profile-2008

"Information contained in this Profile is intended to assist Bellingin Shire Council and other State and Federal Government agencies, business and local community groups to assess the present and future needs of the Bellingin Shire and thus guide the allocation of resources for the effective development of community facilities and services".¹⁶ This report is referenced below in relation to specific demography including age trends, population projections and employment by industry.

The BSC Industrial Lands Strategy was specifically commissioned at State and Local level to make a strategic assessment of future employment lands in the Bellingin Shire, this report was broken into three sections by geography:

Bellingin- Valley
Urunga - Coastal
Dorriggo - Plateau

The additional reports above correspond with or directly reference this report, while offering additional insights into a holistic approach to employment and growth.

Why did the Council and Gateway committee not acknowledge these reports or the references made to them in the documents submitted to council? Why did Bellingin Council fail to submit these documents to the Gateway Committee? How is it that the Bellingin Council Planners failed to refer to these documents in preparing a Planning Proposal? Can the Minister please answer these questions?

¹⁴ Bellingin Shire Growth Management Strategy, 2007. Page1

¹⁵ Mid North Coast Regional Strategy 2006-2031

¹⁶ Bellingin Shire Community Profile, 2008

2. A comprehensive assessment of the suitability of the existing residentially zoned land in Dorrigo for the range of permissible land uses including seniors housing has not been conducted and therefore it is premature to rezone industrial for residential purposes.

The Cork Trust did in fact undertake a comprehensive assessment of the suitability of the existing residentially zoned land which culminated in the Site Comparison Study¹⁷, the Cork Trust also met with Council to discuss the proposed site and availability of land, Council acknowledged in their letter dated November 12, 2008¹⁸ suitable vacant land in Dorrigo was difficult to find. Quote:

'Council acknowledges the need and enthusiasm within the community to establish an aged housing development in Dorrigo as well as the historic difficulty in locating a site that is not only suitable in size, gradient, proximity to town but is also commercially available.'

Council could only identify one other portion of land which was then included in the assessment and subsequently ruled out in the Site Comparison Report.

The purpose of this rezoning proposal is to merely return the zoning back to residential zoning as it was prior to 2005. The land was re-zoned to Industrial via amendment No. 6 to the 2003 BLEP with **absolutely no strategic justification**¹⁹, in fact it was re-zoned **against the recommendations of Councils own Strategic Report**²⁰. The land was never, and has never been identified as being required for Industry in Dorrigo; it should never have been zoned Industrial and **therefore should not be considered to be required for industry**.

3. "The proposal is inconsistent with S117 Directions 1.1- Business and Industrial Zones and 5.1 Implementing Regional Strategies. "

Direction 1.1- Business and Industrial Zones

The objectives of the Direction are to:

- encourage employment growth in suitable locations
- protect employment lands in business and industrial zones, and
- support the viability of identified strategic centres

A planning proposal must:

- give effect to the objectives in the direction,
- retain the areas and locations of existing business and industrial zones,
- ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning

¹⁷ Site Comparison Study, 2009, Schimminger Architects & DSDS

¹⁸ Letter to Cork Trust, RE: Potential Aged Housing Development, BSC

¹⁹ BSC, Minutes of Ordinary Meeting, 28th July 2010. Page 17

²⁰ BSC Industrial Lands Strategy, 2003. Pages 34 &39

A planning proposal may be inconsistent with the direction only where:

- the inconsistencies are justified by a strategy approved by the Director-General of the Department of Planning, or
- justified by a study in support of the planning proposal which considers the objectives of the direction, or
- is in accordance with the relevant regional strategy, or
- is of minor significance

The Cork Trusts Response to Council Report clearly identified a number of key justifications for the development, it also referenced the earlier Site Comparison Study that outlined some of these strategic justifications and referenced Councils own Strategic Reports.

The proposal considers the objectives of the directions 1.1 & 5.1 in the Response to Council and the Site Comparison Study both of which reference the following documents.

The proposal is supported by the following strategic documents:

- The Mid North Coast Regional Strategy 2006-2021
- The Mid North Coast Regional Economic Profile (2008)
- Bellingen Shire Economic Profile (2009)
- Bellingen Shire Council Community Profile (2008)
- Bellingen Shire Council Industrial Land Strategy (2003) prepared for the Department of State and Regional Development and Bellingen Shire Council
- Bellingen Shire Council Pedestrian Accessibility and Mobility and Bicycle Plan (2006)
- Bellingen shire Council Growth management Strategy (2007)

Below is a direct response to the directions objectives 1.1 & 5.1. These responses are also incorporated into the other documents given to council as listed above.

