
JRPP No:	2010HCC011
DA No:	DA 37745/2009 PART 1
PROPOSED DEVELOPMENT	<i>22 Unit Residential Flat Building, Restaurant and Basement Carpark (JRPP) on Lots A and B DP:155888, 63 to 65 Masons Parade, Point Frederick</i>
APPLICANT:	M C Dibben
REPORT BY:	Gosford City Council
CONTACT:	D. Spithill

Assessment Report and Recommendation

The following item is defined as a planning matter pursuant to the Local Government Act, 1993 & Environmental Planning & Assessment Act, 1979.

EXECUTIVE SUMMARY

Reason for Referral to Joint Regional Planning Panel

Part 3 Division 2 Clause 13C (b) of *SEPP (Major Development) 2005*

Proposed building is greater than 13 metres in height, is located within the coastal zone and is non-compliant with height requirement under GCC LEP.

Assessing Officer

D. Spithill

Reviewing By

Acting Independent Development & Environment Panel (A/IDEP)
Director Environment and Planning
General Manager

Application Received

18/11/2009 latest amended plans - 07/10/2010

Proposal

Mixed Use Development comprising 22 unit residential flat building, restaurant and basement car park and demolition of existing buildings.

Zone

Mixed Use B4-GCC LEP 2007

Area

1715.2m²

City Vision 2025

Although not a statutory Plan, the proposal is consistent with the City Vision.

Public Submissions

Three (3)

Pre-DA Meeting

A Pre-DA Meeting was held.

Political Donations

None declared

Relevant Statutory Provisions

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Local Government Act 1993 – Section 89
- 3 Draft Gosford Local Environmental Plan 2009
- 4 Gosford City Centre Local Environmental Plan and Gosford City Centre DCP 2007
- 5 State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development
- 6 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- 7 State Environmental Planning Policy (Major Development) 2005

Key Issues

- 1 Proposal
- 2 Site Description
- 3 State Environmental Planning Policy (Major Development) 2005
- 4 Gosford City Centre LEP - Relevant Provisions
- 5 Permissibility and Zone Objectives
- 6 Compliance with Principal Development Standards
- 7 Exceptions to Development Standards (Building Height, Car Parking, Building Separation)
- 8 Gosford City Centre DCP -Relevant Provisions and Variations Sought
- 9 Draft Gosford Local Environmental Plan 2009
- 10 SEPP 65 - Design Quality of Residential Flat Development
 - Comments from SEPP 65 Panel including Applicant & Council's Response
 - Comments from Council's Architect
- 11 Noise Impact
- 12 Engineering Requirements
- 13 Flooding and Drainage Issues
- 14 Climate change and sea level rise
- 15 Public Submissions

Recommendation

Approval

REPORT

Assessment

This application has been assessed using the heads of consideration specified under Section 79C of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans. The assessment supports approval of the application and has identified the following key issues which are elaborated upon for Council's information.

Proposal

The proposal is for a five storey mixed used development consisting of a ground floor restaurant (302.2m²) and 22 residential apartments. On site car parking (35 spaces) is provided within a basement car park with entry from Shortland Street.

Key site calculations are:

- Total site area – 1,715.2 square metres;
- Gross Floor Area – 2,429.1m²;
- Floor Space Ratio – 1.416:1;
- Site coverage – 809.3m² (47.2%);
- Deep Soil Planting – 361.8m (21%);
- Common Areas/Foyers – 160.7m²;
- Residential density – 22 residential units ranging in area from 67.2m² to 185.2m²;
- Restaurant/commercial space – 302.2m² (including 158.1m² indoor sitting area; 78.2m² kitchen; and 66.5m² toilets) and outdoor seating area 122m² (Total 424m²);
- Basement car parking – 35 spaces (including two disabled spaces).

Refer Attachment: Figure 1 - Architect's Drawing of Proposal

Site Description

The subject site comprises Lots A and B DP155888, No. 63-65 Masons Parade, Gosford having an area of 1715.2m² with frontage to Masons Parade (51.15m) and Shortland Street (33.55m) and an eastern boundary of 51.15m and a southern boundary of 33.53m which incorporates an existing stormwater drain. A sewer main also traverses the site.

