



Coastal Design Link

PROVIDING LINKS BETWEEN BUSINESS AND GOVERNMENT

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Submission 3rd Nov 2021

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Attn:
Planning Commissioner
NSW Independent Planning Commission
3/201 Elizabeth Street
Sydney, NSW 2000

3rd November 2021

Re: 90 Gindurra Road, Somersby (Kariong Sand & Soil Supplies – SSD8660) – Letter of Objection

Dear Commissioner,

This letter has been prepared as a submission on behalf of our client, the owner of the property at 260 Debenham Road, as a strong objection to the proposed development at number 90 Gindurra Road, Somersby. This communication includes an outline of what are considered necessary planning elements with regard to statutory and legislative requirements that have been omitted as part of the application process. These omissions are considered highly pertinent to the relative suitability of the subject site in comparison to alternative available options.

Schedule 2, Part 3, Clause 7 of the Environmental Planning & assessment Regulation 2000 (“The Regs”) clearly delineates the required content to be included as part of an Environmental Impact Statement accompanying a development application. The Regs stipulate that:

“(1) An environmental impact statement must also include each of the following—

(a) a summary of the environmental impact statement,

(b) a statement of the objectives of the development, activity or infrastructure,

(c) an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure,”

Note the bold.

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As per the above provision of The Regs, applicants are required, as part of the preparation of an Environmental Impact Statement, to provide an analysis of “...feasible alternatives to carrying out the development...”. This should, by definition, include an assessment of not carrying out the development at all, and should also factor in a strong consideration of options that are readily available as alternative sites with regard to their relative suitability compared to the proposed site.

In previous submissions to the Department of Planning, Design Link outlined firsthand knowledge and engagement with Mr Ray Davis, the late father of the proponent, which revolved around use of the property at 168 Somersby Falls Road (See Annexure A). In summary, the historical details of the matter are as follows:

Ray Davis acquired the property at 168 Somersby Falls Road with the absolute intent of establishing a substantial resource recovery facility upon the site. Over a period of time, he put a development application before Council for the property which was unsuccessful. Subsequently, there were a number of Land & Environment Court actions and resubmissions to Council which did not yield the outcome he desired.

From my engagements with Ray Davis, he instructed me that it was his intent to pursue development of a resource recovery facility on the property at 168 Somersby Falls Road. He discussed his intention to build concrete attenuation and dust barriers, the absolute suitability of the site for the development and that he could establish his resource recovery facility on the property without hindering any other parties.

My engagement with Ray Davis was to assist in pursuing this outcome. I interacted with the senior compliance officer within Council at the time who attended the site for inspections. I subsequently discussed the matter extensively with Ray Davis and he then decided to purchase a separate property available within the area with the intention of utilising the newly acquired land as a staging site for the interim storage of plant and equipment out of Sydney. The staging property in question was 90 Gindurra Road. This property was purchased with the deliberate intent to be used in a temporary capacity whilst development on the primary site at 168 Somersby Falls Road was pursued.

During the process of dealing with Council, Ray Davis came to terms with the fact that a strident personality does not always yield a positive outcome. My understanding of Ray Davis was that he was highly aware of the industry in which he operated and absolutely aware of what would be necessary for a development to be viable in relation to noise, air quality and the various environmental controls required for resource recovery operations. This broad knowledge base was the reason he intended to pursue development on the primary site at 168 Somersby Falls Road. He considered the site to be the most suitable location for such an operation.

Subsequent to Ray Davis' untimely passing, and in light of current activities, the present applicant for the proposed development at 90 Gindurra Road has engaged a planning firm from Sydney, wherein the intent seems quite clearly to be bypassing the involvement of Council in the assessment process by raising the quantity of waste proposed by the development so as to achieve a classification of “State Significance”.

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As a result, we have therefore ended up with a totally unsuitable site in a most unsuitable location (on a zone interface boundary) with an upgraded volume of waste processing which, as an observer who is well aware of Ray Davis original intentions, I believe is an astounding departure from the original vision for a resource recovery facility. If nothing else, Ray Davis was a very professional proprietor within the waste management industry and knew his work very well.

The shift in focus for the current application towards the property at 90 Gindurra Road, a site which I point out was previously dismissed by the then owner as an inferior option for a resource recovery facility and only considered suitable for temporary storage of equipment, is perplexing. To my knowledge, nothing has altered on the site at 168 Somersby Falls Road and it remains a potentially superior viable alternative.

It is troubling then, in light of the above information, that review of the Kariong Sand & Soil Supplies application does not appear to yield the inclusion of an explicit assessment of available alternatives to the proposed site. This is particularly concerning in view of the fact that the previously established more suitable option of 168 Somersby Falls Road is still owned by the proponent's family and remains available for the purposes of development (See Annexure B).

