

20 June 2018

His Worship the Mayor & Councillors

**Notice of Extraordinary Meeting of Bathurst Regional Council -  
Wednesday, 27 June 2018**

I have to advise that an **Extraordinary Meeting** of Bathurst Regional Council will be held in the Council Chambers on Wednesday, 27 June 2018 commencing at 6.00 pm to consider the following:

DEVELOPMENT APPLICATION NO. 2018/141 – OUTDOOR RECREATION FACILITY (AQUA PARK) AT BEN CHIFLEY DAM, THE LAGOON. APPLICANT: HICKSTAR INVESTMENTS (BATHURST) PTY LTD. OWNER: BATHURST REGIONAL COUNCIL (DA2018/141)



D J Sherley  
**GENERAL MANAGER**

## **BUSINESS AGENDA**

### **EXTRAORDINARY MEETING OF BATHURST REGIONAL COUNCIL**

**TO BE HELD ON WEDNESDAY, 27 JUNE 2018**

- 1. 6:00 PM - MEETING COMMENCES**
- 2. APOLOGIES**
- 3. DECLARATION OF INTEREST**  
To assist the Councillors and committee members in their correct consideration of business before them at the meeting, please give consideration to Section 451 of the Local Government Act, in relation to Declaration of Interest at meetings.
- 4. RECEIVE AND DEAL WITH GENERAL MANAGER'S AND DIRECTORS' REPORTS**  
\* DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT
- 5. RESOLVE INTO OPEN COUNCIL**
- 6. ADOPT REPORT OF THE COMMITTEE OF THE**
- 7. MEETING CLOSE**

**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES'  
REPORT**

EXTRAORDINARY MEETING OF BATHURST REGIONAL COUNCIL

27 JUNE 2018

## **1 SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (03.00053)**

**Recommendation:** That the information be noted.

**Report:** Section 4.15 of the Environmental Planning and Assessment Act 1979 is provided below to assist Council in the assessment of Development Applications.

### **4.15 Evaluation** (cf previous s 79C)

#### **(1) Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
  - (i) any environmental planning instrument, and
  - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
  - (iii) any development control plan, and
  - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),
  - (v) (Repealed)
- (b) that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Note. See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

#### **(2) Compliance with non-discretionary development standards—development other than complying development**

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, standards include performance criteria.

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

**Financial Implications:** Nil

**Bathurst Community Strategic Plan - Objectives and Strategies**

- Objective 28: To plan for the growth of the region and the protection of the region's environmental, economic, social and cultural assets. Strategy 28.8

## **Community Engagement**

- Inform To provide the public with balanced and objective information to help them understand the problem, alternatives opportunities and/or solutions.

**2 DEVELOPMENT APPLICATION NO. 2018/141 – OUTDOOR RECREATION FACILITY (AQUA PARK) AT BEN CHIFLEY DAM, THE LAGOON. APPLICANT: HICKSTAR INVESTMENTS (BATHURST) PTY LTD. OWNER: BATHURST REGIONAL COUNCIL (DA2018/141)**

**Recommendation:** That Council:

- (a) as the consent authority, grant consent pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 to Development Application No. 2018/141, subject to conditions able to be imposed pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979, as amended and including conditions to the effect that:
- (i) The applicant is to provide on-site, for the duration of the aqua park season, a minimum of four (4) self-contained portable toilets suitably designed and installed to eliminate effluent escape to the environment.
  - (ii) The Aqua Park be located to provide unimpeded access for marine craft using the boat ramp, specifically, a 20 metre wide corridor or such other distance as maybe specified by Roads & Maritime Services extending from the centre line of the existing ramp.
  - (iii) In addition to other approvals, the applicant enter into a Licence Agreement with Council to prescribe operational and other requirements.
  - (iv) Exclusion fencing on the foreshore be limited to enable other visitors to the dam to use foreshore facilities.
- (c) notify those that made submissions of its decision; and
- (d) call a division.

**Report:**

**The Site**

Council has received a Development Application (DA) for an outdoor recreation facility (Aqua Park) at Ben Chifley Dam, Chifley Dam Road, The Lagoon, described as Lot 2, DP 224864 and Lot 3, DP 632418.