The subject land is relatively flat with levels ranging over the site from RL 1.48m AHD to 2.1m AHD. Existing development on the site consists of a mixture of commercial premises and a take away fish and chip shop which are all nearing the end of their economic life and will be demolished to accommodate the proposed development.

The site is located to the south of the Gosford City Centre at the base of Rumbalara Mountain Reserve and opposite waterfront reserve land. The site immediately adjoins a two storey brick and tile restaurant "the Upper Deck" on its southern boundary and a single storey fibro clad dwelling house. ***Refer Attachment: Figure 2: Streetscape View Figure 2 and Figure 3 - Aerial Photograph showing location of subject site***

State Environmental Planning Policy (Major Development) 2005

The proposal is subject to the provisions under Part 3 Division 2 Clause 13C (b) of State Environmental Planning Policy (Major Development) 2005 which states:

13C Coastal development to which Part applies

This Part applies to development within the coastal zone for any of the following purposes:

....(b) buildings or structures (other than minor alterations or minor additions to existing buildings or structures) that are greater than 13 metres in height, excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located....

Relevant Provisions Gosford City Centre LEP 2007

Permissibility / Zone Objectives

Under the Gosford City Centre LEP 2007, the subject land is zoned B4 - Mixed Use as indicated on the zoning Map Figure 4. The proposal for a mixed use development (residential flat building - 22 units and restaurant) is permissible with consent on the subject land.

Clause 12(2) of the Gosford City Centre Plan, stipulates that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within that zone.

An assessment of the consistency of the proposed development with each of the zone objectives is provided by the applicant in the following analysis:

- *"To provide a mixture of compatible land uses."*

The proposed development provides for food and drink premises and residential apartments on the site in a manner which enables continuation of the existing fish and chip shop operating on the site as a restaurant, servicing the community in a facility of superior amenity and utility.

- *"to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling."*

The subject site is a highly accessible location well served by existing public transport services (Red Bus Services and Busways) and located within easy walking/cycling distance to the city centre.

- *"To support the higher order Commercial Core zone, while providing for the daily needs of the Mixed Use zone."*

The proposed development supports the higher order commercial core zone by increasing residential density in a location which relies upon the commercial core zone for services, entertainment and employment.

- *"To encourage a diverse and compatible range of activities, including the following:*
 - *commercial and retail development.*
 - *cultural and entertainment facilities,*
 - *tourism, leisure and recreation facilities,*
 - *social, education and health services,*
 - *higher density residential development,"*

The proposed development provides for tourism/leisure/recreation facilities (food and drink premises) and higher density residential development.

- *"To allow development along the eastern edge of The Broadwater to take advantage of and retain view corridors while avoiding a continuous built edge along the waterfront."*

The proposed development activates the eastern edge of 'The Broadwater, taking advantage of available scenic views and provides a highly articulated facade which avoids the creation of a continuous built edge along the waterfront.

- *"To create opportunities to improve the public domain and pedestrian links within the Mixed Use zone".*

The proposed development provides for an improved public domain and pedestrian access along both street frontages and activates the public domain and the adjoining public reserve by providing for the continuation of the provision of food and drink services from this site.

- *"To protect and enhance the unique qualities and character of special areas within the Gosford city centre."*

The built form of the proposed development is oriented towards the expansive available views of Brisbane Water and is highly articulated in both form and choice of building materials, designed to maintain the amenity for neighbouring residential properties."

In this instance, it is considered that the proposal is consistent with the stated objectives of the B4 - Mixed Use Zone as well as being consistent with the principles of Ecologically Sustainable Development, as specified within the Local Government Act 1993.

Refer Attachment Figure 4: Zoning Map

Gosford City Centre Local Environmental Plan-Principal Development Standards

Following is a summary of the relevant development standards under Gosford City Centre LEP 2007 and how the proposal responds to those standards:

