
Evans Head Memorial Aerodrome Committee Inc

Department of Planning, Industry and Environment

By email

Dear Assessor

Re: DA2015/0096 Iron Gates Development

Draft Master Plan for the Iron Gates Residential Release at Evans Head

1. We note that this is the third time this particular development has come for public comment and the second time for the Master Plan. It is our continuing view that the DA should not have come for public comment until the Master Plan matter was resolved. Without question the community's time has been wasted and one has to wonder if this is not just an attempt to erode community input through frustration and exhaustion. What has happened is bad planning practice.
2. We note that the proponent has previously sought exemption from the Master Planning process. We thank the Department for insisting that the requirement for a Master Plan be kept. In our view this particular development, with long controversy in the Courts and public arena, is a defining moment in planning for NSW, for corporate responsibility at a federal level because of the legal device(s) which was used to avoid responsibility for orders from the NSW Land and Environment Court for remediation of the site from previous activity of the proponent, and for the people of Evans Head who will have foisted on them a development which is not only redolent of a land use planning conflict, but will put future residents in 'Harms Way' particularly with regard to fire risk.
3. We note that Richmond Valley Council is badly conflicted with regard to the assessment process for the DA for the Northern Regional Planning Panel. It is clearly the State government's handmaiden with regard to pushing for this development. Council refused to hold a formal Hearing about the inappropriate zoning of the Iron Gates for residential development when it was putting together the current LEP and declined to attend a community forum on the matter at Evans Head on the grounds that it had insufficient notice. It has also recently entertained significant reductions in fees for the developer of 75% for sewerage works and has not made available to the public the depth and extent of subsidy it has offered for other matters. It would seem that such a financial matter which has potential to impact on ratepayers would be readily available and of course begs the question why has that information been withheld from us. It is, after all, in the public interest as it affects us directly. Without taking the matter further here the question is which master is Richmond Valley Council serving, the State government or local residents?
4. We are not aided in our confidence in the planning system with Mr Garry West as the chair of the NRPP. It has been shown in the Courts with regard to the matter of an amalgamation between local governments (Kuringai and Hornsby) that he did not act independently at a cost to the public of nearly half a million dollars in legal fees. We also have first hand experience of him relying on the advice of Richmond Valley Council with regard to a matter in which Council had a conflict of interest as owner of the land as well as assessor for the then JRPP. As we pointed out at the time there was a problem with the hydrological assessment but our advice was ignored to the detriment of the State Heritage Listed Evans Head Memorial Aerodrome which is now being affected by what in our view was not an independent assessment process. Frankly we wonder to what extent the planning process will be independent?



5. The land under consideration for the current proposal was zoned for residential development in 1983 by Minister Eric Bedford. This was an inappropriate zoning for many reasons we will not elaborate here but suffice to say there have been many attempts to have it rezoned to a more appropriate 'environmental' zoning in keeping with the surrounding landscape, all of them unsuccessful. The author of this objection met with the Labor government Cabinet Secretary on 30 April 2002 at Evans Head to suggest such a rezoning to make the necessary connection between Bundjalung National Park to the south of the site and Broadwater National Park to the north. It is a wildlife corridor and there was until 1894, a land bridge (see Figure 1) joining both north (Iron Gates) and south sides (Bundjalung NP) of the Evans River Estuary. That land bridge was also part of the cultural landscape for the Bundjalung Nation and Bandjalang people, a point we will visit shortly.

An investigation made by the Works Department showed that the scheme proposed is thoroughly sound and practicable, and great relief can be given at a comparatively small cost. By clearing the scrub the Evans River can be made into a clear discharge channel of 300ft. in width, except at one point near the mouth. At the section known as the Iron Gates the channel is greatly restricted by rocks. The flood of February, last year, was blocked up by this obstruction to a height of 10ft. It is proposed to blast away this rock and make a clear channel of 30ft. in width at low-water level at a cost estimated at £3000. The next main point of the scheme

Figure 1 Source: Minister for Works in the North. Sydney Morning Herald, 17 May 1894, page 5. The blowing up of part of these "Iron Gates" occurred in 1894-95 until the money ran out. Before that water upstream of the Iron Gates was fresh and supported a fresh water ecology. It was a mile between the Evans River Estuary and that well-known sewer, the Richmond River. The Richmond River now provides on average 5,500 tonnes of silt a year which has affected the river ecology badly. The decision to blow up the Iron Gates was a political decision and not one made on the sound advice of a Mr Coane hired by the NSW government to assess the potential of the Evans River to be a drain for the Richmond in times of flood, a proposition he opposed. Sadly ill-informed political processes won the day, a not unusual outcome for planning processes in NSW.

