



Community Environment Network Inc.

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

7th November 2019

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

Re. 26 Mann Street, Gosford (SSD 10114)

Dear Mr Witherdin

This is a submission from the Community Environment Network regarding the development application for the St Hilliers development at 26-32 Mann Street, Gosford. 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.

Any organisation that is concerned about planning for the Gosford CBD has suffered from severe pressure on its workforce over the last 4 years. This has especially been the case for CEN which relies upon volunteers (with professional qualifications) to write submissions on major planning proposals exhibited by the State Government or Council.

The decision of the Department of Planning and Environment to exhibit simultaneously two proposals for State Significant Development may comply with the black letter of the EP & A Act; but it is certainly contrary to the spirit of the draft Community Participation Plan.

For this reason, CEN is providing a strategic response to the St Hilliers development application for 26 Mann Street, Gosford at this time. CEN reserves the right to provide a more detailed submission in the 28 days following the close of submissions for the other State Significant Development, the former Kibbleplex site.

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 considers that the proposed development does not comply with clause 8.4(4) of the SEPP because:

- The recommendations of the Design Review Panel have not been published in the EIS.
- The amount of floorspace provided for the purpose of commercial premises is not satisfactory.
- The applicant has only provided an outline of how the buildings will meet the minimum building sustainability and environmental performance standards.

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 a number of issues (under cl.8.3(4)).

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.

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 Gosford Public School site should be given to the Independent Planning Commission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Conroy', is displayed on a light beige rectangular background.

Michael Conroy
Executive Member
Community Environment Network