Gosford LEP 2007	Required	Proposed	Compliance
Cl. 21(2) Height of Buildings	15m maximum	16m	No - variation sought
Cl. 22 (1) and (2) Floor Space Ratio	2:1 (site over 1000m ² and street frontage over 24m)	Site Area: 1715.2m ² GFA: 2429.1m ² FSR: 1.416:1	Yes
Cl. 22A Minimum Building Street Frontage	Minimum frontage 24m	51.15 (Masons Parade) 33.55m (Shortland Street)	Yes
Cl. 22C Car Parking	Restaurant (1 per 75m ² GFA) - 6 spaces based on 424m ² including alfresco dining terrace) Resident -27 spaces Visitor - 5 spaces Total - 38 spaces	Basement Car Parking 35 spaces (including 2 disabled)	No - variation sought shortfall of 3 spaces (commercial)
Cl. 22B Design Excellence	High standard of architectural design, materials and detailing, form and external appearance, view corridors maintained addresses DCP provisions	Refer SEPP 65 Design Panel and Architect's comments:	Yes
Cl. 22E Building Separation	Refer DCP provisions require 9m setback common residential boundary for building over 12m	Eastern boundary 8.23m, shortfall 700mm	No

Exceptions to Development Standards

Clause 24 of GCC LEP 2007 contains provisions for exceptions to development standards. Subclause (3) requires the applicant to submit a written request 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.*

Clause 24(4)(a) states:

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 subclause (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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Council has power to **assume the concurrence** of the Director General for exceptions to development standards under clause 24 of the GCC LEP 2007 as per planning Circular PS 08-003 issued 9 May 2009.

Building Height Variation

In accordance with Clause 21(2) of the Gosford City Centre (GCC) LEP 2007 - Height of buildings, the maximum height of the building is not to exceed 15 metres except as provided by Clause 21B (architectural roof feature) and 22B (design excellence).

Building height (or height of building) as defined under the GCC LEP means: *"the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

The mid portion of the building containing the foyer, stair and liftwell including overrun (western elevation) is approximately 16.08m (i.e. existing ground level at RL 1.72 to highest point of building at 17.8m AHD topmost point excluding architectural roof features) and thereby does not comply with the maximum 15m height development standard under Clause 21(2) of the GPSO.

Accordingly, the applicant has submitted a request to vary the maximum 15m building height in accordance with the provisions under Clause 24 of the GCC LEP 2007. The applicant's submissions as detailed in the *Statement of Environmental Effects (Supplementary Report)*, prepared by Doug Sneddon Planning Pty Ltd, dated October 2010 is summarised below:

Applicant's Submission - Justification for contravention of the 15m maximum Building Height Development Standard - Clause 21(2).

"The height of buildings map (Sheet HOB-001) of Gosford LEP 2007 provides for a maximum permissible building height of 15m within an expansive precinct of land in the subject locality having the benefit of a scenic outlook to Brisbane Water and the western escarpment. This precinct, which includes the subject land, is topographically characterised by a west facing hillside rising from the flat Brisbane Water foreshore along Masons Parade and rising easterly to its highest points along Albany Street and Henry Parry Drive.

The subject land is located at the base of the hillside and is one of a limited number of properties fronting Masons Parade located within an area that is low lying' and potentially impacted by Brisbane Water flood events. Gosford City Council requires development in such areas to have minimum habitable floor heights of RL 2.45 AHD which exceeds natural ground levels on the subject land.

Consequently, as the habitable ground floor levels of the proposed development have to be set at a level which is slightly above natural ground levels, the upper wall and ceiling height of both proposed penthouse units result in the minor (up to 0.93m or 6.2%) exceedence of the maximum permissible 15m building height development standard. It should be noted that this exceedence in permissible building height does not result in the floor space ratio of the proposed development (1.46:1) exceeding the maximum permissible floor space ratio of development on the land (2:1).

Other than for the small number of adjoining properties fronting Masons Parade exhibiting similar natural ground levels, all other properties in the precinct do not have this affectation and are able to set out their floor heights at actual ground level and consequently readily achieve five storey construction within the parameters allowed by the 15m maximum building height development standard.

Any requirement for the proposed development to strictly comply with the 15m building height development standard would result in the entire penthouse level having to be removed from the proposed development. This would have a significant adverse impact on the economic viability of the proposed development and would be contrary to the objects of the Environmental Planning and Assessment Act in seeking to encourage the promotion and coordination of the orderly and economic use and development of land. Council would be well aware of the marginal economic viability of development within the city centre in view of the depressed real estate market for retail, commercial and residential properties and the limited demand for property as a consequence of the general lack of confidence and uncertainty regarding the future of the city centre.