The objectives of the Direction 1.1 are to:

- Encourage employment growth in suitable locations

The proposal will in fact encourage long term employment growth in the aged care sector and short term employment in the construction and associated industries²¹. The aged care sector is identified by the Mid North Coast Regional Development Board as a sector requiring additional employment lands capacity. This has also been referred to in the Mid North Coast Regional Strategy²² under economic development and employment growth.

The BSC Community Profile 2008 notes a 'dramatic' increase (61% in the 50-54 year age group) in the aging population of the Bellingen Shire (1996-2006) coupled with a 24% decrease in those people aged 0-4. **The Mid North Coast Regional Strategy forecasts that the population aged 65 years and over will more than double in the next 20 years.**

²¹ Urbis, Dorriggo Seniors Living Employment and Retail Spending Report (2010). Page 3

²² Mid North Coast Regional Strategy-Page 24

It is the intention of this development to provide employment in a recognised growth employment sector that has been shown to require additional employment lands and it is submitted that:

- land that has never been used for industry
- land that was residential land up until 2005
- land that was rezoned to Industry without any strategic justification
- land that adjoins residential land along its longest boundary
- land that is 165 meters to the public library and CBD

is in fact a more suitable location for a seniors living development than that of industry.

- Protect employment lands in business and industrial zones, and

The Bellingen shire Growth Management Strategy 2007 was commissioned to provide an integrated framework for Council decisions relating to planning and services for the future development of the Bellingen Shire up to 2026.

On the subject of Industrial development in Dorrigo this strategy references the BSC Industrial land Strategy 2003 including:

*"There is a relatively formal industrial area of 2 ha, south of Wattle Street and east of Railway Street. The lot sizes are in the order of 2,000m² consisting of mainly storage and light engineering uses. It has not been fully developed. The Strategy also suggested that there was no apparent need to rezone additional land for service or light industry, although having no effective supply could stifle ad hoc investment in the local economy. **The Industrial Land Strategy therefore recommended that an additional 1 ha of land** was required for Dorrigo with land identified at the former Abattoir site considered suitable for redevelopment. This land has since been rezoned."*²³

In fact Bellingen Shire Council rezoned a total of 8.6 Hectares of land from residential to Industrial rather than the recommended 1 Hectare.

As determined in the Industrial land Strategy in 2003 Dorrigo Industry was not expected to grow in the foreseeable future, currently there is less occupied Industrial land in Dorrigo than there was in 2003, approximately 8.8 Hectares now unoccupied and available with two of the largest sites currently on the market as four lots, two lots have been on the market since 2003.

The above mentioned Bellingen Shire Industrial Land Strategy was financed by both the NSW Department of State and Regional Development and the Bellingen Shire Council to investigate the future for industrial development in the Bellingen Shire this strategy concludes:

²³ Bellingen Shire Growth Management Strategy 2006. Page 28

" There is no demand for traditional industrial developments and they are locating to the larger more accessible centres of Coffs Harbour and Nambucca."

The subject portion of land was not rezoned from residential to Industrial in 2005 based on any strategic justification, it was not referred to in the strategy commissioned by the Department of State and Regional Development or Council or any other body. In fact it does not appear to have been referred to at all in any public document until it was put before Council to be rezoned. This land was never required to be rezoned for Industry, it is surplus to industrial requirements now as it was in 2005 and it will remain surplus to Industrial requirements until industry expands in Dorrigo almost 500% (the current forecasted growth for Industry is zero %²⁴), the land for the proposed development adjoins residential land along its longest boundary and its main street frontage road reserve is less than 10metres wide with a 3.5 m gravel road width (a significant drawback for any potential industry).

The proposed development for Seniors Living will preserve the land for business in the form of a Seniors Living Facility that incorporates commercial facilities and services within the 2 Hectare site that will benefit the community and residents alike. It will promote further business in the services industry and add much needed stimulus to the construction industry and local economy²⁵. To protect the employment lands of Dorrigo, alternative uses that generate employment need to be encouraged as it is clear from all reports that traditional industry in Dorrigo is not going to grow.

- support the viability of identified strategic centres

Dorrigo is not considered to be a strategic centre and by virtue of its geographic location is not in a position to support the Coffs Harbour strategic centre.