See location plan and aerial photo at **attachment 1**.

The site, in the immediate vicinity of the proposal, currently contains:

- Tourist cabins;
- Public toilet block;
- Picnic shelters;
- Playground;
- Storage sheds; and
- Boat ramp providing access to the dam by various user groups.

**The proposal**

The proposal involves:

- Placement of an inflatable aqua park on the surface of Ben Chifley Dam and associated

- anchoring with submerged concrete blocks; and
- Placement of a transportable building on the foreshore to accommodate ticket sales, canteen, first aid and administration.

All proposed infrastructure will be removable.

The aqua park will occupy a dam surface area of approximately 100 metres in length by 50 metres in width.

The aqua park is proposed to operate from 1 November to 31 March each year.

The aqua park will be open 7 days a week during school holiday time from 10.00am to 6.00pm. When it is not school holidays the aqua park will be open from Thursday to Sunday (inclusive) from 10.00am to 6.00pm.

The applicant estimates that the peak usage would be in the order of 50 persons per hour although a lesser figure is anticipated as the norm.

See plan of proposed development at **attachment 2** and Statement of Environmental Effects at **attachment 3**.

In addition to Development Consent the applicant will be required to obtain;

- an aquatic license from RMS
- a permit from NSW Department of Primary Industries - Fisheries
- a Controlled Activity Approval from Office of Water
- enter into a licence agreement with Council as landowner to occupy a public place.

### Planning Context

#### *Bathurst Regional Local Environmental Plan 2014*

The subject site is zoned RU1 Primary Production under the provisions of the *Bathurst Regional Local Environmental Plan 2014*.

The proposed development is defined as a *recreation facility (outdoor)* the definition of which is:

*"...a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major)".*

A *recreation facility (outdoor)* is permissible with consent in the RU1 Primary Production zone.

The objectives of the RU1 Primary Production zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*



- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural and scenic character of the land.*
- *To provide for a range of compatible land uses that are in keeping with the rural character of the locality, do not unnecessarily convert rural land resources to non-agricultural land uses, minimise impacts on the environmental qualities of the land and avoid land use conflicts.*

The proposal is not inconsistent with the objectives of the zone .

### **Clause 7.14 Drinking water catchments**

The subject site is identified as being within a drinking water catchment on the Drinking Water Catchment Map.

Clause 7.14 provides the following:

- (1) *The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.*
- (2) *This clause applies to land identified as “Drinking water catchment” on the Drinking Water Catchment Map.*
- (3) *In deciding whether to grant a development application for development on land to which this clause applies, the consent authority must consider the following:*
  - (a) *whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to the following:*
    - i. *the distance between the development and any waterway that feeds into the drinking water storage,*
    - ii. *the on-site use, storage and disposal of any chemicals on the land,*
    - iii. *the treatment, storage and disposal of waste water and solid waste generated or used by the development,*
  - (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

### **Impact of users on dam water quality**

Potential impacts upon water quality from the proposal centre on swimmers using the water and the potential for effluent from additional toilet facilities etc to be inappropriately managed.

The potential for users of the facility to have an additional adverse impact upon the water quality entering or within the Dam, whilst it may exist, is minimal. It is noted that the dam is located within a rural catchment with many activities occurring that have the potential to impact upon water quality. This would include the various agricultural pursuits in the area including those occurring on the foreshore and the whole of the catchment up stream. This would also extend to other user groups who use the dam for recreation purposes.

The potential “additional risk” from this activity is therefore difficult to quantify in any meaningful way however the Council nonetheless has an obligation to protect its water supply. The Council has adopted a number of management and risk mitigation strategies to deal with this obligation including:

- Ben Chifley Dam Management Plan
- Integrated Water Cycle Management Plan

The risk management strategies will need to be reviewed independently of this Development Application, a process that has already commenced. This process will involve consultation with multiple Government Agencies including NSW Health.

It is further noted that the Dam is already used by a number of recreational users including swimmers, rowers, dragon boaters, skiers and recreational anglers. All would to varying degrees provide a level of risk to water quality. It is somewhat difficult to contemplate a scenario where this use creates a significantly greater risk than the other uses already occurring on the site.