It is noted from the building elevation drawings that the penthouse level employs substantially increased building setbacks and as demonstrated in the Statement of Environmental Effects dated November 2009, this topmost floor level does not result in any significant impacts on the amenity or privacy of neighbours and does not result in any adverse impacts on the public domain generally or the parkland/foreshore located to the west of the proposed development.

It is therefore considered that the environmental planning grounds referred to above demonstrates that requirement for strict compliance with the 15m maximum building height development standard is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the minor contravention of the development standard.

The conditions precedent of Clause 24 (3) (a) and (h) and Clause 24 (4) (a) (i) of Gosford LEP 2007 are therefore considered to be satisfied in this request for flexibility in applying the maximum building height development standard."

Assessment Comment

Clause 24 (4)(a)(ii) - The Public Interest.

Clause 24 (4)(a)(ii) of Gosford LEP 2007 requires the consent authority to be satisfied that:

"the proposed development will be in the public interest because it is consistent the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out."

Consistency of the proposed development with the objectives of the zone:

Under Gosford City Centre LEP 2007, the subject land is zoned B4 Mixed Use' and the proposed development is permissible with consent. An assessment of the consistency of the proposed development with each of the zone objectives is provided in the preceding section of the report. The proposed mixed use development on the subject land is considered to be consistent with the objectives of the B4 -Mixed Use Zone.

Consistency of the proposed development with the objectives of the 15m maximum building height development standard:

Clause 21(1) of Gosford LEP 2007 provides objectives for the control of height of buildings. The following analysis demonstrates that the proposed development is consistent with those objectives:

- ***"(a) to ensure that taller development occurs on sites capable of permitting height while protecting the natural environmental setting of the Gosford city centre,"***

Applicant's submission: *"The numerical variation of the proposed development from the maximum 15m building height development standard does not have any adverse impact on the natural environmental setting of the Gosford City Centre, as demonstrated in the accompanying Statement of Environmental Effects."*

Assessment Comment

The building height map (GCC LEP) stipulates a maximum building height of 15 metres generally for land within the city edge-mixed use character precinct with frontage to Masons Parade. The subject land is located at the base of a hill on relatively flat land which faces Brisbane Water foreshore reserve. The formulation of the height controls under the LEP would have had regard to appropriate heights for the natural environmental setting. The minor encroachment of a small portion of the building over the 15m height control (approximately 1 metre) does not pose any significant additional impact on the natural setting. The proposed building is one of the first buildings designed under the new planning regime for this precinct and may initially impact on its foreshore setting and existing development. However such impact is acceptable and reflects the scale of development generated by the controls.

The proposed development does not restrict views of Presidents Hill obtained from the waterfront public reserves and will not prevent district views of hills or the enclosing escarpments being obtained from the Brisbane Water View Corridor.

- ***"(b) to ensure 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."***

Applicant's submission: "The proposed development does not adversely impact upon available view corridors from surrounding development and is complimentary to the natural topography of the area, having particular regard to Councils requirements, setting minimum floor levels relative to potential flood heights in Brisbane Water. The subject land possesses no inherent scenic prominence, distinctiveness or natural features requiring protection or preventing approval of the proposed development at its maximum building height of 16.08m."

Assessment Comment

There will be some impact on available view corridors from existing residential flat building development located to north of the property, on higher land across the road in Shortland Street which presently obtain some views over the existing development to Brisbane Water. However such impact would occur with a fully complying development designed in compliance with the setback and building height controls. Available public view corridors down Shortland Street to Brisbane Water foreshore will be maintained. The neighbouring property to the east currently has no view corridor through the site. The extent of view loss is reasonable in the context of the precinct and planning initiatives as contained in the Gosford City Centre LEP and DCP.

The proposal will also have a visual impact when viewed from adjacent open public foreshore land, Dane Drive and Brisbane Water as a result of the change in scale of development. The proposal will be more visually dominant compared to existing development which adjoins the site as surrounding land is yet to be redeveloped in accordance with the increased development potential (in terms of height and density) permitted under the LEP. Several adjoining developments are nearing the end of their economic life and are likely to be redeveloped in the near future. Such impact is considered acceptable and in keeping with more recent development (four storey units) approved under the GCC LEP at the southern end of Masons Parade.

