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## **CLAUSE 5.28 VARIATION REQUEST**

### **EXCEPTION TO HEIGHT OF BUILDINGS CLAUSE 5.25 OF STATE ENVIRONMENTAL PLANNING POLICY (PRECINCTS – REGIONAL) 2021**

Lot 1 DP 17128  
Lots 24 & 25 Sec 3 DP 1591  
182-186 Gertrude Street North Gosford

Prepared on behalf of Lindfield Group Pty Ltd  
October 2023

This submission has been prepared by  
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*Director*



Author	Version	Date
SF	1	29/11/2022
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## 1. Introduction

This written justification has been prepared pursuant to clause 5.28 of State Environmental Planning Policy (Precincts – Regional) 2021 (SEPP (Regional) 2021) to seek an exception to clause 5.25 (Height of Buildings) associated with a development application for a Residential Flat Building at 182-186 Gertrude Street North Gosford.

I rely upon:

- The architectural plans (Rev C) and design verification statement prepared by Texco Design Pty Ltd and other supporting documents accompanying the development application.
- PS 18-003 – Department of Planning and Environment (Revokes PS17-006 (December 2017))
- Varying Development Standards: A Guide August 2011 - NSW Department of Planning & Infrastructure.

## 2. The Site and Surrounds

The legal description of the subject site is Lot 1 DP 17128 and Lots 24 & 25 Sec 3 DP 1591, 182-186 Gertrude Street North Gosford. The site is a consolidation of three allotments and has an area of 1808m<sup>2</sup>. The consolidated site is rectangular in shape and has a frontage to Gertrude Street of 45m (see **Figure 1**). The site contains a 7.5 metre elevational drop from Gertrude Street in the east to the western rear boundary, see **Figure 2**. The site is located on the western side of Gertrude Street and is surrounded by a mix of low density single residential dwellings to the east, south and west and a medium-density residential development to the north. The wider locality is characterised by a prominence of medium and high-density residential developments, with many single dwelling allotments being redeveloped consistent with the high density Gosford City Centre planning controls under Part 5 of SEPP (Regional) 2021.

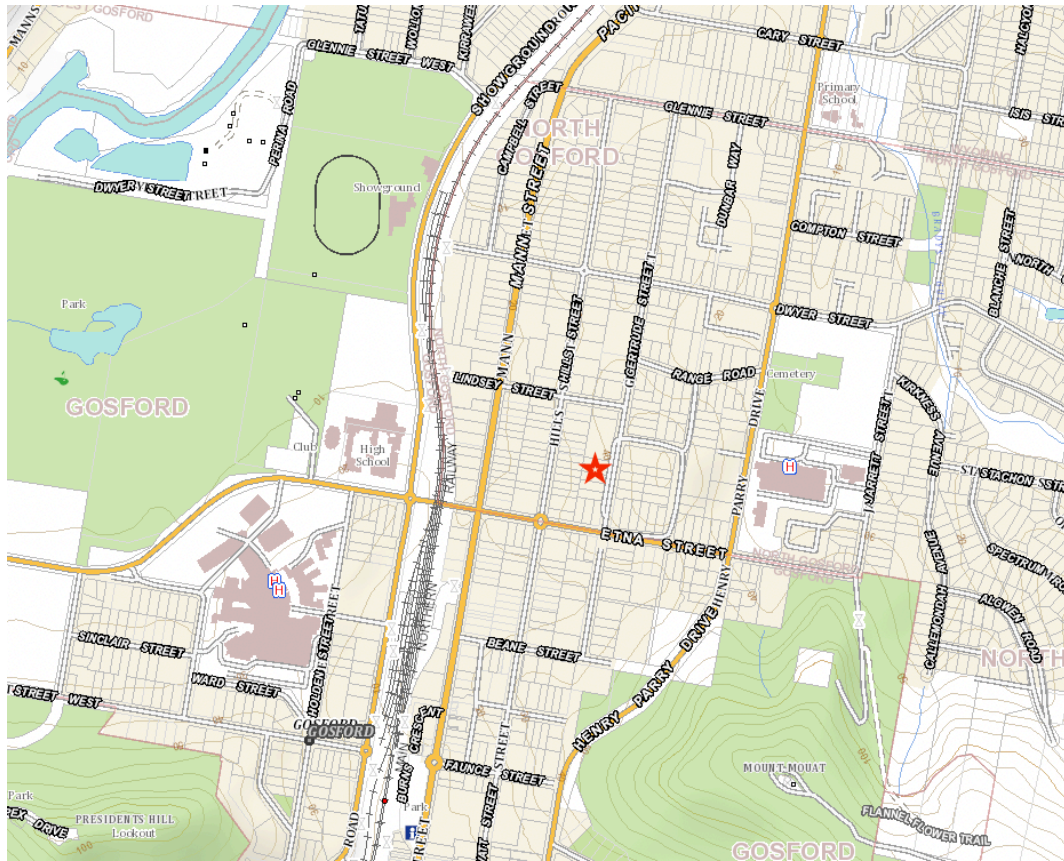


Figure 1 Site Location

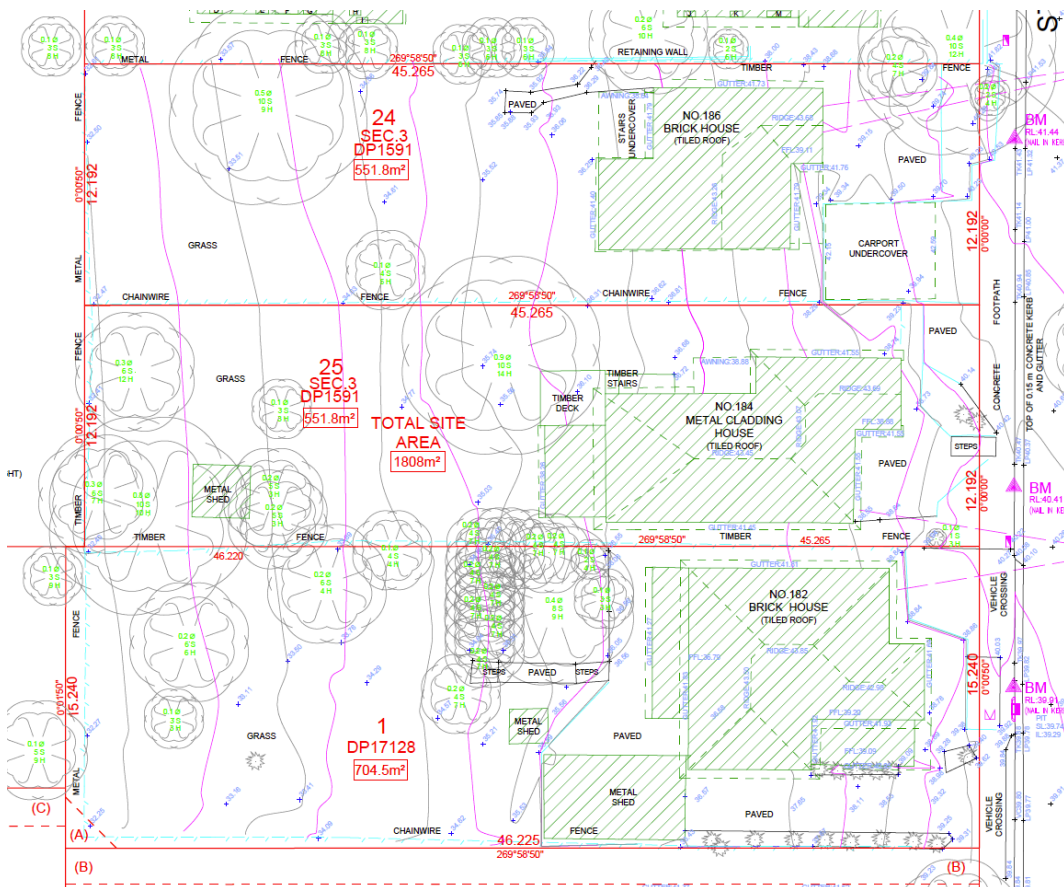


Figure 2 Survey Extract





**Figure 3 Aerial view of site and surrounds**



**Figure 4 Oblique aerial view of site and surrounds**





**Photo 1 View of existing dwelling at 182 Gertrude Street**



**Photo 2 View of existing dwelling at 184 Gertrude Street**



**Photo 3 View of existing dwelling at 186 Gertrude Street**

### **3. Matters to be Considered under Clause 5.28**

The proposed development does not meet the maximum building height standard. Accordingly, the application relies on a written request to vary the standard pursuant to clause 5.28 of SEPP (Regional) 2021 which states:

*5.28 Exceptions to development standards*

*(1) The objectives of this section are as follows—*

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this section, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this section does not apply to a development standard that is expressly excluded from the operation of this section.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*



*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless—*

*(a) the consent authority is satisfied that—*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subsection (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Secretary must consider—*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

*(6) Development consent must not be granted under this section for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*

*(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*Note—*

*When this Chapter was made it did not include all of these zones.*

*(7) After determining a development application made pursuant to this section, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subsection (3).*

*(8) This section does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) section 5.32,*

*(ca) sections 5.46(5), 5.52 and 5.53*

It is noted that Clause 5.28 of the SEPP is the equivalent of Clause 4.6 of the Standard Instrument LEP as referenced in Section 4 below.

## 4. The Approach

As detailed in *Initial Action Pty v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 ('Initial Action') at [14] two opinions of satisfaction are required: The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii).

Firstly, that the Applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). The matters at sub cl (3) are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters: cl 4.6(4)(a)(i) of LEP 2013.

Secondly that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out: cl 4.6(4)(a)(ii) of LEP 2013. The common ways in which an Applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] ('Wehbe').