6. The proposed development is in the flight path for the main runway (18/36) for the State Heritage Listed Evans Head Memorial Aerodrome. While it is outside any potential Public Safety Zone it is still in the flight path and residents will be subject to aircraft noise even if they are outside the out-of-date ANEF envelope (AS2021 and INM). Noise will be accentuated by the fact that background noise will be relatively low, a well-known phenomenon (*The health effects of environmental noise –other than hearing loss*. Enhealth, 2004). It should be noted here that the proposed development is also in the flight path for the RAAF's Evans Head Air Weapons Range and its target areas for the FA-18 and F-35 (JSF), both very noisy aircraft (<https://www.popularmechanics.com/military/aviation/a28625774/f-35-too-loud/>). We are aware that Defence has already made objection to the proposal and we support them because of the risk of a 'Salt Ash' land use planning conflict occurring (https://www.defence.gov.au/AircraftNoise/Master/Docs/ANEF/williamtown/WLM_Summary_Report.pdf). We note that Evans Head is now used for joint exercises with the other countries including the USA in Exercise Talisman-Sabre2019 and that such a development may impact that exercise and future uses of the both the Weapons Range and the Evans Head Memorial Aerodrome which is to be developed in future for increased aviation use. We cannot rely on Richmond Valley Council here to look after the interests of the

aerodrome as it has a long history of wanting to carve it up for real estate development against community wishes even though it is used as a major staging post for both fire and flood for aircraft *in extremis* (See Figure 2).



Figure 2 Aircraft being refilled on the Evans Head Memorial Aerodrome in 2007. It has been used a number of times since then including now during the current bushfire crisis in NSW. Right shows country burnt by bushfire and nearby residential properties.

7. We note that much of the maintenance for the proposed site and surrounds including fire trails and roads will fall to council and place an additional burden on it at our cost. We are unable to find any costing of this upkeep which is stated as being “in perpetuity” by the developer. We already have an infrastructure backlog. Why are we adding to this burden?
8. The Heritage Assessment by Everick Heritage Consultants dated July 2019, such as it is, continues to fall short and fails to demonstrate little understanding of the concept of ‘Cultural Landscape’ with regard to the place that the Iron Gates is for Traditional Owners. The Heritage Assessment from the proponent is a work in progress; it fails to resolve major differences of opinion regarding the site. No women were consulted regarding the site. According to Riebe¹ (2016) in her independent assessment of the proposed development and related commentary on the proponent’s assessment:

There are few, if any, other sites of this integrated, complex nature still available for protection on the Eastern sea board of Australia, where once such sites were numerous. That at least one such site should be preserved and safeguarded as the unique example of the rich traditional culture of the wider area would seem to be indicated.

It is one of the few, if not only remaining relatively intact Aboriginal Culture Landscapes in NSW. That integrity will be destroyed if the development is approved.

In our view the development of the Iron Gates site is akin to chopping down one of the ‘wings’ of the Sydney Opera House to accommodate residential development. The fact that the Aboriginal Cultural Landscape is so important to the Bundjalung Nation is reflected in the fact that the Supreme Court Determination for Bandjalong Claims #1 and #2 were held at Evans Head on 2 December 2013.

9. Council has already wasted \$944,000 on legal fees to 2009 and god only knows how much since that time. That expense does not take account of staff time and related processes. ? We note that Council’s solicitor has provided advice to Council that those orders are still outstanding.
10. We are still unaware of any agreement that Council reached with the proponent with regard to the law suit brought by him against Council and ten other parties in 2002 in the Queensland Supreme Court. What was that agreement in full? What is the standing of legal and other matters agreed to by Council in the Queensland Supreme Court in relation to NSW

¹ Riebe, I. (2016). *Independent Expert Review. Aboriginal Cultural Heritage Assessment. Draft Master Plan for the Iron Gates Residential Release, Evans Head.*

planning legislation. We note that the area set aside for development on the site coincides exactly with an agreement reached in 2009 by various 'independent' experts some of them previously hired by Council's solicitor for other work. How do we know that any agreement reached is in the interests of ratepayers? And how do we know that the assessment was independent? We believe that this whole Supreme Court matter needs to have critical review to determine if there are other agreements to which the public is not privy.