- ***"(c) to allow sunlight access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times,"***

Applicant's submission: "The minor exceedence of the maximum permissible building height in this case does not result in any overshadowing of the adjacent parkland during nominated times."

Assessment Comment

Sunlight access to adjacent foreshore parkland will not be affected by the proposal. The submitted shadow diagrams show overshadowing during the morning will extend partly over the footpath and road during the morning and shadows will retreat before noon both during the Winter solstice and Autumn equinox.

- ***"d) to provide high quality urban form for all buildings,"***

Applicant's submission: *"The proposed building presents a high standard of architectural design and represents a substantial improvement to the existing streetscape. An assessment of design excellence pursuant to Clause 22B of Gosford LEP 2007 is presented in section 5.3.3. (iv) of the Statement of Environmental Effects dated November 2009 accompanying the development application."*

Assessment Comment

The proposal represents a high standard of architectural design and its building form is supported by the SEPP 65 Design Review Panel and Council's Architect. (Refer SEPP 65 Panel Comments)

- ***"(e) to maintain satisfactory, sky exposure and daylight to existing buildings, to the sides and rear of higher buildings and to public areas, including parks, streets and lanes,"***

Applicant's submission: *"As the proposed development occupies a corner site and adopts substantial setbacks to adjoining development, the proposed development maintains satisfactory sky exposure and daylight to neighbouring buildings and to the parkland located on the opposite side of Masons Parade. The penthouse level which results in minor exceedence of the 15m maximum permissible building height employs increased boundary setbacks."*

Assessment Comment

The proposal will not impact on skylight or daylight access to neighbouring buildings, having regard to the location of the development site on the corner of Masons Parade and Shortland and setback of the development from adjoining properties. The adjoining residential dwelling to the east will be overshadowed (during the late afternoon hours) and will be overlooked by the proposed development. However such impact is considered to be within acceptable limits and is unavoidable. It appears that this property which contains a single storey FC cottage nearing the end of its economic life was unable to be secured to form part of the development site and as such development potential for this property is significantly limited without consolidation occurring with adjoining land. A complying development will have similar impact upon this property due to the significant height disparity between the single storey dwelling and the proposal, following adoption of the current height controls within this precinct.

- ***"(f) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,"***

Applicant's submission: *The subject land is not located within an area where there is a transition in building height between precincts and consequently there is no requirement for the proposed development to provide a transition in built form.*

Assessment comment

The building height map shows the extent of the 15m height limit along Masons Parade. **Refer to Figure 5 in Attachment**

As such development immediately to the east, north and south of the site may be developed to a similar height. The proposal is located at the western edge of the designated 15m height limit on the map and a transition does exist in terms of land use

intensity between the development and the waterfront precinct and open foreshore parkland which immediately adjoins the site in Masons Parade. It is considered that the height and scale of the proposal development will not detract from the open character of the foreshore.

- **"(g) to ensure an appropriate height transition between new buildings and heritage items."**

Not Applicable: The proposed development does not adjoin a heritage item.

Summary

Despite the proposal's non compliance with the 15m maximum building height development standard, the proposed development is consistent with the zone objectives and achieves the stated objectives of the maximum height development standard of Gosford LEP 2007 for reasons provided above. Accordingly, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

Clause 21(5) - Matters for consideration by the Director-General.

Clause 21(5) of Gosford LEP 2007 requires the Director-General to consider specified matters in deciding whether to grant concurrence to a development which contravenes the 15m maximum building height development standard. The following analysis addresses the relevant considerations:

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

Applicant's submission: It is demonstrated that the proposed development is consistent with applicable State and regional planning policies/strategic directions:

- *the proposed development is demonstrated to be consistent with the provisions of SEPP 55 Remediation of Land; SEPP 65— Design Quality of Residential Flat Development; and SEPP No. 71 - Coastal Protection. No other State Environmental Planning Policies impose land use or building design limitations on the subject land or the proposed development;*
- *there are no regional strategies which impose prohibitions, restrictions or development standards on the proposed development; and*
- *the proposed development is otherwise demonstrated in the accompanying Statement of Environmental Effects to be consistent with the applicable development objectives and design standards of Gosford LEP/DCP 2007.*

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

Applicant's submission: The proposed development is demonstrated in the accompanying Statement of Environmental Effects to generate social and economic benefits for the community; will not have any adverse impact on the natural environment; and will not have any significant impact upon the privacy and amenity of neighbours or community use of adjacent public parks.