Namely, that:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe test 1);
2. the underlying objective or purpose of the standard is not relevant to the development so that compliance is unnecessary (Wehbe test 2);
3. that the objective would be thwarted if compliance was required, so that compliance is unreasonable (Wehbe test 3);
4. that the development has virtually been abandoned or destroyed by the Council's actions in departing from the standard (Wehbe test 4); or
5. that the zoning of the land is unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary (Wehbe test 5).

In *Initial Action*, Preston CJ notes that the preceding five ways to demonstrate compliance is unreasonable or unnecessary are not exhaustive, and it may be sufficient to establish only one way (at [22] of *Initial Action*).

This clause 5.28 request demonstrates that:

- the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)),
- the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))
- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)), and
- there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

## 5. The Facts

*i) What is the name of the environmental planning instrument that applies to the land?*

State Environmental Planning Policy (Regional) 2021 applies to the land.

*ii) What is the zoning of the land?*

The land is zoned R1 General Residential under the provisions of SEPP (Regional) 2021.

*iii) What are the objectives of the zone?*

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is compatible with the desired future character of the zone.
- To promote best practice in the design of multi dwelling housing and other similar types of development.
- To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.

*iv) What is the development standard being varied?*

The development standard to be varied is the building height requirement.

*v) Under what clause is the development standard listed in the environmental planning instrument?*

The building height requirement is detailed under Clause 5.25 of SEPP (Precincts – Regional) 2021.

*vi) What are the objectives of the development standard?*

- (a) to establish maximum height limits for buildings,
- (b) to permit building heights that encourage high quality urban form,
- (c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,

- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity,
- (e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,
- (f) to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.

vii) *What is the numeric value of the development standard in the environmental planning instrument?*

The maximum height for development is mapped as 'P' which is a maximum height of 18 metres.

viii) *What is proposed numeric value of the development standard in your Development Application?*

The proposed development provides the following building height in accordance with the Building Height Map specified in Clause 5.25(2) (as taken from Drawing 018 Rev A Height Blanket (reproduced as **Figure 5**).

Height requirement	Proposed height	Compliance
18m	21m at front of the building (17%)	No
	23.8m at centre of building (32%)	No
	21m at rear of building (17%)	No

The proposed development seeks a variation of approximately 3m at the front and rear of the building and up to 5.8m at the centre of the building.

ix) *What is the percentage variation (between the proposal and the environmental planning instrument)?*

The maximum percentage variation sought under this application occurs in the centre of the building and is 32%. The front of the building facing Gertrude Street exhibits a maximum non-compliance of 17%, as does the rear of the building.



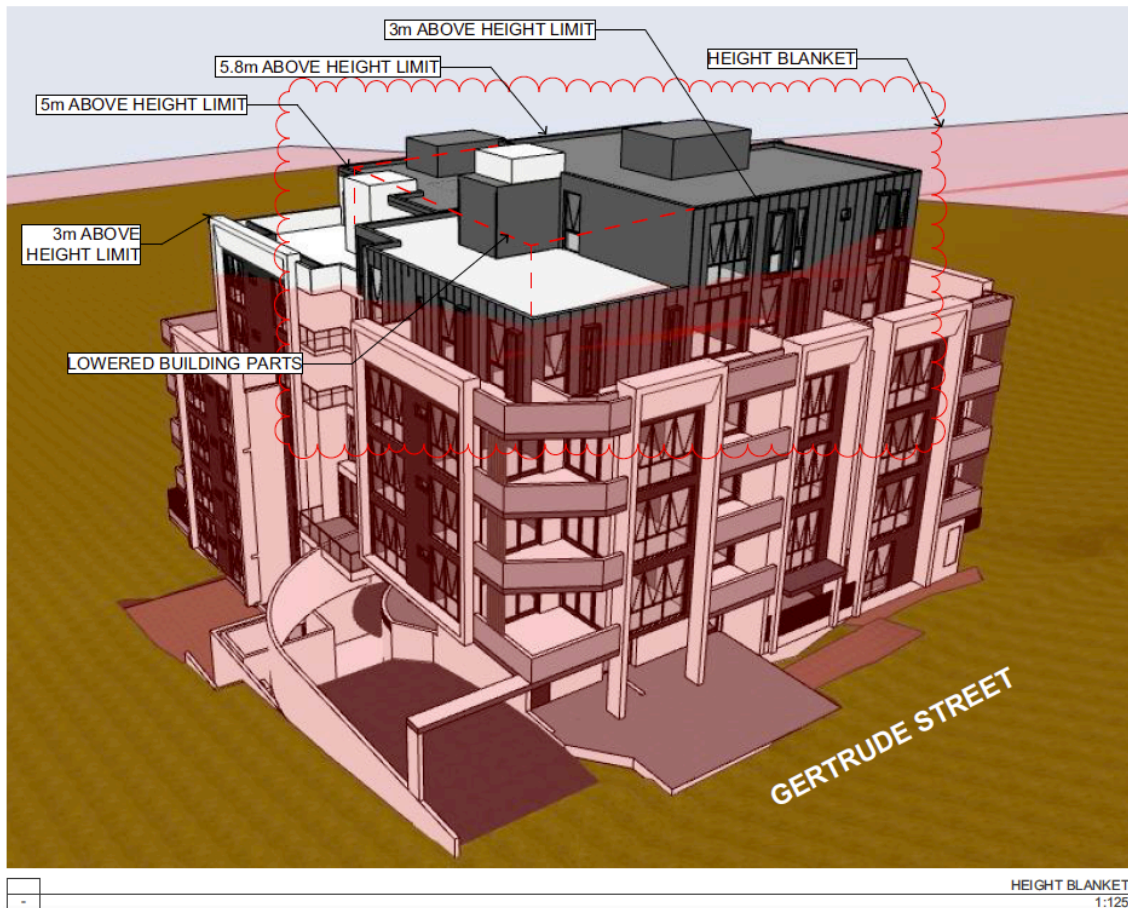


Figure 5 Extract of Drawing 018 Rev B showing height blanket and extent of non-compliance

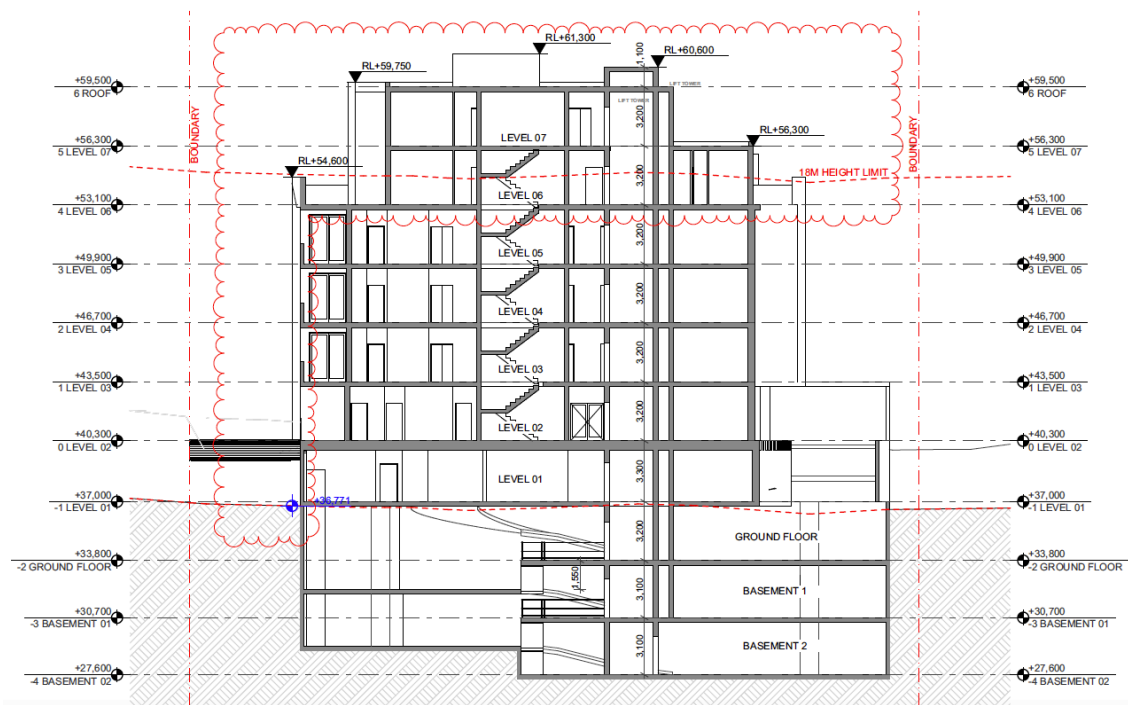


Figure 6 Extract of Drawing 302 Rev C showing height non-compliance through Section B

## 6. The Submission

### 6.1 Consistent with Objective of the zone

The proposed development will be consistent with the objectives of the zone (clause 5.28(4)(a)(ii)) on the following basis:

*a. To provide for the housing needs of the community.*

The proposal provides a new housing development with a variety of living arrangements to suit the growing demographic within the Gosford City Centre. The proposed residential flat building contributes 39 apartments to the locality which helps to increase the availability of residential accommodation within the residential zone. The site's close proximity to the Gosford Railway Station, makes it an ideal location for housing as public transport is easily accessed. In addition to this there are a variety of public services, educational establishments and commercial premises within close proximity which allows for access, employment and usability of these services by residents to meet their day to day needs.

*b. To provide for a variety of housing types and densities.*

The proposal comprises 39 apartment units across eight habitable floors, and a gross floor area (GFA) of roughly 3615.86m<sup>2</sup>. Given a site area of around 1808m<sup>2</sup>, this amounts to a floor space ratio (FSR) of 1.99:1, which complies with the FSR 2:1 permissible for this site under Chapter 5 SEPP (Regional) 2021. The development is therefore well within the appropriate scale and density for the site, as envisioned for the future of the Gosford City Centre. The proposed residential flat building provides a mix of studio (2.6%), 1 – bed (10.2%), 2-bed (64.1%) and 3-bed (23.1%) units. Six of these units are adaptable housing suitable for persons with a disability. The proposed development provides variation to the floor plans to allow flexibility of use for the residents.