### **Impact of additional facilities on dam water quality**

The other area of potential risk to water quality is from additional effluent generated by users of the facility. Currently the site is serviced by a toilet block constructed by Council in 2008. The toilet block currently provides 3 male toilets plus a urinal, 3 female toilets and 1 accessible toilet. The toilet block is available for all users of the Dam.

Effluent from the existing toilet block and the cabins is collected and pumped to an Envirocycle system located up behind the cabins. The capacity of the system, whilst it is able to accommodate existing effluent loads, is limited.

The applicant’s proposal is to rely upon the existing toilet block for its patrons. If the toilet block becomes too small, the applicant proposes to bring in portaloos to service the development. This approach does however raise some concerns as to:

- The capacity of the toilet block to accommodate the additional users;
- The capacity of the existing effluent disposal system to accommodate the additional loads;
- The reliance upon the public asset to augment the commercial development (i.e. the public would be responsible for any additional costs associated with its use);
- Appropriate triggers in determining if the existing facility is “too small”; and
- Increased risk to the dam water quality if the portaloos are not managed appropriately.

Council’s options in this regard would be to either:

- Require the developer to provide their own facilities (i.e. portaloos) to service the development with appropriate management protocols in place; or
- Allow the proponents to rely upon the existing facilities with some appropriate triggers in place through a proposed licence agreement as to the need to augment facilities and agreements for cost.

The preferred approach is obviously the former and the Development Application has been assessed on that basis. That is not to say that the latter is not an option however it does not necessarily provide certainty at this stage.

### **Water quality guidelines**

In terms of risks associated with users of the facility from poor water quality the applicant would have an underlying obligation to ensure the water would comply with the Guidelines for Managing Risks in Recreational Water 2008. This would include regular testing of water quality by the applicant. Where this would overlap with Council's own testing regimes is a matter that could be included in the licence agreement between the applicant and Council.

Council already undertakes regular water quality monitoring within the Dam to ensure appropriate water quality as a drinking water supply/ recreational usage. Decisions as to access to the water body for recreation purposes based on this testing already occurs as part of Council's risk management strategies. Effectively users of this facility will be subject to those same restrictions (i.e. if dam water quality ceases to be acceptable then this use, along with other uses, will need to cease).

It is further noted that public swimming in a very large water body such as Ben Chifley Dam differs from swimming in public/commercial swimming pools which are regulated under the Public Health Act. In the latter circumstances the proponents have obligations as to the treatment of water (i.e. disinfection and clearing). Notwithstanding the impracticalities of this occurring on a natural water body, these Public Health obligations apply to "structures" used for human bathing, swimming or diving. The advice Council has received to date from NSW Health is that these obligations do not apply in these circumstances.

### **Impact on Council's water supply**

It is acknowledged that the Dam forms part of the overall Council water supply for which it has an overriding obligation to protect. Any use that jeopardises the supply could not be contemplated. Whilst there are many Guidelines and legislation that govern water supply the principle ones are as follows:

- ***Australian Drinking Water Guidelines*** designed to provide an authoritative reference to the Australian community and the water supply industry on what defines safe, good quality water, how it can be achieved and how it can be assured. The guidelines have been developed after consideration of the best available scientific evidence and provide a framework for good management of drinking water supplies to ensure safety at point of use. They address both the health and aesthetic quality aspects of supplying good quality drinking water.
- ***Guidelines for Managing Risks in Recreational Water*** designed to protect human health from threats posed by the recreational use of coastal, estuarine and fresh waters, such as natural and artificial hazards. The guidelines are a tool to assist in the development of legislation and standards to ensure that recreational water environments are managed as safely as possible.

Whilst the various Guidelines would stop short of saying that water supply dams should not be used for recreation purposes, there is nonetheless a risk to Council that additional measures to protect the water supply may result. These may well be at some point in time an additional cost, for example, an upgrade to Council's water filtration and treatment plant, for which Council cannot necessarily quantify at present and which cannot be attributed solely to this development.

