

Application No. MP 09-0121 MOD 1  
47 – 50 The Esplanade, Ettalong Beach

Planning Services  
Department of Planning & Environment,  
GPO Box 39,  
SYDNEY NSW 2001

16<sup>th</sup> December 2015

Attention: A/Director – Regional Assessments

Dear Sir/Madam

This submission objects to the proposed development on the corner of Memorial Avenue and The Esplanade at Ettalong Beach and to the current application for modification of the approval for this development.

As you would be aware, the proposed development of a seven storey mixed-use residential development was approved on this waterfront site by the then Minister for Planning in November 2010 (Department of Planning reference MP 09-0121). The proposal was approved by the Minister under Part 3A of the Environmental Planning & Assessment Act, which was subsequently repealed by the Coalition Government (from 1 October 2011).

**Tesrol and ICAC**

The owner of the site at that time was Tesrol Ettalong Pty Ltd, which was the applicant for the approval under Part 3A of the Environmental Planning & Assessment Act. Subsequently, the ICAC inquiry into political donations by property developers investigated a series of donations made by the Tesrol Group of companies during 2010-11.

Although it is understood that the ownership of the subject site has changed, the identity of the proposed developer has not been disclosed. Furthermore, there is no indication in the public documents that the current owner of the site has given consent to the lodging of the application. In view of the previous ownership of the site, the ICAC report on its inquiry into political donations could make recommendations relevant to the current application.

Furthermore, three weeks after the Tesrol proposal was approved, ICAC released the report of its inquiry into the use of Part 3A of the Act. ICAC recommended that the Minister refer private sector applications under Part 3A which exceed development standards by more than 25 per cent to an independent quasi-judicial body for determination. Although Part 3A has been repealed, it is assumed that the Planning Assessment Commission was intended to fulfil this role in determining such applications.

**In view of the past and future ICAC recommendations, it would be appropriate if the current application for The Esplanade, Ettalong were referred to the Planning Assessment Commission for determination.**

**The Peninsula Urban Directions Strategy and Gosford LEP 2014**

The Peninsula Urban Directions Strategy (PUDS) was prepared in 2005 by consultants for Gosford Council, with funding from the Department of Planning. PUDS recommended a development strategy for each of the centres on the Woy Woy Peninsula, i.e. Woy Woy, Umina and Ettalong. These development strategies for the three centres are consistent with their roles as described in the Centres Hierarchy of the Central Coast Regional Strategy (2008).

Gosford LEP 2014 incorporated zonings and development controls for these three centres that were based on the strategies recommended in PUDS. It is understood that the Department of Planning required some minor amendments to the drafting of the Height Controls in the draft LEP, but these amendments were aimed at simplifying the height limits; they were not intended to increase or decrease the amount of floorspace permitted.

In particular, PUDS recommended a maximum of three storeys for waterfront sites in the Ettalong centre to minimise their scenic impact and to share views with sites in the main street. This was reflected in the development controls in Gosford LEP 2014 for sites fronting The Esplanade in the Ettalong centre. The height limit was set at 11.5 metres and the floor space ratio was limited to 1:1.

I would conclude, therefore, that the Department, in permitting the draft LEP to be exhibited and proceed to gazettal, has endorsed the PUDS strategy for the Ettalong centre in principle and agrees that the development controls in the Gosford LEP 2014 are consistent with the Regional Strategy. The proposed development would consist of ground floor retail development and six floors of residential development; this would be four storeys more than recommended by PUDS.

**I am making this submission because the development approved by the former Minister would not meet the basic principles that were recommended by the Peninsula Urban Directions Strategy. For this reason, it would not comply with the development standards for the Ettalong town centre that were set by Gosford Local Environmental Plan 2014.**

### [Statement of Environmental Effects and the Development Standards](#)

The Statement of Environmental Effects (SEE) for the modification states “The overall bulk, scale and density of the development would not change” from the approved proposal. It is clear, therefore, that the proposed modification of the approval would not ameliorate the adverse visual and environmental impacts that would result from this overdevelopment of a significant waterfront site.

#### **Floorspace ratio**

Gosford LEP 2014 prescribes a maximum Floor Space Ratio of 1:1 on the lots along The Esplanade, whereas the approved proposal would have an FSR of 2.59:1. In other words, the floor space proposed in Stage 1 would be 2.59 times the area that would be permitted under the LEP; Stage 1 would have over 3,500 square metres more than the permissible floor space.

The proposed modification would add even more floorspace (277 square metres), thus increasing the FSR to 2.63 according to the Statement of Environmental Effects for the Modification. The Statement of Environmental Effects provides no justification for permitting a development that exceeds the permitted floorspace by 160%.

#### **Height**

Gosford LEP 2014 prescribes a maximum height of 11.5 metres on the lots along The Esplanade, whereas the current proposal would have nearly double this height at 22.4 metres. In other words, Stage 1 has been approved with ground floor retail development plus six floors of residential development, which would be four floors more than the LEP height control would permit.

The SEE claims (page 22) that the proposed development would “present a pedestrian scale, of 3 storeys, along The Esplanade and Memorial Avenue”. As the higher storeys are “set back from the streets, this design complies with the height controls for properties fronting The Esplanade”.

These claims are so blatantly incorrect that the author needs counselling about unprofessional practice. The height controls for properties fronting The Esplanade apply to the whole of each lot, from The Esplanade through to the laneway on their northern boundary. The proposal would not comply with the height controls on any of the four lots it would occupy.

The minor setbacks on residential levels 3 and 4 (about 3 metres for each deck) would be barely noticeable for a layperson standing on the south side of The Esplanade. From that viewpoint, the south side of the building will look like a 5 storey, 16 metre high block of units. A person standing on the beach over 50 metres from the development would see it as a 7 storey, 22 metre high block of units.

A person standing on the western side of Memorial Avenue would be able to see the western side of residential levels 1 to 4 and most of the side of level 5. In other words, it will look like a 6 storey building, possibly with a structure of some kind on the roof.

### **Impacts on the natural and built environments**

The SEE states "The amenity of the area in the form of sunlight, sea breezes and sea views would remain unchanged". However, this is in relation to the approved development, not compared to the Ettalong environment in its current state.

On winter days, the Stage 1 development would cause significant overshadowing of The Esplanade, including the recently completed Foreshore Park and pedestrian/bike path. The shadow diagrams exhibited (as part of the Statement of Environmental Effects) show that there would be no reduction in the area overshadowed compared to the approved development. The shadow would extend across The Esplanade and the bike path from mid-morning to mid-afternoon in the winter season. It would also extend across part of the beach in mid-afternoon.

The height and design of the development, and its proximity to the Mantra Resort, will create a wind tunnel on Memorial Avenue, especially during the frequent southerly winds coming from Broken Bay. There is no change proposed to the design that would mitigate the wind tunnel effect.

### **Conclusion**

Gosford Council and the local residents struggled from 2005 to 2009 to persuade Tesrol to design a development that complied with the Peninsula Urban Directions Strategy. However, Tesrol and the former Minister decided to circumvent regional and local planning policies by the dubious application of Part 3A of the EP & A Act. From 2010 to 2015, Tesrol Ettalong (and its anonymous successor) had enough time (and the lowest interest rates in decades) to commence the proposed development.

**Since the approval would have allowed a building more than double the size that would be permitted under Gosford Council's planning controls, no extension of time should be approved for implementation of development approval MP 09-121. Furthermore, no modification of the approval should be approved unless the modification would comply with the development standards in Gosford LEP 2014.**

Yours sincerely,

Michael Conroy