The lack of specific assessment of viable alternatives in general, let alone the assessment of sites which are owned directly by the proponent and considered both suitable and readily available, shows that the application has failed to fulfill the basic requirements of The Regs in preparing the Environmental Impact Statement for the proposed development. Failure to include this fundamental assessment of feasible alternatives is concerning and raises questions about the reliability and integrity of the application. Failing to consider readily available and more appropriate alternative sites as part of the assessment process rings of disingenuity and displays a lack of respect for good development practices.

By extension of the above omission, claims included in the Environmental Impact Statement of adherence to the key principles of Ecologically Sustainable Development (and more specifically the Precautionary Principle) are called into question. The Precautionary Principle stipulates that public and private decisions should be guided by:

"...an assessment of the risk-weighted consequences of various options..."

In failing to assess and consider the various available options (such as alternative, on hand and suitable sites owned by the proponent), the application also fails to adhere to proper risk analysis as outlined in the Precautionary Principle. If all viable potential options and alternatives to the proposed development have not been adequately considered as part of the environmental assessment, then risk has not been properly weighed and significant, potentially avoidable, environmental impacts may result in a location that could otherwise be avoided.

As an additional observation, we also note that as part of the consultation process after the first round of submissions, the proponent undertook to meet with the Chamber of Commerce for the Central Coast Plateau and presented information regarding the proposed development. I sit on the chamber committee and was present for this meeting.

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The reception to the proposed development during the meeting can best be described as “neutral”. In light of this direct experience, I find it disturbing to hear that claims of a productive meeting with the Chamber of Commerce have been made, implying support for the project where no such support exists. Any inferences of support in these circumstances were clearly untrue and this can be substantiated. I find this extremely unnerving in relation to the application process and the claims contained therein.

The above outlined issues illustrate not only that the application and assessment process have been fundamentally flawed in omitting basic regulatory requirements, but that there are potentially a number of questionable practices and exclusions that have occurred in defiance of responsible development assessment principles. This is information that should carry weight as part of the Independent Planning Commission’s deliberations and I suggest, in the strongest possible terms, that such fundamental issues with the application and its assessment should constitute grounds for refusal of the proposed development.

Kind Regards,

Rod Wall
Coastal Design Link

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ANNEXURE A – Proof of Commissioning Document (Design Link)



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5th May 2017

Mr Rod Wall,
Coastal Design Link,
23 Albany Street,
Point Frederick NSW 2250

Dear Rod,

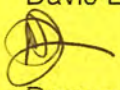
RE: 168 Somersby Falls Road, Somersby

Further to our discussions regarding our DA application to Gosford City Council for use of 168 Somersby Falls Road, Somersby, please find enclosed some documentation that gives you some details of the history of our endeavours. We hope this gives you some back ground to our Application/s to Gosford Council and subsequently to the LEC, to obtain approval for development of the site in Somersby Falls Road:

- Document named "Interest of Justice in the Case" prepared by our solicitor Michael Flaherty listing the chronological order of events;
- Copy of Advice from Dominic Fanning, SLR, regarding Ecological Issues for preparation of the LEC submission dated 14th August 2012;
- Email correspondence between our solicitor Michael Flaherty and Dominic Fanning, our Environmental/Ecological advisor, dated September 2012 through October 2012;
- Copy of Statement of Evidence for LEC prepared by SLR – Ecological Issues dated 9 October 2012, along with Addendum A and Addendum B;
- Copy of the Appeal Verdict (Dismissal) from LEC dated 21 November 2012
- Copy of Management Zones Site Plan
- Full copy of the EIS dated July 2011.

Looking forward to discussing this further with you.

Yours faithfully,
Davis Earthmoving & Quarrying Pty Ltd


Raymond John Davis
Director

Encls.

ANNEXURE B – Proof of Title Ownership (168 Somersby Falls Road)



FOLIO: 9/787857

SEARCH DATE	TIME	EDITION NO	DATE
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25/10/2021	12:08 PM	5	23/8/2018

LAND

LOT 9 IN DEPOSITED PLAN 787857

AT SOMERSBY

LOCAL GOVERNMENT AREA CENTRAL COAST

PARISH OF NARARA COUNTY OF NORTHUMBERLAND

TITLE DIAGRAM DP787857

FIRST SCHEDULE

SUSANNE MARGARET DAVIS

(ND AN606926)

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- 2 AD144920 MORTGAGE TO WESTPAC BANKING CORPORATION

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***