



6<sup>th</sup> July 2009

The General Manager,  
Port Stephens Council.  
PO Box 42,  
Raymond Terrace, NSW 2324

**FURTHER SUBMISSION IN REGARD TO DEVELOPMENT APPLICATION FOR LOTS 2 & 3 DP 502820, No 74-80 Gan Gan Road, Anna Bay**

**FILE NO. 16-2009-160-1**

This submission is made on behalf of the Tomaree Ratepayers and Residents Association and follows earlier submissions dated 16 April and 26 June 2009. We have had the opportunity to inspect the Council file on an earlier Development Application for the same land, and believe it contains relevant information which Council should take into account in its consideration of the current DA.

DA No 16-2003-79-1 was a proposal from a person we believe to be connected with the current DA, for a 'tourist development' on land at Gan Gan Rd, Anna Bay including Lot 3 DP 502820, which is also included in the current proposal. The DA considered in 2003-04, was determined by Port Stephens Council on 29 September 2004 by refusal of consent. Four reasons were given for the refusal, namely:

- “1. The Department of Infrastructure, Planning and Natural Resources have refused to issue concurrence.
2. The proposal is inconsistent with Clause 44 of the LEP 2000 as the development is likely to have a significant impact on the visual amenity of the locality.
3. The proposal is inconsistent with Port Stephens Urban Settlement Strategy and Anna Bay Urban Management Plan.
4. The proposal is inconsistent with the objectives of the Rural 1(a) Agricultural Zone.”

We believe that reasons 1, 3 & 4 are directly relevant to the current application as they are matters of general context, and we address each of them below. Reason 2 was specifically related to the particular proposal, and we accept that the current proposal needs to be considered on its merits - our June submission included comments on its visual impact.

## Department of Planning views

We refer to the letter from the (then) Department of Infrastructure, Planning and Natural Resources to the General Manager of Port Stephens Council dated 29 August 2003.

The letter explains that the Director General of the Department of Infrastructure Planning and Natural Resources declines 'concurrence' with the application, which we take to mean objection to the DA. The letter spells out several grounds for objection, and makes recommendations to Council.

The grounds for objection include:

- a. Inconsistency with the Coastal Design Guidelines for NSW, the adopted Port Stephens Urban Settlement Strategy and the Council's (then draft) Anna Bay Urban Management Plan and Guidelines.

We understand that the first two of these documents remain in effect, while the Council has now adopted an Anna Bay Town Plan. The latter Plan does not however materially change Council's intentions for the site in question, which remains zoned 1(a) Rural Agriculture in the Port Stephens Local Environment Plan 2000.

While one of the reasons for the inconsistency appears to have been the proposed height of the buildings (5 storeys), other reasons, such as the recommendation for retention of a blurred boundaries between the natural and built environments and *small scale* eco-tourism facilities (our emphasis), are we suggest equally relevant to the current application.

- b. Concerns about sand drift hazard and the Department's technical assessment that the proposed development could result in future unrealistic demands on the NSW government to fund mitigation control measures *that may ultimately be unachievable* (our emphasis). This assessment was apparently in conflict with the assessment by the applicant's consultant.

We note that the Statement of Environmental Effects (SEE) accompanying the current application includes an assessment by the applicant's consultants that proposed works are "adequate to address the nuisance of wind blown sand onto the site" (SEE 4.5.4). We submit that in light of the Departments disagreement with the 2003 application on this issue that further independent assessment is required.

- c. Concerns that the proposed strata titling and sale of the proposed units as investment units raises the possibility of permanent residency, which is inconsistent with the Settlement Strategy. The difficulties of Council being able to control the long-term use of the units are highlighted.

We note that the current application also envisages strata titling, and that this issue therefore remains.

The Department's overall conclusion on the 2003 application was that it raised "wider strategic issues which need to be addressed by Council *prior to a development proposal of this nature being considered*" (our emphasis), and required the Council to revisit its Settlement Strategy and Areas Plan for the Anna Bay locality and to prepare a Coastal Management Plan for the locality. The Department's views were confirmed in a letter to Doug Sneddon Planning Pty Ltd dated 10 February 2004, in which it expressly stated:

"In any further submission from the Council to the Department seeking support for a similar or revised application, the Department will expect the Council to clearly articulate the reasons for its support and provide documentation demonstrating that the proposal is consistent with the Council's Settlement Strategy, the Anna Bay Urban Management Plan and the NSW Coastal Policy."

We cannot identify anything that has transpired since 2003, which offers any support for 'a development of this nature' (which is what this application is for). On the contrary, the significant relevant changes in the planning framework since 2003, which we list below, all support the undesirability of significant development on land south of Gan Gan Rd and east of the Anna Bay town centre.