A planning proposal must:

- **give effect to the objectives in the direction,**

It has been detailed above how the proposal satisfies the objectives of this direction with particular reference to its justification in strategic documents.

- **retain the areas and locations of existing business and industrial zones,**

While the rezoning of the land will marginally reduce the industrial land available in Dorrigo, the project will still be generating employment and business in a sector requiring additional employment lands capacity as referred to in the Mid North Coast Regional Strategy²⁶. It has also been shown that Dorrigo with a population of less than 1000 people has 8.8 Hectares of **available and unoccupied** Industrial land and that the proposed development land is superfluous to future industrial needs as clearly identified above in the strategic documents (see also DUAP ratio in Site Comparison Study)²⁷.

- **ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning**

²⁴ BSC Industrial Lands Strategy, 2003. Pages 34

²⁵ Urbis, Dorrigo Seniors Living Employment and Retail Spending Benefit Report, 2010. Page

²⁶ Mid North Coast Regional Strategy-Page 24

²⁷ Site Comparison Study, 2009, Schimminger Architects & DSDS. Page 18

This development proposal is in accordance with a number of strategies as outlined previously, including those financed by the Department of Planning. The justification for the development in fact relies on these documents to back up common sense.

A planning proposal may be inconsistent with the direction only where:

- **the inconsistencies are justified by a strategy approved by the Director-General of the Department of Planning,**

The inconsistency with the direction to (simply) retain industrial zones is clearly justified by the Industrial land Strategy, the Mid North Coast Regional Strategy and the other strategies listed above. It is our belief that the Director-General will approve of the use of these strategies which were either commissioned or funded by the State Government and have apparently formed the basis for the recently gazetted BLEP 2010.

- **justified by a study in support of the planning proposal which considers the objectives of the direction**

Mid North Coast Regional strategy 2006-2031

- **is in accordance with the relevant regional strategy**

Mid North Coast Regional Strategy 2006-2031

Direction 5.1 Implementation of Regional Strategies

- **The objectives of this direction are to give legal effect to the vision, land use strategy , policies, outcomes and actions contained in the regional strategy.**

The Primary purpose of the Regional Strategy is to "*ensure that adequate land is available and **appropriately** located to accommodate the projected housing and employment needs of the region's population over the next 25 years*".²⁸ This is based on a population forecast for the entire Mid North Coast area.

By 2031, the Mid North Coast population is expected to grow more than 28% to around 424,400. The purpose of the Regional Strategy is to ensure that the Mid North Coast can continue to prosper over the next 25 years while protecting areas of high environmental, cultural and resource value.

The NSW Government's 25-year strategy for sustainable development ensures:

- a supply of new residential land can be provided in the right locations to respond to population increases and assisting with housing affordability. The Strategy caters for 59,600 new homes by 2031 for a forecast population increase of 94,000
- a surplus of **well-planned** employment land is available to support an additional 48,500 jobs for new and existing residents
- 'green breaks' are in place between urban areas, protecting areas of high scenic value along with rainforests, wetlands, estuaries and significant farmland

²⁸ Mid North Coast Regional Strategy-Introduction

- increased opportunities for medium-density housing in key centres to match the ageing of the Region's population
- new growth is linked to infrastructure provision, incorporating new regional infrastructure identified in the State Infrastructure Strategy.²⁹

While the Mid North Coast as a region is forecasted to grow by more than 28% by 2031, Dorrigo's forecasted growth for the period to 2026 is expected increase by approx. 12.5% or between 94 and 156 persons with a corresponding increase in dwellings of between 49 and 78. These figures suggest an average increase of between 4 – 6 people/ year and 2- 3 dwellings/ year.³⁰

It is clear from Councils own Strategic Documents that Dorrigo will **not** exhaust the **recommended maximum** required Industrial land supply of approx. 3 hectares³¹, in fact at this forecasted growth Dorrigo will require a total of only 2.05 hectares of industrial land by 2026 (currently only 1.8 hectares is occupied) this will leave a surplus of 8.05 hectares of available industrial land.

At this forecasted growth Dorrigo has a massive 516 years supply of industrial land.