## **Chapter 9 Environmental Considerations**

### **Riparian Land and Waterways**

On DCP Map No 30 *Riparian Land and Waterways* the subject site is identified as being of high and moderately high ground water vulnerability and as being a sensitive waterway.

The Development Application is Integrated Development as approval is required from NSW Department of Primary Industries – Water (DPI Water) under the Water Management Act 2000 and from NSW Department of Primary Industries – Fisheries (DPI Fisheries) under the Fisheries Management Act 1994 and Roads & Maritime Services.

### **Public Notification**

The Development Application was advertised and notified to known dam user groups from 7 May 2018 to 5 June 2018.

Prior to the commencement of the public notification period a submission was received from Bathurst Pan Dragons Incorporated (see submission at **attachment 4**).

No additional submissions were received during the public notification period, although correspondence was subsequently received from Bathurst Pan Dragons Inc describing a regatta to be conducted on 4 November 2018. A discussion forum has not been held.

The submission from the Bathurst Pan Dragons raises the following issues:

- Proximity of proposed aqua park to boat ramp and subsequent safety concerns;
- Distance from emergency services;
- Potential for blue green algae;
- Potential impacts on Bathurst's water supply, the dam surround and wildlife ;
- Lack of car parking;
- Lack of shower and toilet facilities;
- Lack of shelter for inclement weather;
- Adequacy of road network.

Council staff are of the opinion that most of these concerns can be addressed by way of conditions of consent for license or license agreement.

### **External Referrals**

#### **NSW Department of Primary Industries – Water**

The Development Application is Integrated Development as approval is required from NSW Department of Primary Industries – Water (DPI Water) under the Water Management Act 2000.

General Terms of Approval were received from DPI Water on 14 June 2018 with a copy included at **attachment 5**.

## NSW Department of Primary Industries – Fisheries

The Development Application is Integrated Development as approval is required from NSW Department of Primary Industries – Fisheries (DPI Fisheries) under the Fisheries Management Act 1994.

General Terms of Approval were received from DPI Fisheries on 29 May 2018 with a copy included at **attachment 6**.

## NSW Police – Chifley Local Area Command

As the proposal is for an outdoor recreation facility the Development Application was referred to NSW Police – Chifley Local Area Command for assessment against the Crime Prevention Through Environmental Design (CPTED) principles.

After conducting a Safer by Design Evaluation for this development the crime risk rating has been identified on a sliding scale of low, moderate and high. The rating for this development has been identified as **Low Crime Risk**.

The Crime Prevention Officer has made recommendations in relation to crime prevention with a copy included at **attachment 7**, these will be forwarded to the applicant for their consideration.

## Other Matters for Consideration

### Biodiversity Offset Scheme (BOS)

As no clearing of vegetation is required to accommodate for the proposed aqua park and as all associated infrastructure is removable, it is considered that the proposal does not meet the area trigger for the Biodiversity Offset Scheme (BOS).

The development is located on Ben Chifley Dam which is identified as an area of high biodiversity value on the Biodiversity Values Map. The guidance for determining whether the BOS is triggered says that the BOS applies to all clearing of native vegetation and other biodiversity impacts prescribed by clause 6.1 of the Biodiversity Regulation 2017 on land identified on the map. The prescribed impacts listed in clause 6.1 include impact of the development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities.

While the applicant has not specifically addressed this particular trigger, it is considered unlikely that the proposed activities will impact upon water quality in such a way that they will have a negative impact on threatened species and threatened ecological communities.

### Amenities

The Ben Chifley Dam public recreation area has an existing amenities block with provision for male, female and accessible facilities. It is considered that this amenities block may not be adequate for peak periods when multiple recreational uses are occurring on the dam.

A condition will be imposed to require the provision of additional self-contained portable toilets on the site for the duration of the aqua park season.

