



## **Community Environment Network Inc.**

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*An alliance of community and environment groups from Lake Macquarie and the Central Coast.*

7<sup>th</sup> November 2019

Mr Anthony Witherdin  
Director, Regional Assessments  
Department of Planning and Environment  
GPO Box 39  
Sydney, NSW 2001

### **Re. Gosford Kibbleplex site redevelopment (SSD 9813)**

Dear Mr Witherdin

This is a submission from the Community Environment Network regarding the development application for the Gosford Kibbleplex site redevelopment. In particular, this submission concerns the application for approval of a State Significant Development in accordance with State Environmental Planning Policy (State and Regional Development) 2011 and State Environmental Planning Policy (Gosford City Centre) 2018.

The Community Environment Network is an alliance of community and environment groups from the Central Coast and Lake Macquarie LGAs. We are a not-for-profit, community based organisation that works for ecologically sustainable development and against threats to it. Our membership is approximately 400 including 90 groups with an affiliated membership of approximately 5,000.

CEN is a non-political organisation and has not made any donation to a political party in the last two years.

### **Reasons for CEN's Objection**

#### **Non-compliance with height and floor space ratio limits**

The Community Environment Network objects to the proposed development because it would not comply with the height of building limits specified under clause 4.3 of SEPP (Gosford City Centre); furthermore, the development would not comply with the floor space ratio limits specified under clause 4.4 of SEPP (Gosford City Centre).

The applicant has argued in their EIS that development consent may be granted, notwithstanding clauses 4.3 and 4.4, because the proposed development would comply with the requirements of clause 8.4(4) of SEPP (Gosford City Centre). CEN does not dispute that the development complies with sub-clauses (a), (b) and (c) of clause 8.4(4).

Although CEN assumes that the consent authority will comply with sub-clause (d) by considering the findings of the design review panel, CEN is concerned that the letter of 11 July 2019 from the Design Advisory Panel includes 10 recommendations for improvements to the design of the proposed development. It is not clear whether the applicant will incorporate the recommended changes in the detailed development applications. How can the consent authority properly consider the findings of the DRP if it does not know which of the 10 recommended improvements will be incorporated in the detailed development applications?

CEN considers, however, that the consent authority has been given no evidence that would justify it being satisfied with the amount of floorspace that will be provided for the purposes of commercial premises, as required by sub-clause (e). The EIS proposes 3,692 square metres of gross floor area for commercial premises; this would be just 5% of the GFA in the whole development.

The former Kibbleplex development contained much more commercial floorspace than this, including a large supermarket and several speciality shops, before Council bought the centre and converted it to a commuter parking station. There would be a negative community benefit from a development that will remove the 400 commuter parking spaces and replace them with a much smaller shopping centre than was originally on the site.

The applicant states in the EIS that they are unable to provide evidence that the buildings will meet minimum building sustainability and environmental performance standards, as required by sub-clause (f), because they have not yet undertaken sufficient design work. Is it reasonable for a consent authority to accept an applicant's promise to meet minimum standards when the applicant has not provided even an outline of how they will meet these standards?

The recent inquiry into the building certification process has concluded that "just-in-time" design processes have been a major factor in many of the catastrophic structural failures that have occurred. The EIS is proposing that this sort of design process now be adopted for approval of State Significant Development!

#### Lack of design excellence

Clause 8.3 requires that development consent must not be granted to development involving the erection of a new building unless the consent authority considers that the development exhibits design excellence (cl. 8.3(2) and 8.3(3)). CEN considers, however, that the proposed development fails to achieve design excellence in relation to the following issues (under cl.8.3(4)):

(c) consistency with the objectives of clause 8.11 – to protect and enhance key vistas and view corridors;  
(d) relevant requirements of Gosford City Centre DCP – in particular, 14 metre height of street walls;  
(e) proposed uses and use mix; bulk and massing of buildings (floor plates > 750 sq.m.); street frontage heights; overshadowing (Court and TAFE); pedestrian and cycle access and circulation.

The details of CEN's concerns about these issues will be provided in a supplementary submission in the next week. The limits of a 28 day exhibition period have not allowed full documentation of these concerns.

The visual impact of the street frontage walls is particularly problematic because of the proposal for four floors of parking above ground. This is another failure to comply with the Gosford City Centre DCP, which requires parking to be built underground unless geotechnical conditions prevent this.

This design problem is unnecessary since the geotechnical investigation indicates that at least 3 levels of car parking could be easily built underground. The groundwater level was estimated at RL 2 m. i.e. at least 9 m. below ground level. The EIS fails to give adequate consideration to the options for underground parking, because the developer is trying to maximise the number of residential units while minimising the cost of development!

The proposed development does not comply with clause 8.6 - Active street frontages, partly because the four levels of above ground parking (with limited commercial floorspace) would not provide sufficient active frontages on William Street and Donnison Street. So instead of developing more of the parking underground, the applicant proposes using cl. 4.6 of SEPP (Gosford City Centre) to fudge the requirements of the SEPP for active frontages on these potentially busy pedestrian streets.