*c. To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Not applicable

*d. To ensure that development is compatible with the desired future character of the zone.*

The proposed development has been designed generally in accordance with the built form controls set out by Chapter 5 SEPP (Regional) 2021 and is of a form that is compatible with the desired future character of the area.

The proposed development has considered the existing and also future desired development outcome for the locality in the design. The proposed development will move away from the older style residential development typically found along this stretch of Gertrude Street and will provide a unique development for a period of time whilst the surrounding allotments are also redeveloped. This ongoing redevelopment will create a new streetscape character that is more modern and in alignment with the future desired development outcome planned for the locality.

The Land and Environment Court has established a planning principle for considering the compatibility of development with the surrounding area in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, as detailed below:

*Planning principle: compatibility in the urban environment*

*22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

*23 It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.*

*24 Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

*25 The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.*

*26 For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character.*

*27 Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*

*28 Front setbacks and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. Setbacks from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.*

*29 Landscaping is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy*

*trees define the character, new developments must provide opportunities for planting canopy trees.*

*30 Conservation areas are usually selected because they exhibit consistency of scale, style or material. In conservation areas, a higher level of similarity between the proposed and the existing is expected than elsewhere. The similarity may extend to architectural style expressed through roof form, fenestration and materials.*

*31 It should be remembered that most people are not trained planners or urban designers and experience the urban environment without applying the kind of analysis described above. As people move through the city, they respond intuitively to what they see around them. A photomontage of a proposed development in its context provides the opportunity to test the above analysis by viewing the proposal in the same way that a member of the public would.*

The character of the area includes a number of considerations including the characteristics of the site and surrounding land, and the existing and likely future development expected in the area having regard to the applicable zoning and development controls. The following observations are provided in relation to the existing character of the site and surrounding area:

- The development site is comprised of 3 standard lots, (Lot 24 & 25, DP1591, and Lot 1, DP 17128), all located to the West of Gertrude Street, with a combined street frontage of 46m. Each lot contains a dwelling. The site has a site area of 1808m<sup>2</sup>, and when consolidated would achieve a relatively square shape. The site falls sharply from the street level, with an approximate 7.5m of elevational drop to the rear, presenting a significant design challenge for the development.
- Primary vehicular access to site is provided via an access road that branches parallel to Gertrude Street, which acts to separate opposing lanes of traffic. The access road for north bound traffic is at a lower level than Gertrude Street which carries south bound traffic. This change in level is due to the steep topography in this location. The access arrangements result in a quiet, protected and domestic nature to the streetscape.
- The development site is situated within the vicinity of the Gosford City Centre, approximately 1km North of the Gosford Railway Station, and two streets east of Gosford's central commercial corridor along Mann Street. The site is located within the City North area defined in the Gosford City Centre DCP and chosen, under SEPP (Regional) 2021, to promote economic and social revitalisation.
- In a broad context, the site is located within a pocket of R1 zoning, straddled between the business precinct running North-South along Mann Street, a light industrial zone running East-West along Glennie Street to the north of the site, with multiple areas of parks, reserves, golf clubs and creeks nearby. Gosford City Centre presents a variety of retail and commercial strip along Mann Street, which is adjacent to the Railway station corridor.
- While there are no direct neighbouring developments of a similar scale or recency along this length of Gertrude Street, there are other examples of residential flat building (RFB) developments in the immediate locality, that share the same R1 zone and 18m height limit, including:



**Photo 4**      **No. 208-210 Gertrude Street (4 storey high apartment building that is a brick finished contemporary aesthetics),**



**Photo 5**      **No. 212-220 Gertrude Street (3-storey apartment complex, with multiple building blocks)**





**Photo 6**      **No 226 Gertrude Street (8 storey residential flat building constructed on the corner lot of the intersection between Gertrude Street and Dwyer Street).**



**Photo 7      No. 69-71 Hills Street (8 storey residential flat building)**



**Photo 8      No. 70 Hills Street (8 storey residential flat building)**

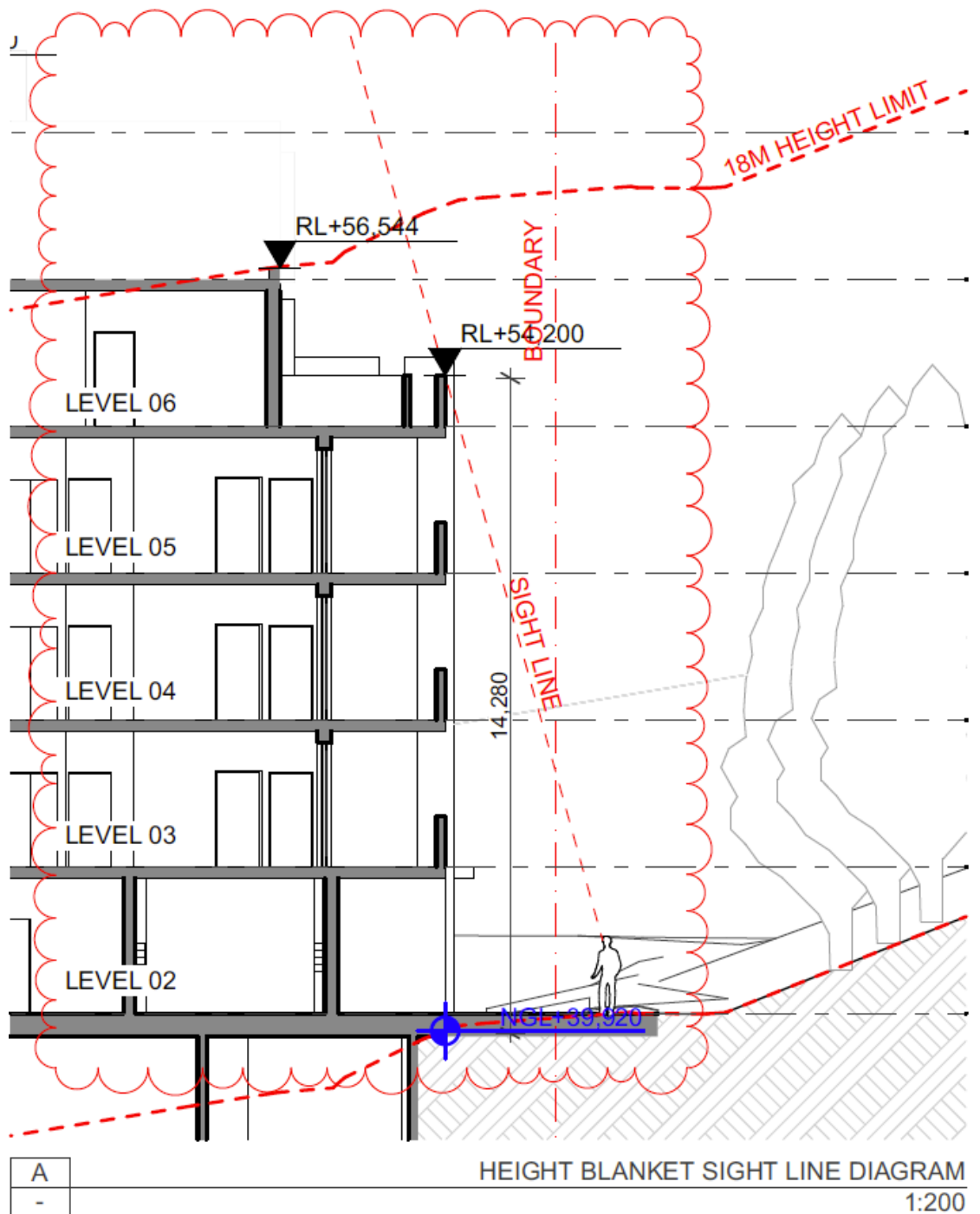




**Photo 9 62 Hills Street Approved Elevation (8-9 storey residential flat building currently under construction)**

The surrounding area is also in transition, with planning controls for Gosford City Centre significantly increasing the development capacity of the area. The existing character is therefore best described as mixed, with different land use zones and activities, and a range of different medium density residential development forms. The majority of sites retain single dwellings and are yet to be developed to their full potential as allowable under the current planning controls. There are a number of older style medium density residential, which are generally 3-4 storey (**Photos 4-5**), and there are also a number of residential flat buildings of 7-9 storeys as shown in **Photos 6-9**. These more recent developments are indicative of what can be expected when the remainder of the area is developed under the current planning controls. It is noted that development potential for the immediate surrounding properties to the north and east are 6 storeys, to the south is 8 storeys and to the west is 4 storeys (noting the topography on the eastern side of Gertrude Street results in this land being 8-10 metres above the subject site).

As referred to in the Court's planning principle, there are situations where planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. The proposal presents as a 6 storey building to the street with the upper 2 storeys recessed beyond the pedestrian sight line as illustrated in **Figure 7** below.



**Figure 7** Sight Line with upper 2 storeys recessed beyond pedestrian view)

This presentation is consistent with what is envisaged under the planning controls for the site and with recent new development in the surrounding area. Furthermore, it will provide an appropriate transition to the adjoining site to the west which has an allowed height limit of 24 metres (or 2 storeys above this site).

This proposal will be a pioneer development for this part of Gertrude Street, and will present a strong precedent for quality urban design for future developments along the

neighbouring lots, ensuring the development contributes positively from a social and economic perspective to the community.

- e. *To promote best practice in the design of multi dwelling housing and other similar types of development.*

The proposed development has been designed in accordance with SEPP 65 – Residential Flat Buildings and the Apartment Design Guidelines. The design verification statement provides a detailed assessment of the development against the requirements.

