



P. Storr	152 Gordon Hill Rd., Lindisfarne
C. Nodder	3/5 Rosny Esplanade, Montagu Bay
A. and R. McKercher	8 Rosny Esplanade, Montagu Bay
P. A. and P. C. Drinkwater	56 Grange Rd. Rokeby
P. and G. Wood	11 Conara Rd., Montagu Bay
K. McFarlane	
P. and J. Hopkins	17 Conara Rd., Montagu Bay
R. and M. Bevan	11 Rosny Esplanade, Montagu Bay
Y. McEvan	14 Loina Rd., Montagu Bay
N. Lambert	10 Rosny Esplanade, Montagu Bay
P. Hogan	76A Riawena Rd., Montagu Bay
J. Hogan	117 Derwent Avenue, Lindisfarne
G. and D. Bird	4 Rosny Esplanade, Montagu Bay
J. and S. Mirkazemi	4 Conara Rd., Montagu Bay
M. Patten	obo. Clarence District Scouts
B. Hogan	457 Sandy Bay Rd., Sandy Bay
Montagu Bay Residents Group	
P. Clarke	13 Stoke St. New Town
Hon. Allison Ritchie MLC	
Ross James	Holiday Island Charters
R. Findlay	44 Riawena Rd., Montagu Bay
G. Short	9 Kellatie Rd., Montagu Bay
R. Hortle	31 Kellatie Rd., Rosny
D. Tongs	5 Conara Rd., Montagu Bay
M. Andrews	31 Rosny Esplanade, Montagu Bay
G. and N. Nolan	33 Rosny Esplanade, Montagu Bay
J. Rienks	66 Kellatie Rd., Rosny
M. McPartland	PO Box 78, Glenorchy

Also, Mr. M. Patten submitted a petition bearing 488 signatures, which expressed opposition to the proposed amendment and development, but did not state any grounds for opposition.

**Appearances**

**Clarence City Council**

Mr. Evan Boardman- Planning Consultant  
Mr. Andrew Walker

**Applicant**

Mr. Ross James- Holiday Island Charters

**Representors**

Mr. G. Davis (SEMF) obo. Department of Education  
Mr. L. Taylor Department of Education  
Mr. S. Bogus Department of Education  
Mr. P. Storr  
Mr. G. Short  
Mr. R. Pocock  
Mr. T. Crossin

Ms. C. Nodder  
Mr. R. McKercher  
Mr. M. Patten  
Mr. G. Wood  
Ald. K. McFarlane  
Mr. R. Bevan  
Ms. Y. McEvan  
Ms. S. J. Chamberlain

### **Amendment**

The draft amendment was to modify the definition of the use 'Tourist Operation' by adding specific reference to the 'hire of watercraft, bicycles and associated facilities for storage, administration and the like'

### **Permit**

The s.43A permit was to allow for the development and use of a boat hire facility, a floating pontoon, and a restaurant, on land at 12 Conara Road, and 20a and 20b Rosny Esplanade, Montagu Bay.

### **Issues raised in Representations**

The issues raised by representors opposing the combined draft amendment and development application were:

#### **Draft amendment:**

- The amendment provided for the consideration of a commercial use and development which would result in a loss of residential amenity, including increased noise, traffic, waste and odours.
- The amendment would facilitate a private commercial use resulting in the loss of public land which was valued as open space for community recreational use. Approval would result in a significant private capital gain at the expense of the community.
- The draft amendment was too broad and would set a precedent for use and development in the zone.
- The draft amendment made no mention of whether or not watercraft would be motorised. There would be considerable difference between the impacts from motorised craft such as power boats and jet skis, and non- motorised craft such as kayaks, canoes, and rowing boats.
- The draft amendment was not consistent with the State Coastal Policy.