The *Hire and Rental Industry Association Ltd – Portable Toilets Division Code of Practice* provides the following guide for portable toilet facility provision for temporary events of up to 240 patrons:

<b>No. of users</b> (50% male and 50% female)	<b>Minimum number of portable toilets</b> (for an event of up to 6 hours duration)	<b>Minimum number of portable toilets</b> (for an event of up to 12 hours duration)
Up to 240	3	4

In the absence of any other guide or regulation on portable toilet provision it would seem appropriate to apply the above figure of 4 toilets for the proposed development given its maximum anticipated patronage of 50 persons per hour and maximum duration of 8 hours per day.

### Car parking

While limited formalised car parking spaces are available, the access road into the public recreation area provides the opportunity for informal parallel parking.

It is considered that there is adequate area available for parking for peak periods where multiple dam users are in the public recreation area.

### Traffic generation

It is anticipated that the aqua park could generate up to 20 vehicle movements per hour during peak periods.

It is considered that the surrounding road network is of sufficient capacity to cope with the envisaged increase in traffic. The application will be conditioned to demonstrate appropriate bus turning paths can be accommodated.

### Conflict with other user groups

There are two aspects to this issue, namely the potential conflicts with the various user groups on the water and the various users wishing to use the foreshore areas for other activities.

In terms of the safety and management of on water activities the Maritime Safety Act, administered by the RMS, applies. This includes the safety of the various user groups (i.e. swimmers and boats etc.) and the licensing of events on the water through an Aquatic Licence.

A licence is required from Roads & Maritime Services (RMS) for the operation of the aqua park.

It is Council's understanding that discussions between the applicant and the RMS as to the licensing regime are occurring.

Conflict between Aqua Park users and boat ramp users can be managed by ensuring a suitable separation distance for both activities.

The second conflict exists around the different users groups wishing to conduct events when the aqua park is operational and those user groups also wishing to have access to the highly

valued foreshore areas.

The potential for these conflicts to occur has already been raised by Pan Dragons Inc who are seeking to conduct a major Dragon Boat Agenda event on 4 November 2018. It is fair to say that once the aqua park is established on a permanent or semi-permanent basis that other users will have to cooperate and compromise in the use of the space. In particular, access to the foreshore from both onshore and offshore may become unavailable or disrupted, and this may not be readily accepted by other users of the Dam.

It is noted that public consultation process undertaken as part of the preparation the Ben Chifley Dam Management Plan in 2000 noted that:

- Water quality should not be compromised;
- Facilities should be located in a manner that provides adequate physical separation of water skiers and motor craft and passive aquatic uses;
- Concentrate on providing quality day visit facilities for the local community as opposed to trying to create a regional tourist destination;
- A significant asset is the dam's quiet and rustic environments; and
- Theme or fun parks facilities, such as a kiosk or water slide, are inappropriate for the dam.

In relation to the last point it is ultimately a matter for the Council to determine future uses at the Dam and it is unknown as to whether the same sentiment would apply today. Certainly there has been a significant number of additional users added to the Dam in the intervening period which has increased its visitation and range of uses. The addition of swimming facilities is not seen as antipathetic to these other uses.

#### Waste

The Chifley Dam public recreation area is provided with garbage bins and these are regularly emptied.

#### Conclusion

Council has received a Development Application (DA2018/141) for an outdoor recreation facility (aqua park) at Ben Chifley Dam, Chifley Dam Road, The Lagoon. The proposal involves placement of an inflatable aqua park on the surface of Ben Chifley Dam and associated anchoring with submerged concrete blocks and the placement of a transportable building on the foreshore to accommodate ticket sales, canteen, first aid and administration. The Development Application was advertised and notified to known dam user groups from 7 May 2018 to 5 June 2018. Prior to the commencement of the public notification period a submission was received from Bathurst Pan Dragons Incorporated. Key issues of water quality and conflict between dam users have been addressed in the body of this report.

**Financial Implications:** Nil

#### **Bathurst Community Strategic Plan - Objectives and Strategies**

- Objective 28: To plan for the growth of the region and the protection of the region's environmental, economic, social and cultural assets. Strategy 28.8

**Community Engagement**

- Inform To provide the public with balanced and objective information to help them understand the problem, alternatives opportunities and/or solutions.

Yours faithfully



N Southorn  
**DIRECTOR**  
**ENVIRONMENTAL, PLANNING & BUILDING SERVICES**