The apartments have been designed with generous floorplans, reserving additional space to allow flexibility of use to suit a diverse range of needs and lifestyles. The proposed room mix features studio, 1 Bed, 2 Bed and 3 Bed apartments, reflecting the local demographic and market desirability of developments in North Gosford. The master bedrooms have been located facing North, with generous windows and views out into the canopies of the existing trees.

Each of the units feature a combined living/dining/kitchen area, as is desirable in the current market. This makes for a large combined volume for the collective use of the family, with visual connectivity between the various activities and sub-volumes within the family space. This connectivity extends out onto the balconies. Most of the kitchens have been provided with island benches, with sinks facing the living space. The living areas all feature a dual-aspect, with windows on at least two sides to promote cross-ventilation and makes a variety of vistas available to the inhabitants.

The balconies have also been located on the northern side of the living areas where possible, with the intention for these spaces to be sunny and useable throughout the year. The shade that the balconies provide over the living room doors below also provide a degree of shelter that promote their use through poor weather.

All the apartment units have also been afforded a degree of enclosed storage, and some have the potential for study corners to be incorporated as an extension of the living space.

Six out of the 39 apartment are assigned as adaptable units for future adaptation of higher accessibility standards. This allows a degree of flexibility for occupants of a larger age range and a broader spectrum of physical ability.

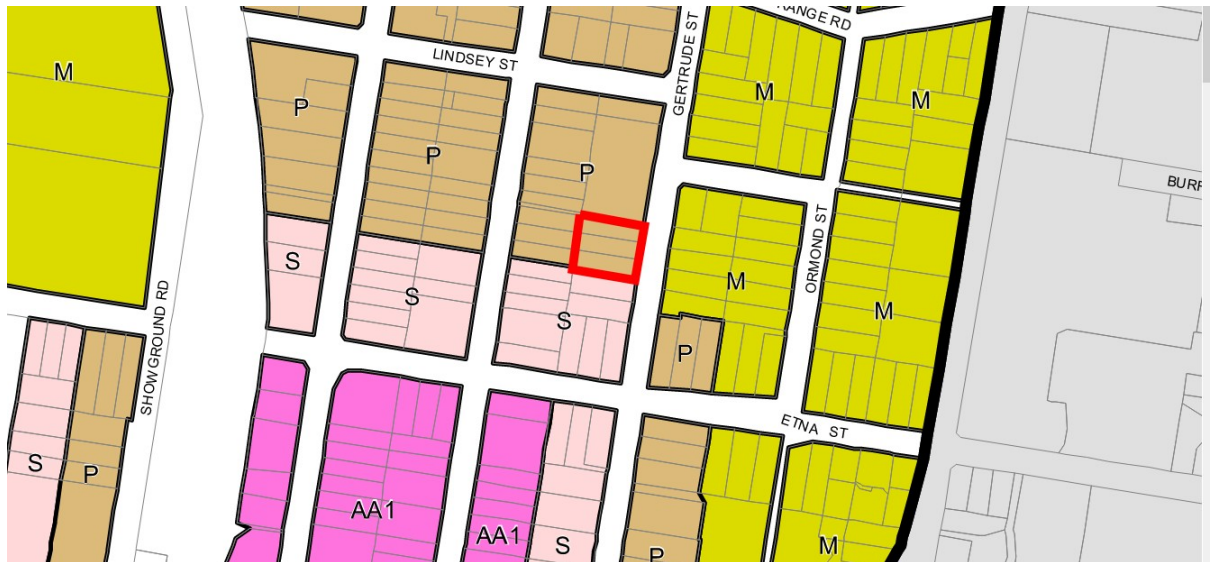
- f. *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.*

Not applicable

## 6.2 Consistent with Objective of the Development Standard

The proposed development will be consistent with the objectives of the development standard (clause 5.25(1)) on the following basis:

- a. *to establish maximum height limits for buildings,*



**Figure 8 Gosford City Centre Height of Buildings map showing the difference between the subject site (in red) and the adjacent land to the south (24m)**

The proposed development site is situated within an R1 zone, with a maximum building height of 18m. Given these planning controls, it is typically presumed that the site shall allow for a development of 6 storeys (assuming floor-to-floor heights of 3m each). It is with this massing strategy in mind, that the designer has proposed a six-storey massing facing Gertrude Street. This approach is compatible with the character of the area as established earlier in the submission that has identified residential flat buildings with the same height limit and zone with 7-9 storey construction.

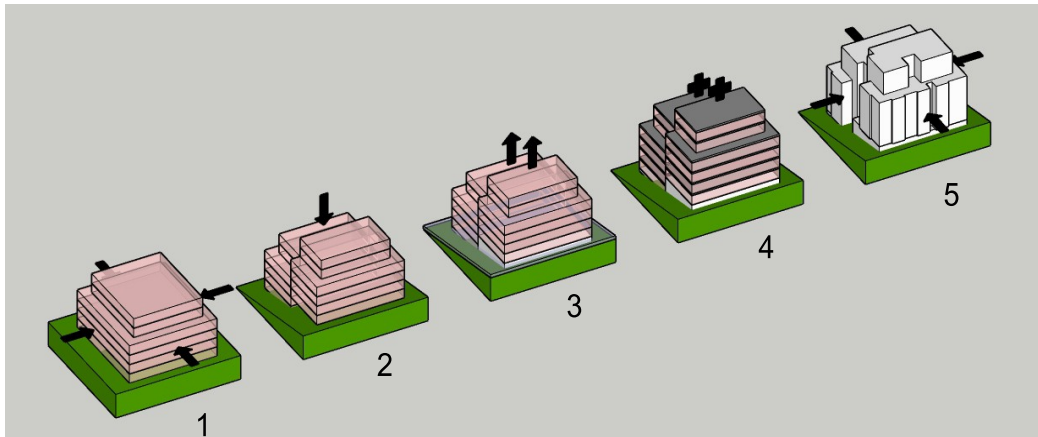
The non-compliance with the height limit is justified having regard to the topography of the site and the design response which has ensured the building connects to the streetscape and minimises impacts on neighbours, as much as is practical with a development of this scale in an area that is under transition. It is noted that Unit 702 on Level 7 has been removed to improve solar access to the adjoining property to the south. The design has avoided relying on sinking the building to allow for the 6 storeys as this would result in units below the street level, and of significantly lower amenity than what is provided under the adopted scheme. By siting the habitable levels at street elevation, a connection to the street is maintained which improves solar access, safety and security for residents as well as an improved built form presentation to the streetscape.

- b. *to permit building heights that encourage high quality urban form,*

The proposed residential flat building has been designed to provide street activation and engagement, whilst also taking into account the topography of the site and construction requirements. The development site has an 18m maximum building height, which is proposed to be exceeded by 3m at the front of the site. The height limit exceedance continues to the rear of the site, which is exacerbated by the 2 storey fall over the site. The design of the apartment building

considers the fall over the site, however it is impractical to match this fall in the building design. As a result of this the height exceedance extends to 5.8m in the centre of the building (noting the area nominated for communication structures beyond this height is excluded from the definition of building height).

A breakdown of the massing model is provided in **Figure 9** below to illustrate the designer's conceptual progression to the final massing.



**Figure 9 5-step massing model illustrating the following conceptual progressions to the final massing., as follows:**

- Step 1: starting with a 6-storey massing, with 6m setbacks to three sides, and a 3m setback to the front. The top two floors are set back a further 3m from each side.**
- Step 2: Splitting the building mass with the fall of the site.**  
**Stepdown is 2 storeys in height**
- Step 3: Raising the building above the flood water path**
- Step 4: Addition of constructional tolerance to the floor-to-floor heights**
- Step 5: Articulation and carving-out of massing to allow for balconies and division of massing to reduce visual bulk**
- Step 6: Lowering building parts to minimize its shadowing impacts to neighbours. Refer to architectural drawing 020 for detail (Figure 5 and 7 in this report).**

The building mass has been developed with generous setbacks to three sides, with a 3m front setback (and allowable 600mm variation for balcony's) to improve street activation and engagement, as per DCP requirements. The building mass further recesses, or sets back another 3m on all sides on the top two floors, creating a 4-2 division of street wall podium to upper terraces.

The large setbacks provides space to co-locate deep soil zones, landscaping areas, and communal open areas, to ensure a good amount of amenity is retained for the future tenants of this development. This approach sets a good precedent for all future developments along the street by way of an existing RFB character which is desired and duplicable.

The setbacks to the North and South side boundaries also help to mitigate overshadowing of the southern neighbouring lots (even taking into consideration their future development as a RFB of a similar scale). The development has been amended to remove Unit 702 to further reduce shadowing impacts to the southern neighbour. The design of this development has ensured that



future high density development on the neighbouring southern site is able to achieve compliance with the relevant access to sunlight provisions of the ADG as demonstrated in Drawing 013A. The design also alleviates any future overshadowing concerns over the subject site's ground level units from a future development of the northern neighbouring lots. The setbacks provide adequate building separation that ensures the visual amenity and privacy of the proposed building and future developments will not be compromised.

As referenced in Step 3 of the massing model shown in Figure 9, a minor floodwater management strategy of providing 500mm freeboard above the natural ground line adds to the height of the building at the entry point. Furthermore, in order to provide a for a 2.7m habitable ceiling height in compliance with ADG the design provides for a 3.2m floor to ceiling height which accounts for additional structural considerations and service tolerances during later constructional phases.

When considered in unison it is submitted that the breach of the maximum building height plane is warranted, and results in no major adverse impact overall.