#### **Permit:**

- The proposed development would cause a loss of water views, and obstruct movement and access to the school, the public jetty, and the Clarence Foreshore Trail.
- Lighting would reduce the aesthetic value of neighbouring properties.
- The planning scheme required 14 car parking spaces for the development and only 6 were proposed. The remaining 8 were to be provided by the Council from

existing spaces adjacent to the public park, resulting in a loss of community parking spaces for a private commercial enterprise.

- The plans were inaccurate and lacked detail, specifically in relation to the extent of the operation outside the building envelope, for the purpose of a boat rigging and washdown area. The extent of the land to be appropriated for the development was not indicated on the plans.
- The proposed building was too close to the Clarence Foreshore Trail. It did not take into consideration the minimum clearance required from fixed objects along bike trails, and the sight lines, to reduce the likelihood of collision with pedestrian movements associated with the building.
- The hours of operation would cause a reduction in residential amenity.
- Safety issues associated with an increase in vehicle and boating traffic.
- The scale of the development.
- Uncertainty as to the specific items available for hire, the services to be provided, the hours of operation, and the nature and frequency of proposed major events.
- Lack of community consultation.
- Lack of a master plan to guide development in the area.
- Concern at the possibility of a subsequent application for a liquor licence.
- Effect on the value of surrounding residential properties and the site itself.
- Impact on wildlife and marine life.
- Proximity to the Tasman Bridge in the event of a bridge collapse.
- The ramifications of sea level rise and storm surge.
- Safety risks and pollution from boat refuelling on site.
- Visual intrusion from signage.
- The need for fencing to protect school traffic and the consequent restriction on pedestrians and cyclists.
- The possibility of the accumulation of rubbish and waste, and the attraction of vermin.
- Obstruction of emergency egress from the school oval.
- Impact on existing watercraft in Montagu Bay.
- Impact on existing jetty and moorings.
- Potential for foreshore erosion.
- Impact of stormwater on water quality in Montagu Bay.
- The need for a breakwater to protect the pontoon.

Issues raised in support of the amendment and development application

- The development would encourage active participation in healthy activities.
- The proposed building would cause little if any visual interference.
- The development would facilitate the improvement of a neglected foreshore area.

#### **Additional issues identified by the Commission**

The following issues were identified by the Commission:

- Lack of strategic justification for the amendment.
- The wider implications of adopting a general amendment which was based on a site-specific proposal.

### **Council's Report**

At a meeting held on 21 July 2008, Council considered a report and recommendations on the representations and the issues raised. Council's determination was as follows:

- 'A. The Council resolves, under Sections 39(2) and 43F(6) of the *Land Use and Planning Approvals Act 1993*, to advise the Resource Planning and Development Commission that it considers the merits of the representations warrant refusal of the Planning Scheme Amendment and the Draft Permit for the development at 12 Conara Road, 20A and 20B Rosny Esplanade, Rosny (CI Ref D-2007/450).
- B. That Council recommends in relation to the amendment, Council needs to consider any broad ramifications to the proposed change for the Tourist Operation decision within the overall context of the Clarence Planning Scheme 2008 . This Amendment was designed specifically for the Development Application A2007/10 is now redundant due to the recommended permit refusal. This decision is consistent with other refusals for planning amendments lodged with development applications.
- C. That Council recommends in relation to the draft permit, that it be refused for the following reasons:
1. proposed hire of motorised watercraft included in application;
  2. lack of sufficient parking provided by developer;
  3. proposed development is too large for the site;
  4. moving the building to accommodate the requirements for the Clarence Foreshore Trail will create on-going safety and conflict issues with use and impede the public access to the jetty at the rear;
  5. representations received; and
  6. privatisation of public land is against the public interest.
- D. That the reasons for Council's decisions in respect of this matter be recorded as follows:
1. The reasons stated in "C".