The vision and expected outcomes of the Mid North Coast Regional Strategy is not to lock up portions of land for over 500 years, but to ensure the State has an adequate and appropriately located supply of land for employment-generation. This proposed development will generate:

Construction Stage-

66 Direct Jobs

104 Indirect Jobs

Operational Phase-

Min. 3 full time equivalent jobs

*'The employment gained from this development would be expected to essentially represent the total increase in employment throughout the region estimated at a net additional 3 jobs on an ongoing basis.'*³²

It is submitted that this development would be consistent with the fundamental intent of the Mid North Coast Regional Strategy and that the Mid North Coast Regional Strategy gives legal effect to the vision of encouraging employment growth in a recognised growth sector that would provide housing for seniors and people with a disability.

²⁹ <http://www.planning.nsw.gov.au/PlansforAction/Regionalplanning/MidNorthCoast/tabid/190/language/en-US/Default.aspx>

³⁰ BSC Growth Management Strategy, 2007. Page 27

³¹ BSC Industrial Land strategy, 2003. Page 34

³² Dorrigo Seniors Living Employment and Retail Spending Benefit Report, URBIS, 2010. Page 3

4. "The Proposal is contrary to the provisions of the Mid North Coast Regional Strategy which requires the protection of vacant industrial zoned land for future employment opportunities."

The Mid North Coast Regional Strategy provision for protecting vacant industrial zoned land is based on the Mid North Coast's strategic positioning to growth areas, major cities and transport infrastructure including the Sydney to Brisbane rail network and the Pacific Highway. The Report lists the four major regional centres that have been targeted for growth in employment land supply. This list includes the sub region of the Coffs Coast which incorporates the local government areas of Coffs Harbour, Bellingen and Nambucca, centred on the major regional hub of Coffs Harbour and supported by the major towns of Woolgoolga, Bellingen and Macksville.³³

The Bellingen Local Government Area is predominantly coastal / valley land (2m-25m above sea level), the Pacific Highway and rail network pass through the main population centres of the area, Dorrigo however at an elevation of 750m above sea level is geographically isolated from both of these transport options and the rest of the Bellingen Shire by virtue of the Dorrigo Mountain.

While the Strategy calls for the protection of vacant industrial zoned land for future development it cites the capacity for centres further from the coast to provide the land and other infrastructure to support industry with an export focus. This is based on the ability of these centres to take advantage of the Australian Rail Track Corporation's recent improvements to the North Coast rail line (Sydney – Brisbane).³⁴

This obviously does not include Dorrigo as Dorrigo has no heavy transport infrastructure and is particularly isolated from the rail network by virtue of the Dorrigo escarpment and the Waterfall Way mountain road which is regularly cut off from the coast by flooding and washouts. At the moment and as for the past 9 months there are two sections of the mountain pass that are reduced to a single lane of traffic and will likely remain so for the foreseeable future despite repeated assurances of improvements. Dorrigo cannot guarantee coastal deliveries and any suggestion of increasing the traffic flow down the Dorrigo Mountain with heavy vehicles would be absurd.

Importantly, the Mid North Coast Regional Development Board has identified aged care as a sector requiring additional employment lands capacity. This has also been referred to in the Mid North Coast Regional Strategy.³⁵

Bellingen Council Planning Failures and Misinformation

Under the Environmental Planning and Assessment Act 1979 and the mandatory provisions of section 33A the aim of the Bellingen Local Environmental Plan 2009 was to:

³³ Mid North Coast Regional Strategy-Page 15

³⁴ Mid North Coast Regional Strategy- Page 24

³⁵ Mid North coast Regional Strategy- Page 24

- A. to give effect to the desired outcomes, strategic principles, policies and actions **contained in the Councils adopted strategic planning documents,**
- B. To **identify land that is suitable for development** or environmental protection purposes and to **encourage or restrict development accordingly.**
- C. to **progressively respond to changes in the natural, social and economic environment** in a manner that is consistent with the principles of ecological sustainable development.

Under the mandatory provisions for preparing a LEP council has failed under all provisions in their preparation of the Planning Proposal in terms of this development.

- A. Council has failed to acknowledge their strategic planning documents both now 2010 LEP and in the Amendment No. 6 to the BLEP 2003 in Aug. 2005
- B. Council has failed to competently recognise (or identify) land that is suitable for development, council has failed to encourage development on land that has been identified as suitable with regard to Councils own Strategic Documents.
- C. Council has failed to progressively respond to the changes in the socio-economic environment of Dorrigo despite the information being presented to them based on the Councils own strategic documents which clearly and concisely address the increased needs for aged care development coupled with a decreasing need for industry.