**Figure 10** Streetscape perspective of proposed development

The aesthetic design of the proposal has been driven by the vision of a modern apartment, in a contemporary coastal character consistent with the newer developments centred around the central commercial corridor along Mann Street. This character deliberately eschews the post-war brick styling of residential flat buildings more commonly found around the quieter streets of Gosford, and is defined by a primarily white façade, with grey blocks, and timber trimmings/accents.

This palette is applied to the proposed development in the following manner: predominantly white portal frames and solid balcony upturns; dark grey infill within each of the portals, and a dark grey podium level to create a visually distinct and recessive massing; and occasional vertical timber battens for privacy screening (see **Figure 10**).

The built form, as discussed above, is defined by a 4-storey podium massing, and additional setbacks to all sides on the top two storeys, creating a 4-2 division of the six-storey street bulk

(see **Figure 11**). The massing of the podium level is further articulated via an alternating division of portal frames and balconies, creating a roughly three-bay façade, accentuating the verticality of the base. The portal frames are designed with a slanted soffit, and visually “frame” the large openings to bedrooms and living rooms. A framing element has also been provided over the driveway entry into the site, to lend a unifying visual element to the building entry.



**Figure 11** *In model view of the East elevation facing Gertrude Street. Note the removal of Unit 702 on the top floor, 4-2 division of the six storey massing and the three bay division of the lower podium.*

Viewed from the side (see **Figure 12**), the building also reads as two masses, with a one-storey drop/splits down the middle, which correlates with the slope of the site, and the negotiation of the ground level. The rear half of the building, centred around the western vertical circulation (lift and stair) core follows a similar 4-2 division of the podium and terrace massing



**Figure 12** *In model view of the Northern elevation of the proposed development. Note the one storey step down of the massing in the middle in response to the topography of the site.*

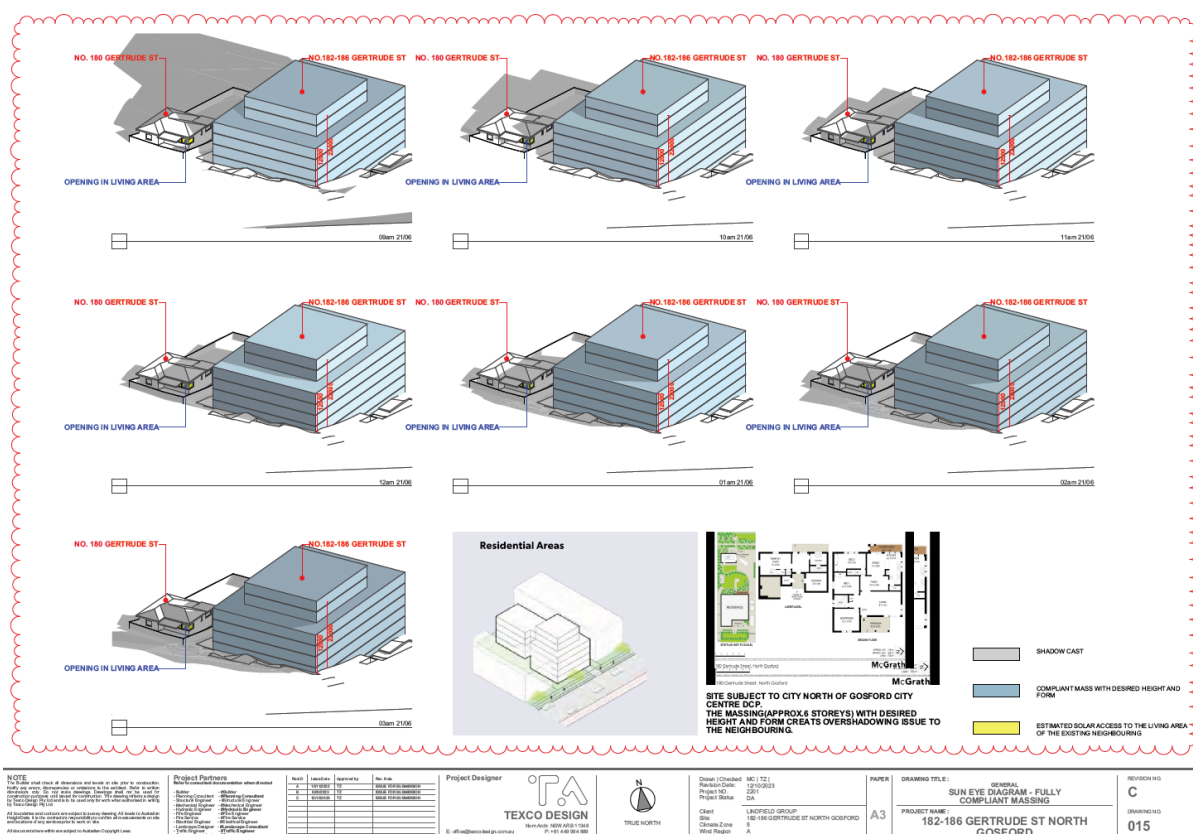


- The proposed development will not result in unreasonable overshadowing of the public domain or result in a loss of views or key vistas.

The development site has a favourable orientation, and the building mass has been designed to take advantage of solar access opportunities. 38 units achieve solar access to their primary living spaces and private open space throughout the year. Of these 30 units (77%) achieve at least 3 hours of direct sunlight between 9am to 3pm mid-winter 21 June, exceeding the 70% minimum. 8 units (20.5%) achieve less than 3 hours direct sunlight between 9am to 3pm mid-winter 21 June. Only one unit (2.5%) achieves no direct sunlight between 9am to 3pm mid-winter 21 Jun, in compliance with the maximum 15% of units allowable under the APG.

The orientation of the site means overshadowing of the southern neighbour at 180 Gertrude Street is unavoidable. As requested by the Department, the Applicant prepared the following additional architectural drawings in relation to shadowing impacts:

- Drawing 015 (**Figure 13**): to show the overshadowing issues to 180 Gertrude St caused by the compliant development massing as per ADG (noting this does not comply)



### Figure 13 Fully Compliant Massing Shadow Impacts

- Drawing 016 (**Figure 14**): to show the development massing that does not overshadow 180 Gertrude St, which is inconsistent with ADG massing and damages the streetscape.

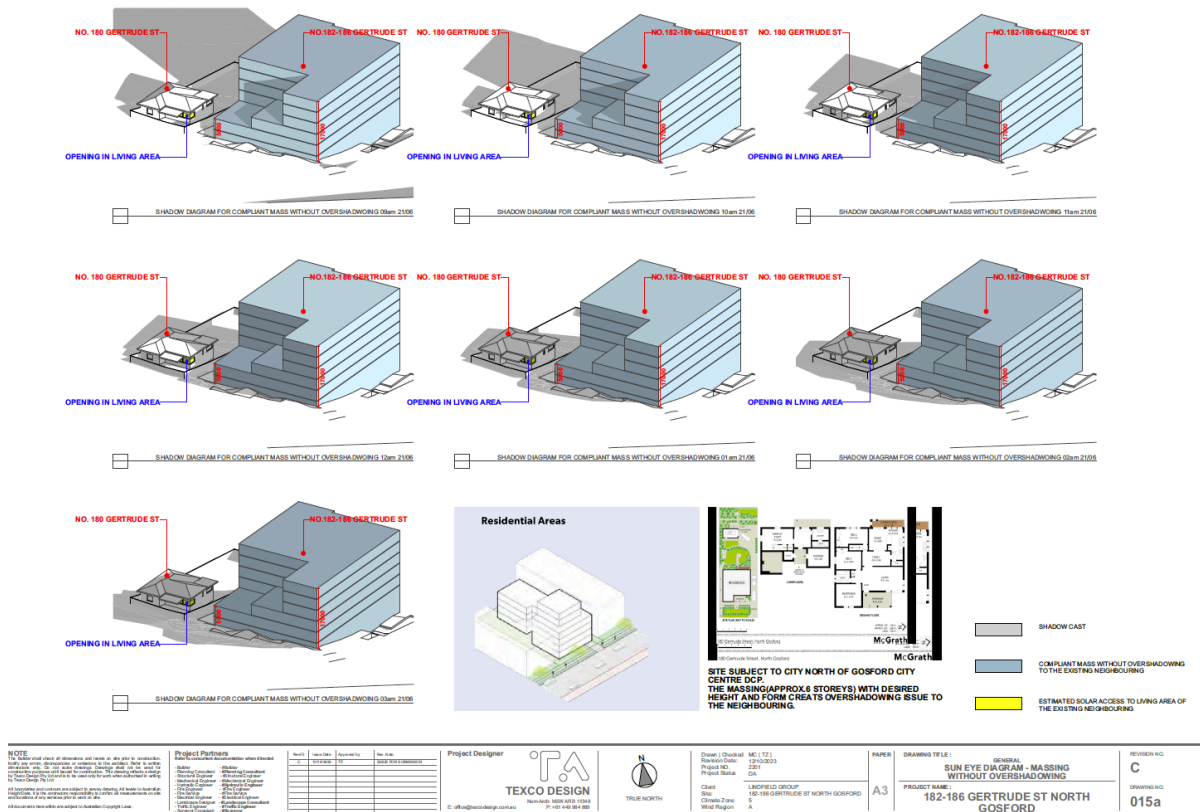


Figure 14 Massing without Overshadowing

Based on the above information, it is evident that a building design required to avoid the overshadowing issues to 180 Gertrude St creates significant streetscape issues with an imbalanced front façade to Gertrude Street. This building design is not desirable and would be inconsistent with the design guidelines outlined in the Gosford City Centre DCP. Notwithstanding, an effort has been made to reduce the shadowing impacts with the proposal being amended to reduce bulk from Level 7 through the removal of the southern unit together with reshaped balconies of Unit 406, 506 & 602. This combination of changes assists in minimising the shadowing impact to 180 Gertrude Street.