### **Commission's consideration of the draft amendment**

The draft amendment proposed to replace the existing definition of 'Tourist Operation' with the following:

*'Land used specifically for tourist purposes, and includes wildlife parks, hire of watercraft, bicycles and associated facilities for storage, administration and the like, or outdoor, historical or bush displays and the like, but excludes any other tourism facility defined in this clause.'* (additional words shown in italics)

The Discretionary uses in the RECREATION zone, as listed in the Table of Uses in cl. 6.11. 2 include 'Tourist Operation' and 'Restaurant'. There is therefore no current impediment to consideration of the Restaurant component of the application; the

additional words proposed by the amendment are intended to allow Council to consider the boat and bicycle hire component.

However, the Delegates note that the Table of Uses also includes as a Discretionary use, 'Any undefined use', and there is no definition in the scheme which clearly embraces boat hire, watercraft hire, bicycle hire, and their ancillary facilities.

Council representatives introduced a tentative argument that a definition of 'boat hire' did in fact exist in the scheme.

The defined use 'Motor Vehicle Sales or Hire' states, inter alia:

'Land used to sell or hire motor vehicles, boats, or caravans.....'

From this it could be argued that boat hire was by definition Motor Vehicle Sales or Hire, and that use was prohibited in the subject zone.

We reject that proposition. In our view the reference to specific activities in the definition of Motor Vehicle Sales or Hire is to indicate what activities the principal use may embrace, not to confer that principal classification on each of the separate activities referred to. A parallel may be drawn with the use class 'Service Station.' That use may include... 'selling of food, drinks and other convenience goods..' It would be a patent absurdity to reason that that component of the principal use was by definition a Service Station.

We consider that the proposed additional words add nothing of substance to the definition of 'Tourist Operation'.

As submitted by the representations, the term 'hire of watercraft' is too broad to be meaningful. Watercraft can vary from kayaks, rowing boats, canoes, sailing dinghies to jet skis, power boats, cruisers and charter yachts, with an attendant wide range of impacts.

Also it is noted that the activities included in the definition of Tourist Operation are prefixed by 'Land used specifically for tourist purposes'. That may be an ill chosen phrase, but as it stands, it places an onerous constraint on the allowable uses, and the additional words in the amendment shed no light on how they would be restricted to 'tourist purposes'. In our opinion the amendment as drafted has no material effect on the definition of Tourist Operation.

In relation to the issues identified by the Commission, it is clear from the statement in Part 'B' of the Council's s.39 determination quoted above, and from the evidence, that the genesis of the amendment was a desire to facilitate approval of a development application, rather than to implement a considered strategy.

Council also acknowledged that there was a need to consider the broad ramifications of the modified amendment within the overall context of the scheme, since it would apply across the board to all zones in which Tourist Operation was an allowable use. Those zones are:

RESIDENTIAL  
RURAL RESIDENTIAL  
VILLAGE  
COMMERCIAL  
RURAL  
INTENSIVE AGRICULTURE  
RECREATION  
KANGAROO BAY SPECIAL DEVELOPMENT

The Delegates concur with the council's view.

### **Schedule 1 and Schedule 2 Objectives**

In the Delegates' opinion, with the exception of the procedural Objectives such as public involvement, planning scheme procedures, and the like, the draft amendment fails to comply with the relevant Objectives in terms of fair, orderly and strategy based planning.

### **Application of State Policies**

Whilst any water based development which might be facilitated by the amendment might impact on State Policies, particularly the Coastal and Water Management policies, we do not consider that the amendment itself will have any impact.

### **Conclusion**

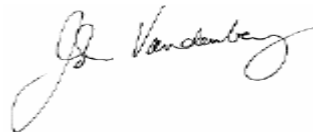
1. In consideration of:
  - (a) The failure to establish a strategic basis for the amendment, or to consider its broader ramifications; and
  - (b) The failure to make any material contribution to the current definition of Tourist Operation,the Delegates conclude that the draft amendment is not in order for approval.
2. As a consequence of the refusal of the amendment, the permit must be refused.

### **Decision**

The Commission rejects the draft amendment pursuant to Section 41(b) of the *Land Use Planning and Approvals Act 1993* and refuses the permit.



Clarry Pryor  
**Delegate**



John Vandenberg  
**Delegate**

10 March 2009