11. The whole development fails to take account of the Principles of ESD enshrined in Section 8 of the NSW local government act. No long-term perspective is taken with regard to the impact of Climate Change including changes to bushfire risk which are now well-documented in various government sources. It is not our intention to exercise those matters here as they should be well-known to DoPIE.
12. The bushfire assessments included at Appendices 3 and 4 are problematic for many reasons:
 - The map used the Bushfire Assessment at Appendix 3 does not coincide with the area being considered for development. This was not reassuring.



Figure 3 Both figures from same bushfire report. Where is the consistency?

- While the setbacks for APZ for Category 1 vegetation barely meet requirement at test of BAL there is also the problem of the assumption of the building envelope being 10 X 15m². Some of the blocks are set for duplex. We have the view that the building envelope limit will be violated and therefore the calculations will be incorrect. Who is going to police this requirement and make sure that it is adhered to? Council has a long history of giving exceptions for buildings at Evans Head. But more than that much of the bush around the site is Category 1 and there should be a 100 metre APZ. We note the recent evacuation of the Riverside Village at Evans Head at Doonbah because of risk of fire. It has far less encroaching vegetation. The proposed Iron Gates development is surrounded by extensive vegetation and is high risk of attack both direct and indirect. In our view it is absolute stupidity from a fire risk perspective to be considering this site for residential development.
- The development is listed as low density. Not so. This is low-medium density. There is no sensitivity analysis in the bushfire assessment to see what happens when there is a change to density.
- The Bushfire assessments push the minimum limits. Whatever happened to The Precautionary Principle enshrined in legislation in the assessment process?
- The Bushfire Assessments made for the proponent are static in nature and do not consider the future. We are speaking of a development for around 700 people here who will live in houses which will outlive many of them. There seems to be no consideration of increasing risk over time because of climate change. We are writing directly to the RFS to ask them to refuse the application under 100B. Part of that



request relates to the fact that the existing community could be left without coverage should the local Fire & Rescue be engaged with the Iron Gates.

- Council will be left with a big burden with regard to maintenance of APZs. At what cost. Where is the costing model for this?
- There are pinch points in the access road identified by the Fire reports which have the potential to create problems in the event of emergency. There is also the problem of converging roads in the development itself which will create problems for egress in an emergency. This topic is not dealt with at all in the current proposal.
- “The vegetation is classified ‘littoral rainforest’, an endangered community, which presents as a low bushfire threat to the subject site.” However, we now know from recent bushfires that littoral rainforest burns. It is no longer a low bushfire threat as stated. The model and assumptions are out of date.
- A claim is made that: “historically, extreme bushfire events are relatively rare”. This is hardly a convincing argument for approval given the fact that there has been a dramatic and unprecedented increase in fire event in the last few years and particularly this year. It is worth noting here the disclaimer of the last Fire Report:
DISCLAIMER

Despite best efforts, there is no guarantee that desirable outcomes are achievable during extreme bushfire weather episodes, which may occasion unpredictable bushfire behaviour and have detrimental consequences to life, property and the environment.

Says it all really. The assessor gives no guarantee of ‘desirable outcomes ...during extreme bushfire weather episodes’. So why would development be allowed in an area which puts people at risk. The proposal should be rejected because of bushfire risk. This argument stands alone notwithstanding the bushfire reports which look very much like an attempt to put ‘lipstick on a pig’.

- Notwithstanding claims that the site doesn’t flood, it does and not infrequently during heavy rain events (see Figure 4). Not surprising. Part of it is to be built on a SEPP 14 Wetland.



Figure 4 Flooding at the Iron Gates occurs quite regularly because part of it is located on SEPP 14 Wetlands.

- Finally we make the observation that approval is given for this site for development it opens up Council for potential litigation by giving approval for a development in an inappropriate location which would better be rezoned for its environmental and cultural heritage value.



Concluding Remarks

The proposed residential satellite development for the Iron Gates is a classical example of inappropriate land use planning which should be rejected outright on the basis of bushfire risk, environmental grounds, destruction of Aboriginal Cultural Heritage Landscape, flooding and risk of potential litigation. It should be rejected in its entirety and the land rezoned to more appropriate environmental zoning.

In our view the developer should be held in 'contempt of court' for failing to fulfil Land & Environment obligations to restore the site. He should be held accountable for his actions and not be permitted to escape responsibility using the mechanisms of 'The Corporate Veil'

A handwritten signature in blue ink, appearing to read 'R. Gates', is positioned above the typed name.

Dr Richard Gates
President