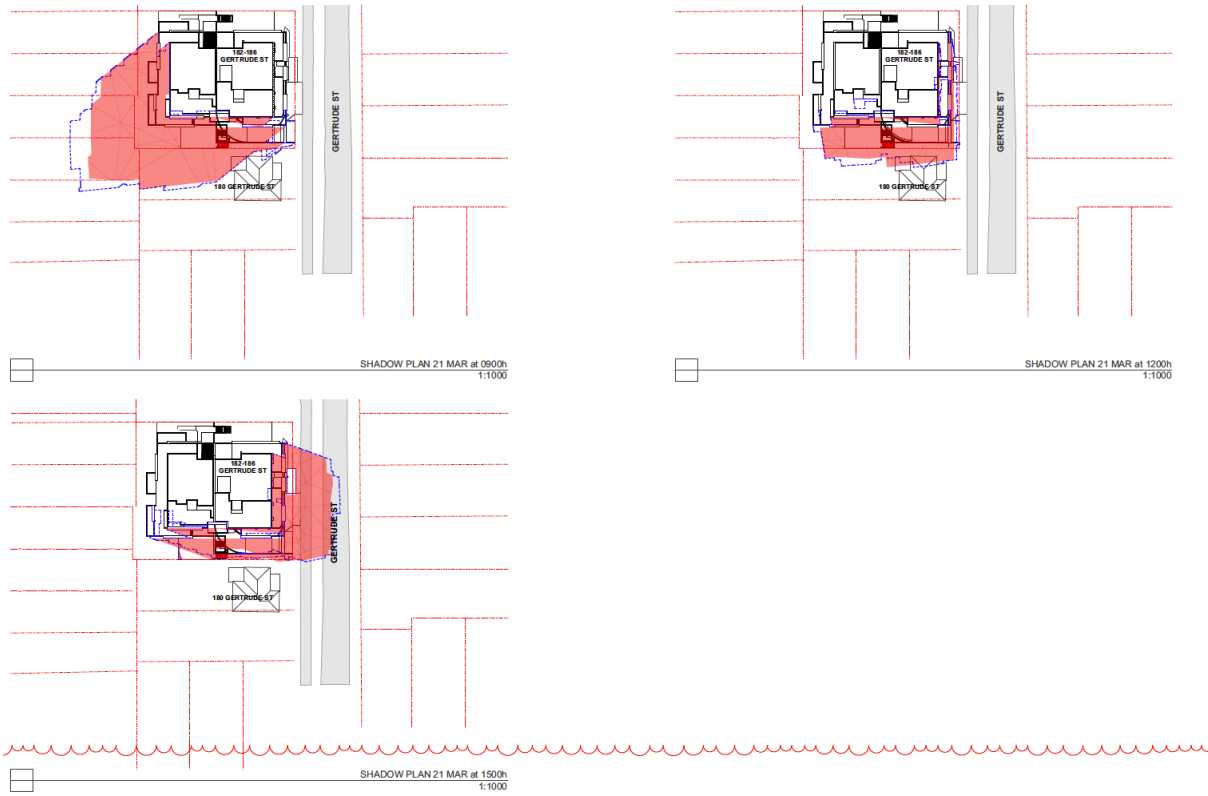
It is noted that the area is in transition and the existing single storey dwellings on neighbouring sites will be redeveloped for high density residential housing in the future. The design of this development has ensured that future high density development on the neighbouring southern site is able to achieve compliance with the relevant access to sunlight provisions of the ADG as demonstrated in Drawing 013A. (**Figure 15**)



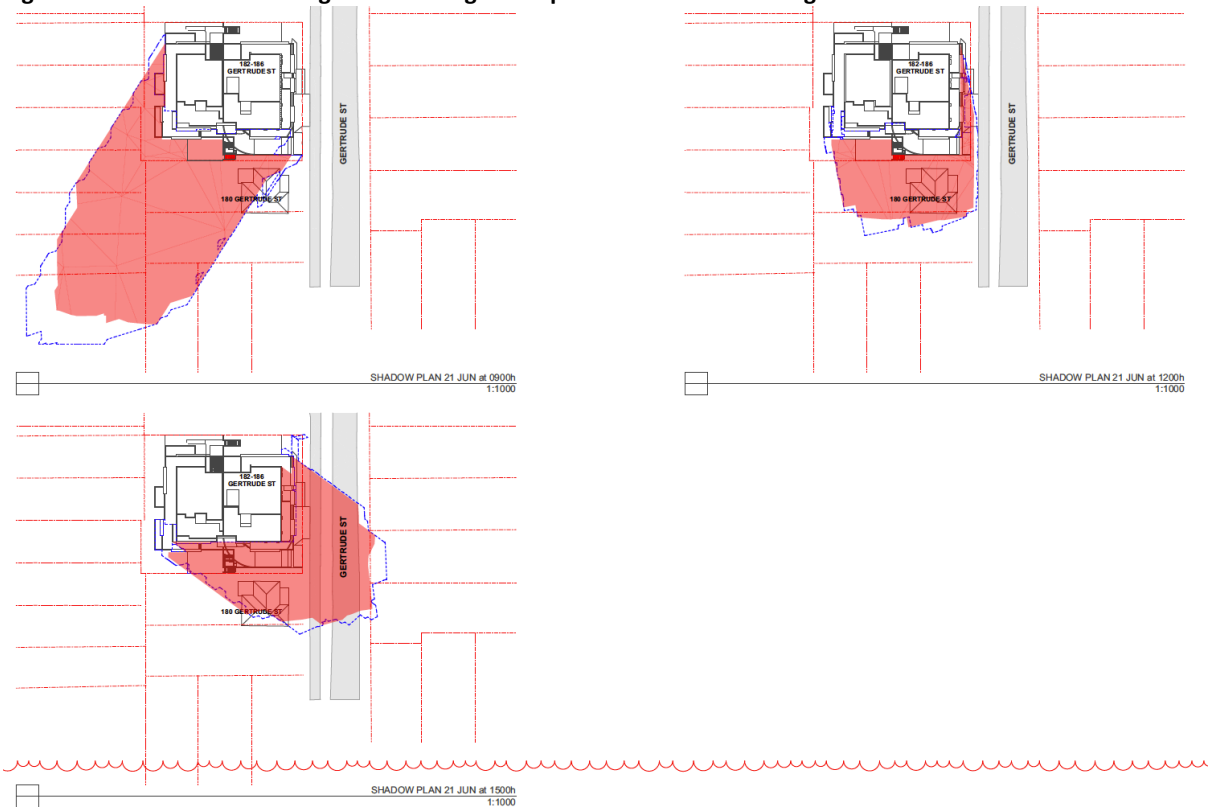
Figure 15 ADG Compliant Neighbouring Solar Access (redeveloped)

Updated shadow diagrams based on the amended design have been prepared for March (Figure 16), June (Figure 17), and September (Figure 18), to demonstrate the impact to the neighbouring dwelling to the south at 180 Gertrude Street.

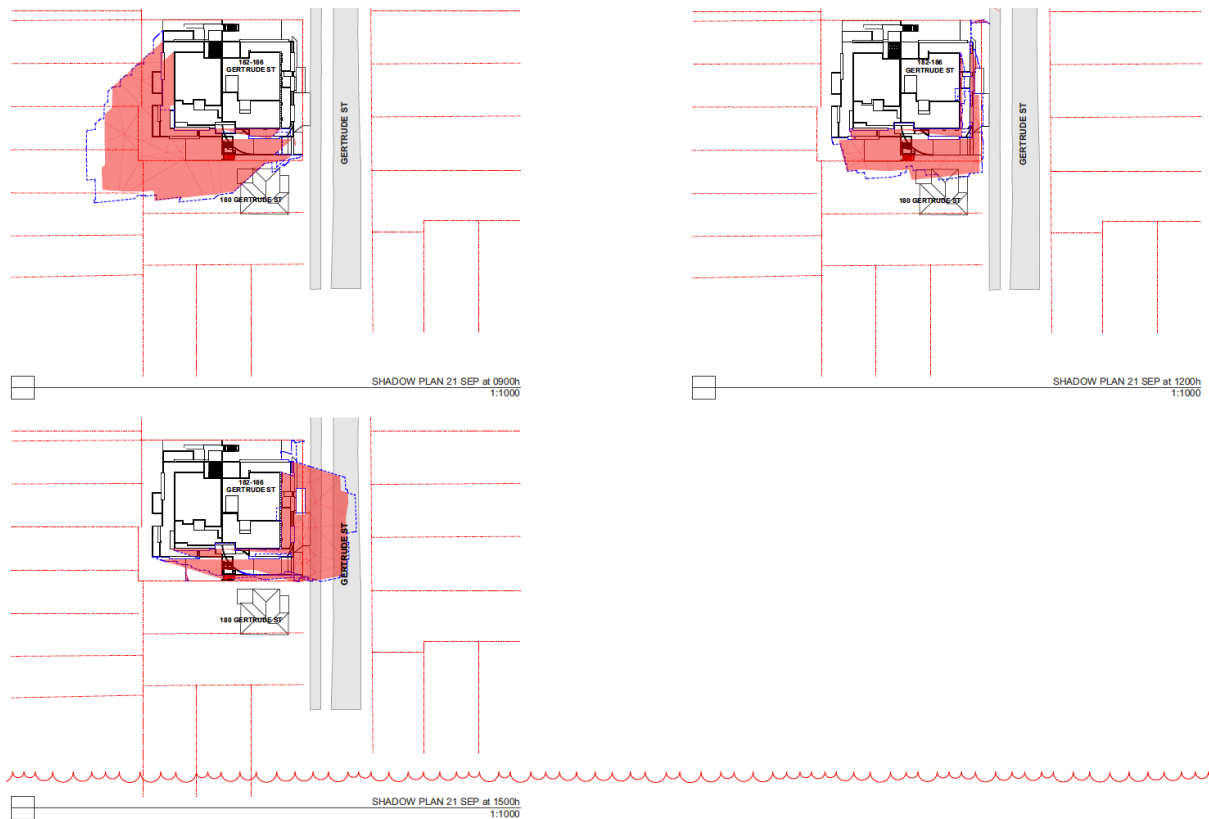
The proposed development will cause overshadowing of the southern neighbour. However, the favourable north south orientation of the site creates opportunity for the southern lot to obtain some solar gain to the front of their property in the morning, and some to the rear yard and rear windows in the afternoon which helps to mitigate the solar loss. The shadow diagrams demonstrate the overshadowing to be most severe at 12 noon on 21 June. The majority of the dwelling has solar access at 9am on 21 June and a large section of the dwelling will receive solar access from 3pm onwards on 21 June. The impacts in March and September are significantly less and reasonable solar access can be retained at these times.