The **Lower Hunter Regional Strategy**, adopted by the State Government in October 2006, identifies Anna Bay as a proposed urban area with boundaries to be defined through local planning, but does not otherwise go into the level of detail that would be helpful in considering this application.

The **State Environmental Planning Policy 71 – Coastal Protection** was adopted by the State Government in 2002 and last modified in 2005. We have already indicated, in our June submission, why we consider the proposed development to be contrary to a number of the aims set out in Clause 8 of SEPP 71. We note that Clause 13 of SEPP 71 expressly states that:

"A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect."

We submit that this re-inforces the need for Port Stephens Council to assess this application on its merits in relation to its 1a Rural Agriculture zoning without being influenced by existing approvals on adjacent 1a zoned land or by its proximity to a 2a Residential zone.

We assume that the **Port Stephens Community Settlement and Infrastructure Strategy 2007** (CSIS) supercedes the Urban Settlement Strategy referred to by the Department in 2003. The CSIS identifies a 'strategic direction' for Anna Bay as 'New neighbourhood and edge of town' residential development to accommodate 600 new lots (Table 10) but we assume that the land availability for this expansion is provided for in the subsequent Anna Bay Strategy and Town Plan which is now a part of the CSIS (see below). This 'strategic direction' is therefore not relevant to this application, except insofar as Council's difficulty in preventing permanent residency in strata titled 'tourist' units (referred to above) would potentially undermine the planned provision for future population growth in other areas.

The Sustainability Principles and Criteria in the CSIS include:

"Natural and rural environments across the LGA will be protected through the application of the transect (Figure 30) and not allowing inappropriate development of Class 1, 2 and 3 lands (Figure 17)." (P30);

"Tourist development in natural or rural scenic areas should be located and designed and be of a scale that is sympathetic to the desired character of the locality and the objectives of the land use zone. Such development shall not be visible from transport corridors identified in Figure 45. (P41) (Gan Gan Rd is such a transport corridor), and

"Tourism activities shall respect the environment on which they rely. This includes the operation of tourism activities and the design and appearance of tourism facilities (P48).

We submit that the proposed development is contrary to all three of these principles.

The Implementation section of the CSIS (Part G) includes the following provisions in relation to land not identified for development in Parts D & E (the subject land is not so identified):

"Greenfield land not physically attached to existing urban-zoned land and located on a transport corridor identified for the purposes of this Strategy in Figure 45 will require a minimum of 50 hectares of developable land excluding land required for bushfire hazard buffers and passive open space including wetland and riparian buffers." (G3.2), and

“Rezoning requests for land not strategically identified for development will require a Local Environmental Study (L.E.S) to be prepared. The LES will be prepared by Council and paid for by the proponent in accordance with Section 57 of the Environmental Planning and Assessment Act 1979.”  
(G3.4)

We submit that the subject site of the current proposal, which has an area of 4.3 hectares) clearly does not meet the criterion in G3.2 and also, as we said in our June submission, that the appropriate process for the applicants would involve a re-zoning application and an L.E.S.

**The Anna Bay Strategy and Town Plan**, adopted in December 2008, leaves the land subject to this application zoned as 1(a) Rural Agriculture and does not include it in areas identified for proposed new land uses. It is not even, in the final adopted plan, marked as an ‘Investigation Area’, despite having been proposed as such in earlier drafts.

No Coastal Management Plan has been prepared for the Anna Bay/North Stockton Bight area, despite the Department’s recommendation, although the Anna Bay Strategy and Town Plan states that there is a need for a coordinated approach to the management of the Stockton Dunes, of which this land clearly forms part (Constraints on development - 4.5).

However, the ‘Strategic Directions’ in the Anna Bay Strategy and Town Plan does include:

“A green corridor will enhance the entrance to Anna Bay from the east and west on both sides of Gan Gan Road. Development in these areas must maintain a green entrance to the town (5.2 1.b), and

“Vegetation between Gan Gan Road and the Stockton Sand Dunes will be maintained or planted to provide a visual buffer between the coastline and the town. (5.4 1.b).

We question how the proposed development, with a relatively dense built form and only a narrow landscaped strip along Gan Gan Rd, can be consistent with either of these ‘Strategic Directions’.

## **Conclusion**

To summarise, we submit that Council must consider the history of this site, including the previous refusal of the 2003 DA and the views at that time of the Department of Infrastructure, Planning and Natural Resources, which declined to issue concurrence. We further submit that consideration of the planning instruments referred to by the Department, and subsequent instruments, all support our objections set out in our submission dated above.

Yours sincerely,

R.A Young, Chairman,

Tomaree Residents and Ratepayers Association.