### Inadequate EIS

CEN considers that the applicant has failed to demonstrate design excellence because they have aimed to minimise the cost of development, minimised cost of the design studies and then minimised the cost of preparing the EIS. As a consequence the EIS fails to meet the Secretary's Environmental Assessment Requirements in numerous areas, including:

- Consideration of the potential cumulative impacts due to other developments in the vicinity.
- Details of the proposed use for each component of the development and the relationship between the different uses.
- The adequacy of floorspace provided for commercial purposes and provide relevant justification.
- How above ground parking and services would be fully integrated into the design of the development.
- How the future development potential of adjoining properties would not be compromised by the proposal.
- How the proposal would maximise street activation, provide sufficient open space for future residents, provide access for people with disabilities, minimise potential vehicle, bicycle and pedestrian conflicts.
- The impact of the proposal on car parking within the Gosford CBD during construction and operation.
- Measures to be implemented to promote sustainable means of travel, including Public Transport use, pedestrian and bicycle linkages.
- A contamination assessment of the site by a qualified environmental consultant (not just a desktop review)
- Geotechnical and groundwater assessment (not just a desktop review).
- The proposal land uses including a floor by floor breakdown of GFA and site coverage.

### State and Regional Development SEPP

The most controversial issue in the Gosford City Centre Revitalisation report was the proposal to include the City Centre in the State and Regional Development SEPP. This proposal is most objectionable because it has removed the Central Coast Council's role in the assessment and determination of development applications over \$10 million in capital value.

The inclusion of Gosford City Centre in the State and Regional Development SEPP is equivalent to declaring major developments in the City Centre to be Part 3A projects under the EP & A Act as it applied prior to 2011.

The ICAC report (December, 2010) found that “Part 3A can allow for some categories of development (particularly residential and commercial) of a very different nature and at much greater intensity than is allowed for by the existing planning instruments... Consequently, Part 3A has the potential to deliver sizable windfall gains to particular applicants. The attendant corruption risk is obvious.”

To reduce the corruption risk, ICAC made specific recommendations aimed at limiting the application of Part 3A to projects that are wholly or partly prohibited under existing planning controls. ICAC recommended that the Government amend the Act:

- to permit the application of Part 3A only to projects that are permissible under existing planning instruments;
- where a project is wholly or partly prohibited, to give to the JRPP the Minister’s authority to consider and determine rezoning proposals for the prohibited aspects of a project, prior any determination of the project under Part 3A.

Despite the ICAC recommendations concerning Part 3A, the State and Regional Development SEPP still allows consent to be granted for development that is partly prohibited by an existing planning instrument (without any amendment of the e.p.i.). Furthermore, where a project is wholly prohibited by an existing planning instrument, the SEPP allows concurrent rezoning and development approval, including concurrent exhibition of the rezoning proposal and the development application. Neither of these provisions are consistent with the ICAC recommendations.

The Gosford City Centre Revitalisation report proposed that the height of building controls and the floorspace controls that are set by Gosford LEP 2014 would not apply to sites in the City Centre that are greater than a certain area, provided that certain conditions about building design are met. This proposal has been incorporated in State Environmental Planning Policy (Gosford City Centre) 2018 (clause 8.4).

The ICAC report on Part 3A found that: “For proposals that are permissible but propose variations to key development controls in existing instruments, meaningful and objective reference points should be provided for considering the reasonableness of what is being proposed. This would include any controls in a relevant draft LEP or SEPP, a consideration of the relevance of existing controls, and the design principles relating to bulk and scale in SEPP No. 65.”

To reduce the corruption risk, ICAC recommended that the Government amend the Act to require the Minister to refer private sector Part 3A projects to the Planning and Assessment Commission if the project exceeds development standards by more than 25%. When the State and Regional Development SEPP was introduced following the repeal of Part 3A in 2011, there was no reference to the Planning and Assessment Commission having a role as consent authority. Although the Independent Planning Commission (as it is now called) is given certain consent roles in clause 8A of the current version of the SEPP, these do not include developments that are permissible but exceed the development standards.

## Conclusion

The State and Regional Development SEPP retains most of the features of Part 3A of the EP & A Act and SEPP (Major Development) 2005 which were criticised by ICAC (December 2010). Although the NSW Government repealed Part 3A soon after being elected in 2011, the Government did not adopt the key ICAC

recommendations concerning projects that are prohibited and projects that exceed the development standards in existing planning instruments, when the State and Regional Development SEPP was made.


The proposal in the Gosford City Centre Revitalisation report to introduce a SEPP that declares any development over \$75 million as State Significant Development specifically targets development applications for major retail/commercial developments and residential developments. Furthermore, SEPP (Gosford City Centre) 2018 allows the consent authority to approve on large sites development proposals that exceed the development standards for the height of buildings and floor space ratios.

Not only will these development applications be removed from Council's assessment process and from determination by the Joint Regional Planning Panel, but the SEPP will also override the development standards in the Gosford LEP. The introduction of clauses 8.3 and 8.4 has not only introduced flexible development standards for the Gosford City Centre, it has provided a process where the goal posts can be moved, i.e. the development controls can be changed, as a development progresses from the masterplan stage to the detailed development application stage.

The corruption risk that could arise from the State and Regional Development SEPP has been exacerbated because of these clauses in SEPP (Gosford City Centre). ICAC identified the application of "flexible" development standards with no objective reference points as potentially providing the opportunity for massive windfall gains for developers.

The ICAC report shows, therefore, that the inclusion of Gosford City Centre in the State and Regional Development SEPP and the introduction of SEPP (Gosford City Centre) have increased the risk of corruption in the assessment and determination of major development applications in the City Centre. For these reasons, responsibility for determining the development application for the former Kibbleplex site should be given to the Independent Planning Commission.

Yours sincerely



Michael Conroy  
Executive Member  
Community Environment Network