**Figure 16 – March shadow diagrams showing the impact to the southern neighbour**



**Figure 17 – June shadow diagrams showing the impact to the southern neighbour**

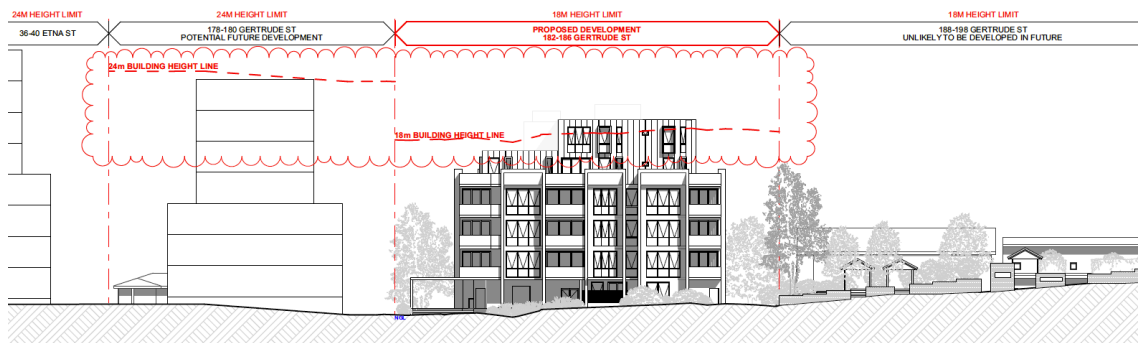


**Figure 18 – September shadow diagrams showing the impact to the southern neighbour**

On balance, it is submitted that the overshadowing impacts to the southern neighbour are not unexpected given the high density zoning and the future character of the area as dictated by the planning controls. The shadow impacts on the existing dwelling is a relatively short term issue which will be remedied by the redevelopment of the site in the future for high density housing. Satisfactory exposure to sun and sky is provided to public areas. With these considerations in mind it is submitted that the development is consistent with the above objective.

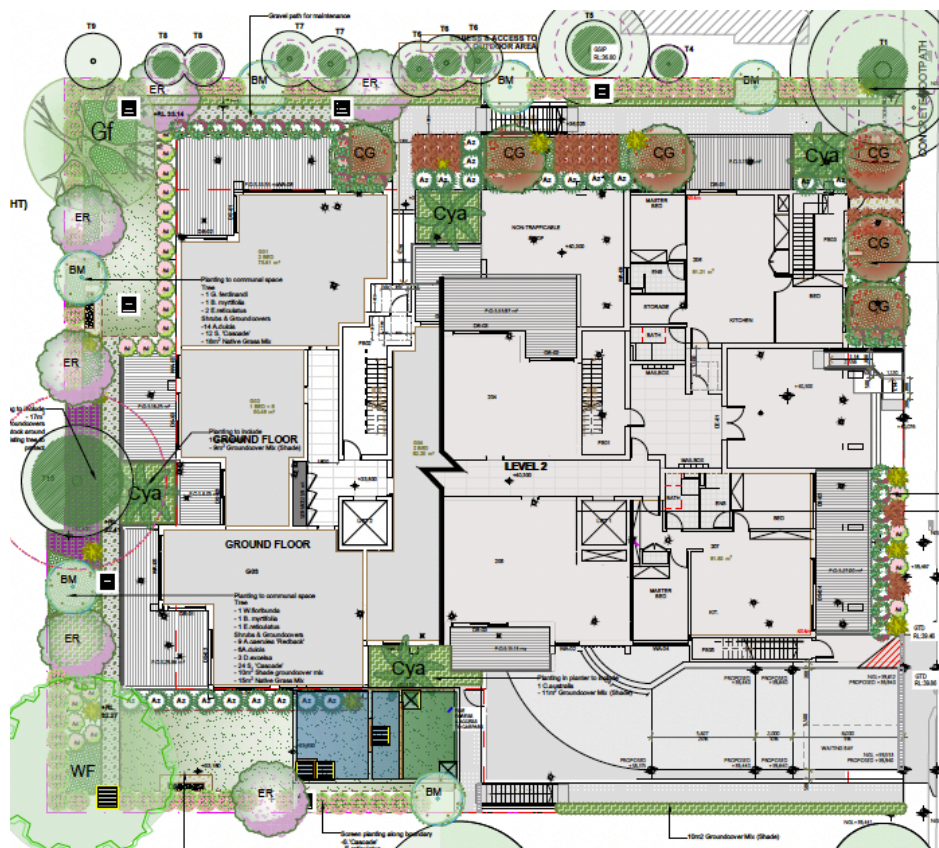
**d. to nominate heights that will provide an appropriate transition in built form and land use intensity,**

The development site is within a 18m (6 storey) height limit, with the adjoining property to the south mapped as having a building height requirement of 24m (8 storey). As illustrated in **Figure 19** the proposed development is ideally positioned to provide a transition between the likely future higher properties to the south and the property to the north which is already consolidated into an 18- townhouse complex, and as such, is unlikely to be re- developed in the near future. The proposed building contributes positively to the streetscape by being empathetic to the scale of surrounding future developments.



**Figure 19** Streetscape view showing transition between likely future housing to the south (8 storeys) and the neighbouring property to the north (currently a 18 townhouse development but with potential to match height on the subject site)

As detailed in the concept landscape plan the proposed development has provided pockets of landscaping to all of its boundaries, with deep soli zones capable of accommodating medium to large trees to the north, south and west . The landscaping is largely allocated towards communal use, and shall be maintained by the building management to ensure the appropriate care for the gardens can be provided. Landscaping on the communal roof terrace provides a degree of visual screening, and a buffer zone from the balustrade edges, thus preventing overlooking into the neighbouring properties. The landscaping design has been prepared by a landscape architect to ensure compliance, suitability of species, and appropriateness of the plantings.



**Figure 20 Extract of landscaping plan for ground level (Note the concept landscape plan can be conditioned to be updated to align with amended architectural plans)**



- e. to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*

The proposed residential flat building is not expected to unreasonably impact on properties views to the south-west towards the Gosford City Centre and Brisbane Waters. The topography of the site and surrounds together with the change in planning controls will create new view opportunities for taller developments. The established vegetation within the public domain of Gertrude Street and the access road (see **Photo 10**) already obstructs views from properties on the eastern side of Gertrude Street, however some of this view would be retained when those properties are redeveloped to their full potential.



**Photo 10** *View of change in level and established vegetation in road reserve of Gertrude Street (to the right) and access road that services the development site (to the left).*

- f. to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

As evidenced by the shadow diagram Drawing 017, 018 and 019 submitted with the application and reproduced in **Figure 16, 17 and 18** of this submission, the proposed development does not overshadow any public open space and will not interrupt any views to natural topography features. There is some mid-winter late afternoon shadowing to the public domain of Gertrude Street however this is to be expected given the orientation of the lot and applicable planning controls.



### 6.3 Compliance with the Development Standard is Unreasonable or Unnecessary

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 5.28(3)(a)) on the following basis:

- a. *the objectives of the development standard are achieved notwithstanding non-compliance with the standard as detailed above: **1<sup>st</sup> Wehbe** test at [42] and [43].*

The objectives of the development standard have been satisfied as detailed in Section 6.2 above and this justifies why compliance with the development standard is unreasonable or unnecessary in the circumstance of this case.

- b. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: **2<sup>nd</sup> Wehbe** test at [45].*

This is not pressed.

- c. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: **3<sup>rd</sup> Wehbe** test at [46].*

The objectives of the development standard have been met and compliance with the standard would adversely impact on the design and provision of a development that provides a mix of suitable housing options for the locality. If the building was lowered to step down with the land it would result in units below street level which is undesirable from both an internal amenity perspective and privacy and security perspective given the proximity of the development to the street.

- d. *the development standard has been virtually abandoned or destroyed: **4<sup>th</sup> Wehbe** test at [46].*

This is not pressed.

- e. *the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: **5<sup>th</sup> Wehbe** at [48].*

This is not pressed.

If strict compliance was required, it would undermine important statutory objectives that are relevant to the consideration of this matter as detailed under Section 6.4 below.

## 6.4 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

- i) The proposal is consistent with the following objects of the Act:

*Section 1.3(c) of the Act: to promote the orderly and economic use and development of land,*

The proposed residential flat building provides a mix of housing options within close proximity to a number of existing services, employment opportunities and educational establishments. The site is located within close proximity to the Gosford Heart as identified in the Gosford DCP. The proposed development will provide employment and income generation for the local community and a variety of housing options in a rapidly growing community with ease of access to services.

The proposed design utilises the site to its full potential which ensures the viability of the development and introduces an additional 39 new residential premises, with suitable on-site parking and facilities for each unit provided to ensure the amenity of occupants and surrounding properties. The proposed apartment complex provides a mix of studio, 1, 2 and 3 bedroom units, with a number of these designed as adaptable housing. The housing mix reflects the needs of the community and will provide an opportunity for a diverse range of occupants to reside in the area.

