

Presentation to Eurobodalla Shire Council Tuesday 1st February 2022

Introduction

Thank you for this opportunity to address Council. I'm Robyn Flynn and I'm a member of the Coila Cultural Heritage and Environment Group and a Tuross resident.

I'll begin my presentation acknowledging the custodians and traditional owners of this land, the Brinja Yuin and Walbunja people.

Please also accept our congratulations first of all to our newly elected Mayor, Matt Hatcher and to each of our Councillors.

Today I'm asking three important questions.

1. How does tourism & hospitality help Eurobodalla?

The most recent statistics from ".id community" for 2019/20 reveal that tourism & hospitality contributed \$288.24 million to total sales in Eurobodalla.¹ In 2018/19 it was \$358.41 million. As a proportion of total sales in 2019/20 tourism & hospitality comprised 9.6% (**nearly 10%**) of total sales in Eurobodalla.²

Tourism & hospitality also comprise a significant percent of **employment** in Eurobodalla employing 15.6 % of the workforce Eurobodalla in 2019/20. In addition, retail is Eurobodalla's largest employer and an indirect tourism employer.

The key message from these statistics is that we need to encourage visitors to Eurobodalla to retain a long term, healthy economy and strong employment figures.

2. Why do tourists visit Eurobodalla?

So hospitality and tourism are vital for Eurobodalla's long term, healthy economy.

I want to look at why tourists visit. The Eurobodalla Summer Visitor Survey, January 2018 asked visitors at question 17 asked "Why in particular did you choose to visit the Eurobodalla region?"³

The number one response to that question was "Beautiful Beaches and Waterways". This was the response from 69% of all respondents and 86% of those visiting the south of Eurobodalla.

¹ <https://economy.id.com.au/eurobodalla/tourism>

² [Economy.id.com.au/eurobodalla/tourism-value](https://economy.id.com.au/eurobodalla/tourism-value).

³ Eurobodalla Shire Council, Visitor Research 2018, Micromex Research, 20 March 2018.

The second most popular response was “Great scenery and natural attractions” at 55% of all respondents and 72% of those visiting the south. Over half of respondents were attracted by it’s “Unspoilt and underdeveloped” nature (58% of those visiting the South).

Question 10 of this survey asked about activities undertaken by visitors revealing visitors most frequently engage in beaches/water based and nature-based activities receiving an “Extremely high” satisfaction rating from visitors.

This is also the reason Tourism Australia’s top ten Australian beaches announced yesterday included Murramarang National Park’s Depot Beach as eighth. Nature-based locations were the focus and Depot Beach was awarded the 8th best beach.

So, the natural environment and the activities associated with that, are the key reason Eurobodalla is a destination for a significant number of tourists. This is also probably a reliable prospect to look to for generating future growth.

The rise of Eco-Tourism

Conservation and economic incentives for conserving biocultural diversity are just some of the hallmarks of a rise in Eco-Tourism internationally. Eco-Tourism emphasises enriching personal experiences and environmental awareness.

Closer to home, Ecotourism Australia, have their own website and list resources for businesses and hubs for tourists seeking a nature-based experience.⁴ One Eurobodalla location, Mossy Point, currently lists a certified business on this website which aims to inspire environmentally sustainable and culturally responsible tourism.

As we saw earlier, Eurobodalla’s surveys of visitors reveal tourists want a nature-based experience. This should therefore be seen as a strong growth area for attracting our future international and domestic visitors to Eurobodalla.

Coila Lake and surrounds

Coila Lake is commercially fished and is famous for it’s green-back prawns and bream. Eurobodalla Tourism website and Council’s website currently highlight the lake and how visitors love the fishing and prawning on Coila Lake - especially when they can simply scoop prawns into their nets.

3. What does the current legislative environment tell us about the decision concerning 41 Anderson Avenue Tuross Head?

Let’s turn our mind briefly to the legislative environment relating to this type of development.

State Environmental Planning Policy (Coastal Management) 2018 (SEPP 2018)

SEPP2018 established mapped Coastal Wetlands as highest priority coastal management areas. Forty-one Anderson Avenue contains mapped coastal wetlands which include riparian

⁴ Mossy Point is listed @ Ecotourism.or.au

lands such as coastal saltmarsh, seagrasses etc. These comprise ‘marine estate’ under the *Fisheries Management Act 1994*. Coastal Saltmarsh and “Swamp Oak Floodplain Forest” which are both on this land are also classified as Endangered Ecological Communities.⁵

SEPP 2018, Part 2, Division 1, S.10 requires development consent prior to developing land within *Coastal Wetlands Areas* under this and other environmental planning instruments.⁶

“10 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* only with development consent—

(a) the clearing of native vegetation within the meaning of Part 5A of the *Local Land Services Act 2013*,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the *Fisheries Management Act 1994*,

(c) the carrying out of any of the following—

(i) earthworks (including the depositing of material on land),

(ii) constructing a levee,

(iii) draining the land,

(iv) environmental protection works,

(d) any other development.