Based on the fact that this BLEP 2010 was gazetted it must be assumed that the NSW Department of Planning was satisfied with the strategic justification for maintaining the Industrial zoning on all 10.6 Hectares of existing industrial zoned land despite the Community Consultation Submission to have the land rezoned under the new LEP and despite Councils own Strategic Studies and reports that clearly show that Dorrigo has a massive oversupply of available industrial lands.

That said we must now discuss what "justification" there was for continuing the Industrial zoning on the block in question? And ultimately how it was originally zoned Industrial?

Facts:

- In 2003 The NSW Department of Regional Development and Bellingen Shire Council under the Regional Economic Transition Scheme commissioned the BSC Industrial Land Strategy, this report forecasted zero industrial growth in Dorrigo due to transportation issues and population forecasts. The report acknowledged a 2 Hectare industrial area and recommended that BSC rezone an additional 1 hectare of land at the former abattoir site to cater for any potential ad hoc investor.
- BSC ignored the recommendation and rezoned an additional 8.6 Hectares of land.
- The BSC Industrial Lands Strategy never mentioned the parcel of land in the proposal.
- Bellingen Council staff misled the elected Councillors in July 2003 in the General Managers Report to the Planning Committee when they recommended "*that Council adopt the Industrial land Strategy for Bellingen Shire incorporating the Minor Changes outlined in the report*"³⁶, these "minor" changes included rezoning 8.6 hectares in Dorrigo instead of the 1 hectare that was recommended. This is clearly not a minor change as it meant rezoning 8.6 times the recommendation.

³⁶ General Managers Report to the Planning Committee Meeting of the Bellingen Shire Council, July 22 2003
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- Council staff also misled the elected Councillors by reporting that "The land that is proposed to be rezoned for industry is currently being utilised or was in the past utilised for industrial purposes."³⁷
- Prior to the rezoning in 2005 the land was zoned 2B Village for residential development
- **The land has never been used for industry** or any other development.
- **The land directly adjoins residential land along its longest boundary** (it is not isolated from residential land nor is it within the utilised industrial area as claimed by Council)³⁸
- Today Dorriggo has Approx. 8.8 Hectares of **available** (un-used) Industrial Land which represents a **10% decline in Industrial land occupation** since 2003
- The proposed development site is 2 Hectares in size and represents **only 23% of available Industrial land.**
- The Cork Trust made a submission to council during the '**Community Consultation Stage**' of the LEP proposal to have the land rezoned under the new LEP. Council refused to address the application in the LEP process claiming that it would have to be dealt with at a later date with no further qualification. The submission was made in time and receipted as such.³⁹
- Councils own strategic planning documents clearly illustrate that Dorriggo has 7.6 Hectares of **surplus** available industrial land with **no Industrial growth forecasted before 2027.**⁴⁰

Bellingen Council has made a planning mistake in rezoning this portion of land (and others) in 2005, rather than right that wrong in the 2010 LEP (after the Cork Trusts Submission) Council decided instead to vehemently defend that decision at the expense of the elderly community and the communities wishes. There are no grounds for defence as councils own documents disclose a gross over rezoning of residential land to industrial. We submit that Bellingen Council Planners have knowingly misled the NSW Planning Department by omitting documents from the application and making false and misleading claims including:

- BSC claims that there is '*a natural buffer (river and reserve) between it and the residential areas*'. The land in fact adjoins residential zoned land to its longest boundary, this BSC statement is obviously misleading and false.
- BSC claims that '*it represents approximately 50% of vacant industrial land*' When in fact it represents approximately 23% of available unused industrial land, this is again misleading.
- BSC claims that '*it is not suitable for a seniors housing development, given its relative isolation from other residential areas and services*' The site as stated above literally adjoins a residential area (shares a boundary and fence) and the site is a mere 165 metres from the public library and CBD, this claim is blatantly false and misleading.
- BSC states that '*it would appear logical that alternative sites currently zoned residential be further investigated for seniors housing before rezoning industrial land*'. As stated previously council is fully aware of the lack of residential land suitable for a seniors housing development and noted only one other site, this was ruled out in the Site Comparison Report. Council planners have met with the Cork Trustees to discuss the available lands and are aware of the Trusts research. This is a

³⁷ General Managers Report to the Planning Committee meeting of the Bellingen Shire Council, July 22 2003.

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³⁸ BSC, Minutes of Ordinary Meeting, 28th July 2010. Page 16 (as submitted as PP)

³⁹ BSC Letters to Cork Trust, RE: Draft Shire Wide LEP Submission, 10th Dec. 2009

⁴⁰ BSC Growth Management Strategy, 2007. Page 28

misleading statement aimed at undermining the amount of research that has gone into the location.