During the construction phase of the development there will be significant positive economic impacts as various trades and services are employed to undertake work on the development. The local economy will also be supported through the purchase of building materials. Based on the project value the estimated number of construction jobs is 100 and the estimated number of operation jobs is 12.

Ancillary benefits of the development are the opportunity for additional families to relocate into the area creating a larger generation of income within the community and an increase usage of existing services such as public transport and educational facilities.

*Section 1.3(e) of the Act: to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

The proposed development is not expected to have any adverse impact on the environment and will not impact the conservation of threatened species, ecological communities or their habitats. A number of trees will be removed to accommodate the building however these have been assessed in the Arboricultural Report and the landscape plan details replacement planting suitable to the locality and conditions of the site.

*(g) to promote good design and amenity of the built environment,*

As detailed in Section 6.1 and Section 6.2 of this submission the proposed development promotes good design and amenity of the built environment. The development responds to the characteristics of the site and is compatible with the future character of the area. The

development can be accommodated on site without adversely impacting on the amenity of adjoining sites, especially when those sites are also development to their full potential as would be expected under the applicable planning controls.

*(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

The building has been designed by an registered Architect. The development is accompanied by a Design Verification Statement prepared in support of the design quality of the development, which outlines the various considerations that have been taken in the design development process to ensure compliance with the State Environmental Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65), and the Apartment Design Guide (ADG). The scheme achieves the standards for design quality in apartments, to ensure a desirable, beneficial, and ultimately sustainable outcome for the LGA of Central Coast Council, for the locality of North Gosford, and for the future owners and inhabitants of this development. The selection of materials and finishes is intended to achieve a long-wearing and maintenance-free finish which shall lengthen the building's lifecycle and avoid the need for redevelopment for many years.

- ii) The Proposal is consistent with following aims of the Chapter 5 Gosford City Centre of SEPP (Precincts – Regional) 2021:

*(a) to promote the economic and social revitalisation of Gosford City Centre,*

The proposal provides a new housing development with a variety of living arrangements to suit the growing demographic within the Gosford City Centre.

The proposed residential flat building contributes 39 apartments to the locality which helps to increase the availability of residential accommodation within the residential zone. The sites close proximity to the Gosford Railway Station, makes it an ideal location for housing as public transport is easily accessed. In addition to this there are a variety of public services, educational establishments and commercial premise within close proximity which allows for access, employment and usability of these services by residents to meet their day to day needs.

*(b) to strengthen the regional position of Gosford City Centre as a multi-functional and innovative centre for commerce, education, health care, culture and the arts, while creating a highly liveable urban space with design excellence in all elements of its built and natural environments,*

The proposed development provides a residential flat building, with a variety of housing options that are suitable for the changing and growing demographic of the Gosford area. The site is ideally located within close proximity to key facilities such as hospitals, schools and public transport making it ideally located to support employment opportunities and use of these facilities. The development exhibits design excellence and contributes positively to the streetscape.

*(c) to protect and enhance the vitality, identity and diversity of Gosford City Centre,*

The range in housing opportunities and also the provision of all on site services for residents makes the proposed development suitable to enhance the Gosford city centre. The site is located within walking distance to major public transport facilities and provides a contemporary design which will lead the locality towards a more modern built form.

*(d) to promote employment, residential, recreational and tourism opportunities in Gosford City Centre,*

As discussed previously the proposed development will provide a unique modern design of a mix of housing options for the locality. The development will indirectly support employment, recreation and tourism given its close proximity to major servicing in the Gosford City Centre and the ease of access from the development to those services.

*(e) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Gosford City Centre achieves sustainable social, economic and environmental outcomes,*

The building has been designed to incorporate resource, energy and water efficiency measures. Both BASIX and NatHERS requirements have been considered in the design to ensure thermal comfort and water efficiency. Window and door openings have been placed to encourage cross ventilation and adequate solar access.

Long wearing, low reflective materials and finishes are proposed for the development.

The development site has a favourable orientation and the building mass has been designed to take advantage of solar access opportunities. Whilst the development will cause some overshadowing to the southern neighbour, the plans have been amended to reduce this impact and the north-south orientation ensures that the solar access to the front of the site will be maintained in the morning and the rear in the afternoon. The architectural drawings prepared by Texco Design Pty Ltd provide shadow and sun eye diagrams to demonstrate solar access and overshadowing impacts. The development can be undertaken without adversely affecting the environmentally sensitive areas and natural and cultural heritage of Gosford City Centre.

*(a) to help create a mixed use place, with activity during the day and throughout the evening, so that Gosford City Centre is safe, attractive and efficient for, and inclusive of, its local population and visitors alike,*

The proposed development will increase the residential density on the subject site through the provision of 39 residential apartments, which helps underpin and sustain a vibrant local economy. The design of the overall built form, in addition to the individual apartments, is such that primary living areas will be orientated towards local streets, entries and through site links, as far as practicable. The proposal will provide a high level of passive surveillance to the public domain and internally within the site which is expected to reduce the opportunity for incidents in crime.



*(b) to preserve and enhance solar access to key public open spaces,*

The proposed development does not overshadow any public open space and will not interrupt any views to natural topography features.

*(c) to provide direct, convenient and safe pedestrian links between Gosford City Centre and the Gosford waterfront,*

Not applicable.

*(d) to ensure that development exhibits design excellence to deliver the highest standard of architectural and urban design in Gosford City Centre.*

The proposed residential flat building considers the existing streetscape and also the desired future development potential for the locality. The palette of colours and materials employed in the design creates a modern apartment complex with a contemporary coastal character. The built form of the building is divided by podium massing and large setbacks to the top two storeys to break up the six storey streetscape. The building massing and setbacks reduces the bulk and also creates visual interest when coupled with the portal frames, timber trims and large openings to bedrooms and living areas.

- iii) The proposal is compatible with the future character of area as dictated by the applicable planning controls and evidenced by development already undertaken in the same zone and height limit.
- iv) The overshadowing impacts to the southern neighbour are not unexpected given the high density zoning and the future character of the area as dictated by the planning controls. Notwithstanding the plans have been amended to reduce the shadowing impacts to this neighbour. The shadow impacts on the existing dwelling is a relatively short term issue which will be remedied by the redevelopment of the site in the future for high density housing.
- v) There are no unreasonable privacy impacts to neighbours as a result of the height variation sought. The streetscape analysis and design verification statement address the streetscape and demonstrate that the variation to height will not adversely impact the public domain.
- vi) The proposed development is consistent with zone and development standards objectives of SEPP (Regional Precincts) 2021 as detailed above.
- vii) The residential flat building and future use of each apartment will provide a better amenity outcome for the locality by providing a mix of housing options that are accessible, well serviced and within close proximity to employment opportunities, health services, educational establishments and public transport.

- viii) The residential flat building will not result in unreasonable amenity impacts to the immediate neighbouring properties, all of which are subject to the same or higher density planning controls. Each apartment is provided with sufficient area for private open space, living space, communal open space, storage, parking and vehicle movements. The proposed development will provide an increased casual surveillance and site security as the allotments will be permanently occupied.
- ix) Visually, the proposed residential flat building will provide a high quality contemporary architectural design which will set a positive precedent for the design and siting of buildings with access from this part of Gertrude Street. The building has been designed with long wearing materials that will ensure the site is well maintained for a long period of time, whilst also reducing maintenance costs.
- x) The wider locality is characterised by a prominence of medium and high-density residential developments, with many single dwelling allotments being redeveloped to make way for the higher density residential residences, consistent with the high density zoning and height controls. The proposed development will not transform or take away from the character of the locality in any material way as it is contributing to the modern high density desired development outcome of the locality.
- xi) The proposed residential flat building will not add an unreasonable additional demand to existing services in the locality. Applicable contributions will be paid as part of the development process.
- xii) This development will re-enliven the use of land and promote the orderly and economic use and development of land, which is entirely consistent with the objects of the Environmental Planning and Assessment Act 1979 (see for example s 1.3(c) of the Act).

As outlined above it is submitted that the proposal provides “sufficient environmental planning grounds” to justify contravening the development standard.

## 6.5 Concurrence of the Secretary

The concurrence of the Secretary of the Department is required in accordance with Clause 4.6(4)(b) of SLEP 2013. The matters for consideration under Clause 4.6(5) are:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

The numerical non-compliance represents a 32% variation with the majority of this contained within the centre of the site. The extent of variation to the public street is 17%. The circumstances of the case are such that the non-compliance with the development standard does not raise any matters of significance for State or regional planning, as the development meets the underlying objectives of the development standard.

- (b) *the public benefit of maintaining the development standard, and*

As the development substantially complies with the stated objectives of the development standards, there is little utility in requiring strict compliance with the development standard for an otherwise generally compliant development.

Furthermore, there is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the building height requirement on the land, whilst better planning outcomes are achieved.

- (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

It is considered that all matters required to be taken into account by the Director-General before granting concurrence have been adequately addressed as part of this Clause 5.28 variation request.

## **7. Conclusion**

The proposal demonstrates and this written (clause 5.28(3)) request for an exception to the development standard justifies:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 5.28(3)(a)).
- sufficient environmental planning grounds to justify contravening the development standard (clause 5.28(3)(b)).
- that the exception is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone (clause 5.28(4)(a)(ii)), as detailed above.

The proposal development will not result in unreasonable adverse impacts in the locality and can be comfortably accommodated on the site. Support for the variation would result in a better outcome for and from the development and there are sufficient environmental planning grounds to justify contravening the development standard. The proposed development is permissible in the zone and is compatible with the future character of the area, as dictated by the applicable planning controls that encourage higher density use. The proposed non-compliance with the building height requirement would not result in any significant long term adverse environmental or amenity impacts and it is submitted the request for exception to the development standard is worthy of support.