SEPP Part 2, Division 1, S.10 elaborates:

“(2) Development for which consent is required by subclause (1), other than development for the purpose of environmental protection works, is declared to be **designated development** [emphasis added] for the purposes of the Act.

...

(4) A consent authority must not grant consent for development referred to in subclause (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.”

SEPP 2018 also requires a 100-metre proximity zone around coastal wetlands in Part 2, Division 1, S.11 and that the consent authority be satisfied that the development does not significantly impact the integrity of adjacent coastal wetland including biophysical, hydrological or ecological integrity.

Environmental Planning and Assessment Act NSW (1979) (EPAA 1979)

As a ‘designated development’ Part 1 S. 1.5 of EPAA 1979 defines development:

1.5 Meaning of “development”

(cf previous s 4)

(1) For the purposes of this Act, **development** is any of the following—

(a) the use of land,

⁵ Biodiversity Conservation Act NSW 2016.

⁶ SEPP 2018, Part 2, Division 1, s.10.

- (b) the subdivision of land,
- (c) the erection of a building,
- (d) the carrying out of a work,
- (f) any other act, matter or thing that may be controlled by an environmental planning instrument.

Note—

There are the following categories of development under this Act—

...

- (v) **designated development** (development, other than State significant development, that requires an environmental impact statement for an application for consent),

EPAA 1979, Part 4, Division 4.3, S.4.12, ss.8 states:

“(8) A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.”

The Act also prescribes periods of public exhibition and advertising of an application deemed to be a ‘designated development’.

If this was a development application under current legislation it would be required to be treated as a ‘designated development’ and be accompanied by an Environmental Impact Statement.

Environmental Planning and Assessment Regulations 2000 (EPAR 2000)

Part 14, Division 8, S. 244I of EPAR 200 describes in detail the contents and process of producing an Environmental Impact Statement.

The requirements for an Environmental assessment are that the responsible person make an application for the “Planning Secretary” for the environmental assessment.⁷ This must be in a form approved by the Planning Secretary and made available on the NSW planning portal including the location, nature and scale of the development. The content of the environmental impact statement is prescribed in S.7 etc.

These details are clearly included in order to protect the fragile land, ecology, water quality, marine life and fauna which are all at stake when a development includes fragile waterways, coastal wetlands, coastal saltmarsh etc used by migratory and native birds and wildlife.

Biodiversity Conservation Act 2016 NSW (BCA 2016)

BCA 2016 classifies “Coastal Saltmarsh” and “Swamp Oak Floodplain Forest” as “Endangered Ecological Communities”.⁸ These communities are both present on 41 Anderson Avenue, Tuross Head.

⁷ EPAR 20, Part 14, Division 8, S. 244I 3.

⁸ NSW Biodiversity Conservation Act, 2016, Part 1.5 (b) (v).

Department of Primary Industries requires that:⁹

“Any development or activity (such as those requiring approval under Part 4 or 5 of the Environmental Planning & Assessment Act 1979) that may harm saltmarsh on public water land or the foreshore of public water land that is below the HAT¹⁰ must be referred to the NSW DPI for approval.”

Further:¹¹

“In accordance with the requirements of Part 5 of the Environmental Planning and Assessment Act 1979, NSW DPI is required to consult with, or seek the concurrence of, the Minister for the Environment or the Director-General of the NSW Office of the Environment and Heritage (OEH) on all proposals where a significant impact on threatened saltmarsh species or ecological communities is likely.”

Fisheries Management Act 1994 NSW (FMA 1994) reinforces this:

Part 7A, Division 4, S.220ZC and s.220ZD makes harming threatened species, populations or ecological communities a crime including:

“the act or omission occurred in the course of the carrying out of development or an activity for which development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or an approval to which Part 5 of that Act applies, was required but not obtained, ..

“A person must not harm any fish or marine vegetation of a threatened species, population or ecological community”.