- BSC states that *'The proposal will significantly reduce the supply of available vacant industrial land in Dorrigo'* Again, the site represents only 23% of available industrial land, again, misleading.
- BSC states that the 'SES conduct practice exercises involving sirens', Totally false, the SES do not conduct exercises involving sirens and many SES premises are situated in the residential zoning areas of the Bellingen Shire including those in Bellingen and Urunga. Note that the SES and RFS sheds in Dorrigo are both wholly located within the road reserve (why?) and as such are not actually zoned industry, BSC is responsible for this development which reduces the road width along the proposed development site from a normal industrial area width of 30m to less than 10m. We submit that this Council Planning 'anomaly' may have also influenced the BSC Planners decision to not support the project on this site due to the potential embarrassment that may arise out of this planning blunder.

Under Section 54(2) of the EP&A Act Council has obligations in the "Making of an LEP", the example given in the LEP practice Note PN 09-004 as follows alludes to a similar obligation on Council in the consideration of a "Planning Proposal" and we submit this is applicable:

*'A failure to give reasonable consideration to a planning proposal provided to a council, or to delay unreasonably the consideration of a planning proposal commenced by the council'*⁴¹

We submit that Bellingen Council Planners have failed to give reasonable consideration to the proposal by virtue of not having considered relevant strategic documentation as referred to in the reports submitted to Council by the Trust. We further submit that Bellingen Council Planners are delaying the Planning Proposal by supplying misleading and incorrect information to the Gateway.

We believe that under section 54(2) of the EP&A Act the proposal also falls into the category of Regional Environmental Planning Significance. The Projects cost is expected to be in the vicinity of \$13.61 Million⁴². The strategic Importance of the development required under this section of the Act is based on:

- the opportunity for employment in a geographically isolated area
- it's development potential to achieve government policy goals (Seniors Living)
- service delivery and amenity

We therefore request that the Minister facilitate the preparation of a LEP under Section 54(2) of the EP & A Act.

We understand that if the Minister agrees to this request, that the Cork Trust as proponent will be required to prepare a Planning Proposal to the satisfaction of the person or body appointed by the Minister.⁴³

A formal request for the Minister to facilitate the making of a LEP will be submitted to the Local Regional Office of the Department of Planning in line with department policy.

⁴¹ LEP Practice Note, PN 09-004, DOP, 2009. Page 1

⁴² Dorrigo Seniors Living Employment and Retail Spending Benefit Report, 2010, Urbis. Page 2

⁴³ LEP practice note PN 09-004, DOP, 2009. Page 2

Conclusion

When Bellingen Shire Council rezoned the subject portion of land (and other portions) in 2005 to industry they blatantly (we submit, incompetently) ignored the recommendations of the BSC Industrial land Strategy rezoning more than 8 times the land recommended, in doing so they have effectively locked up over 8 Hectares of prime land adjoining residential and CBD zones for up to 500+ years. As ridiculous as this sounds it has occurred and needs to be corrected.

Based on the strategic documents referred to in this report we submit that this proposed development would satisfy the objectives of the Mid North Coast Regional Strategy and in doing so satisfy the Gateway Determination as the four points for refusal were all based essentially on this strategy.

We submit that Bellingen Shire Council failed to give reasonable consideration in the making of the planning proposal and has failed to carry out its obligations in a satisfactory manner.

We submit that Bellingen Shire Council failed to submit a competent Planning Proposal that represents the intent of the elected Councillors and knowingly withheld crucial documents from the Gateway, the Department of Planning and the Minister.

Should this information have been submitted in a competent Planning Proposal we believe that the Gateway Determination would have been to proceed with the Planning Proposal. We therefore request that the Minister Facilitate the Making of the LEP under section 54(2) of the EP&A with special reference to Planning Note PN 09-004 which allows the Planning Minister to require a Planning Proposal from the **proponent**.

We further submit that there is no need for additional strategies to be prepared which could potentially slow down the proposed development for years when this development is needed now, we submit that there are enough relevant in-date strategic studies and information available to clearly show that BSC has indeed made an error in rezoning the land to Industrial and that the rezoning should be reversed for the purpose of this development.

It is clear from these reports et al that Dorrigo requires Seniors Housing now and that **seniors housing will generate employment in a guaranteed growth sector where industry cannot.**