NSW Marine Estate Management Strategy 2018-2028

This important document lists risks to the following “Environmental Assets”:¹²

“Clearing riparian¹³ & adjacent habitat including wetland drainage is listed as **“High Risk from foreshore development”**¹⁴.

“Estuarine & ocean waters” is **“High Risk from Clearing riparian & adjacent habitat including wetland drainage”** and **“modified Freshwater flows”**.

“Saltmarsh” is “Moderate-High Risk”¹⁵ from “Clearing Riparian & adjacent habitat including wetland drainage” and from “Foreshore development”.

“Species & communities protected under FMA 2014 and species protect under BCA 2016” are both **“moderate-high risk”** from “urban stormwater discharge” and “Clearing riparian & adjacent habituating including wetland drainage”.

Each are present and requirement management in Coila Lake or around it’s foreshores.

4. Eurobodalla Shire Council Decision

⁹ Department of Primary Industries, Coastal saltmarsh, March 2013, Primefact 1256, First Edition, p.12.

¹⁰ Highest Astronomical Tide, Department of Primary Industries, Coastal saltmarsh, March 2013, Primefact 1256, First Edition, p.12.

¹¹ Department of Primary Industries, Coastal saltmarsh, March 2013, Primefact 1256, First Edition, p.12.

¹² NSW Marine Estate Management Strategy 2018-2028.

¹³ Property report for 41 Anderson Avenue lists Riparian land including Coastal Wetlands at this address.

¹⁴ NSW Marine Estate Management Strategy 2018-2028.

¹⁵ A mixture of moderate and high risk levels.

You, the Council are now required to decide how you treat this development. You have a clear choice. The previous Council informed CCHEG that they were not required to request an Environment Impact Statement for this DA as it was submitted and consented to prior to existing legislation.

A reading of the legislation may well be able to make that case.

But is that what this new Council wishes to do?

Does the new Council wish to demonstrate professionalism, integrity and a long-term vision for nature-based tourism. The type of tourism we currently have and wish to foster. Tourism that creates a long term strong economy and strong employment in Eurobodalla?

Or would they choose to allow the developer, Monarch Constructions, to proceed without requesting what would be required under existing legislation. Without seeking a contemporary, professional opinion - an Environmental Impact Statement. One which would be required if they submitted a Development Application under existing legislation. An Environmental Impact Statement is clearly required in order to be assured that the Developer and Council can develop in such a way that protects this fragile landscape.

A professional Council, one with integrity would not be persuaded by the quick, easy, buck in terms of rates but would choose to abide by current legislative requirements and apply the legislation and request an Environmental Impact Statement.

Conclusion

A professional Council, one with integrity would not be persuaded by the quick, easy, buck in terms of rate grabs but would choose to abide by current legislative requirements and apply the legislation and request an Environmental Impact Statement (EIS). Encouraging tourism in Eurobodalla is a vital way to foster growth and jobs for the future as tourists visit because of our nature-based locations and activities. Eco-Tourism will be a significant part of that in the future if Council nurture our natural landscapes.

Coila Lake is attractive to tourists due to its prawns, fishing, natural landscape and foreshores. Risking constructing over 70 new dwellings beside Coila Lake's foreshore – some just 80 metres from the Lake, without an Environmental Impact Statement will not protect the endangered ecological communities, marine life and wildlife including migratory birds. Many use these places for breeding. This development as it currently stands puts Coila Lakes fishing, prawning, endangered ecological communities and foreshore at risk as well as risking the nature-based tourism Tuross Head and the Eurobodalla attracts.

Questions for Presentation to Eurobodalla Shire Council

Tuesday 1st February 2022,

in relation to 41 Anderson Avenue,

Tuross Head 2537, DA 2248/1983

In a letter addressed to Mr Simon Cox, dated 25 October 2021 reference: 4612088 Eurobodalla Shire Council claim there is no more land clearing, they have negotiated improved drainage and that both the Applicant and Council view there is no material change from the 1984 Development Consent to the most recent modification for the above development.

Question 1: Does Council believe that these are the only factors arising from the above development likely to impact on the environment surrounding and including Coila Lake and it's forshores?

At this stage there has been no Environmental Assessment or Environment Impact Statement undertaken to assess the impact of this Development on nearby endangered ecological communities, biodiversity, and marine parks. Council has referred to an application lodged in 2011 that is still under assessment and was accompanied by an Ecological report and a Cultural Heritage Report.

Question 2: Does Council believe that assessments or reports that were carried out at least a decade ago remain accurate and relevant to this development and modification?

Question 3: We understand that the Council has requested further information from the the Marine Park Authority under the Marine Estate Management Act concerning this development. Is that in relation to the 2012 Development or in relation to the current Development owned by Monarch Development and the most recent Modification?

Question 4: The land was recently sold to Monarch Development and a new Modification was submitted. Why is it that the new owner has not been asked to submit a full new DA?

Question 5: The land was recently sold to Monarch Development and a new Modification was submitted. Why is it that the new owner has not been asked to submit a full new DA?

Council maintain that the developer claims that under either ss 4.55 of Division 4.9 of the Environmental Planning and Assessment Act 1979 (NSW) that the DA modifications are substantially the same as the original development by deciding that they are either:

“of minimal environmental impact” and “is substantially the same development as the development for which the consent was originally granted.”¹

Or, that it :

“is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.”²

A key test for both the above is that a modification has to be “substantially the same development”. The term substantially means essentially or materially having the same essence.

Question 6 : How can it be argued that this is ‘substantially the same development’ when it includes a road extension – Monash Avenue, cutting through the development and over the waterways, 20 per cent more dwellings packed into the same sized land and many new homes on Chauvel Crescent?

a. Minimal environmental impact

Question 7: The Council and the Developer maintain that this development will have minimal environmental impact. How can this be argued when:

- a) there is a 20 % plus increase in the number of dwellings on the same land increasing the intensity of the environmental impact on the Endangered Ecological Communities, fragile foreshore, Coastal Wetlands, sea grass, endangered bird life, reptiles, mammals and marine life which all rely on Coila Lake and it’s surrounds for refuge and food?
- b) There are 18 dwellings proposed on the **eastern** side of the modification and development, (blocks 59 to 76). The modification provides no drainage for runoff from the rooves and driveways of these dwellings. The additional runoff water poses a threat to the continued existence of the remnant rainforest, the fragile wetlands, seagrasses and saltmarsh where insects and marine life breed and wildlife feed. How can you argue 18 new dwellings will have a minimal environmental impact?
- c) The dwellings located on the **western** side of the development have provision for drainage on blocks 2 and 36. However, runoff from the eastern side of the development, (blocks 11 to 25, 46 to 57 and 59 to 76), will follow the contours of the land draining towards the east with more runoff and sediment heading towards the fragile foreshore of Coila Lake. This will compound the impact on habitat and fauna along this part of the lake. How can you argue these dwellings will have a minimal environmental impact?
- d) **Monash Avenue extension** The 1984 approval did not use Monash to road link the western and eastern sides of the development. The new road runs perilously close to Endangered Ecological Communities and demonstrates a material change to the environmental impact of this development. It crosses fragile

¹ Ss4.55 (1A) Environmental Planning and Assessment Act 1979 No 203 (NSW)

² Ss4.55(2) Environmental Planning and Assessment Act 1979 No 203 (NSW)

waterways. How can you argue that this road will have minimal environmental impact?

Question 8: The modification follows the 2020 bushfires which destroyed 80 percent of Eurobodalla LGA bushland. Allowing this modification and development will further reduce habitat for endangered native flora and fauna in Eurobodalla LGA, and represents a potential material impact for the environment. How does Council and the developer propose to manage the wildlife displaced by this development in the wake of the bushfires?

Question 9: Further, Council have not provided evidence they have complied with Department of Primary Industries requirements that:³

“Any development or activity (such as those requiring approval under Part 4 or 5 of the Environmental Planning & Assessment Act 1979) that may harm saltmarsh on public water land or the foreshore of public water land that is below the HAT⁴ must be referred to the NSW DPI for approval.”

This development requires referral to the NSW DPI for approval.⁵

“In accordance with the requirements of Part 5 of the Environmental Planning and Assessment Act 1979, NSW DPI is required to consult with, or seek the concurrence of, the Minister for the Environment or the Director-General of the NSW Office of the Environment and Heritage (OEH) on all proposals where a significant impact on threatened saltmarsh species or ecological communities is likely.”

Has Council referred this development to the DPI and if so, what has been the response of their consultation with the Minister for the Environment or the Director-General of the NSW Office of the Environment and Heritage?

³ Department of Primary Industries, Coastal saltmarsh, March 2013, Primefact 1256, First Edition, p.12.

⁴ Highest Astronomical Tide, Department of Primary Industries, Coastal saltmarsh, March 2013, Primefact 1256, First Edition, p.12.

⁵ Department of Primary Industries, Coastal saltmarsh, March 2013, Primefact 1256, First Edition, p.12.