There is no public benefit to be derived from the strict application of the 15m maximum permissible building height development standard in this case as the proposed development will only result in a minor exceedence of the 15m building height development standard by up to 0.93m (6.2%).

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- ***"(c) an other matters required to be taken into consideration by the Director-General before granting concurrence"***

Applicant's submission: The Director-General has not specified any other matters required to be taken into consideration.

Assessment Comment

Variation to the maximum building height requirement as proposed does not raise any matters in relation to environmental planning or the public interest which would prevent the Director-General from granting concurrence to the proposed development pursuant to Clause 24 (4)(a) (ii) of Gosford LEP 2007.

Car Parking Variation - Clause 22C (LEP) / Clause 4.3 (DCP)

Clause 22C of the LEP stipulates:

- (1) *Consent must not be granted for development on land zoned B3 Commercial Core or B4 Mixed Use that involves the erection of a new building or an alteration or addition to an existing building that increases the gross floor area of the building unless:*
 - (a) *at least one car parking space is provided for every 75 square metres of the gross floor area of the building that is to be used for commercial activities*, and*
 - (b) *at least one car parking space is provided for every 40 square metres of the gross floor area of the building that is to be used for the purposes of retail premises.*
- (2) *Car parking required to be provided by this plan must be provided on site unless the consent authority is satisfied that the provision of car parking is adequately provided elsewhere.*

*Note definition of commercial activities under clause 22C(5) includes food and drink premises (restaurants etc.).

Clause 4.3 of GCC DCP states that car parking rates for commercial and retail development in the commercial core and city edge zone (mixed use) are specified within the GCC LEP 2007. Parking for other land uses and for development outside of these zones are specified in Table 4.1. As such, the residential component should be assessed in accordance with table 4.1 of the GCC DCP and the commercial component should be assessed in accordance with clause 22C of the LEP (i.e. 1 space per 75m² GFA).

Car parking generated by the commercial component of the proposed development is 6 spaces applying the applicable parking rate of 1 space per 75m² of gross floor area, based on a restaurant with a gross floor area of 424m², which includes outdoor alfresco dining terrace (122m²).

The parking space requirement for the residential component of the proposed development is as follows:

- resident car parking at the rate of 1 space/one bedroom dwelling; 1.2 spaces/two bed dwelling; and 1.5 car spaces/three bed dwelling (total of 27 spaces are required);
- visitor car spaces at the rate of 0.2 spaces/dwelling (5 spaces are required);
- motorcycle parking at the rate of 1 space/15 dwellings (two required); and
- bicycle parking at the rate of 1 resident's space/3 dwellings and 1 visitor space/12 dwellings (10 spaces required).

The total number of car spaces required by the proposed mixed use development is 38 spaces, comprising 6 restaurant spaces; 27 resident spaces; and 5 visitor spaces. The proposed development provides 35 on-site basement car spaces (2 of which are for disabled persons). All resident/visitor spaces (32) are able to be accommodated in the basement car park accessed

from Shortland Street. With a residual of three basement spaces available for the restaurant component. The deficiency of on-site car parking therefore relates to the commercial (restaurant) component of the proposed development representing a shortfall of 3 spaces.

Request for flexibility in the application of Clause 22C (l) (a) of Gosford LEP 2007.

As a consequence of the proposed development not fully providing the required number of on-site car spaces for commercial activities required by Clause 22C (l) (a) of Gosford LEP 2007 (i.e. one space per 75m² of gross floor area), being deficient by 3 on-site car spaces, the applicant has submitted a request pursuant to Clause 24 of LEP 2007 for flexibility in applying the car parking development standard of Clause 22C (1)(a). Clause 24 requires a number of specified matters to be considered by both the Council and the Director-General in deciding whether non-compliance with the car parking development standard in this case is reasonable. These matters are addressed in the following analysis.

Applicant's Submission

"Clause 24 (3) - Justification for development that contravenes the provision of car parking for commercial activities.

Opportunity for the provision of on-site car parking in a basement configuration is constrained by the depth of the existing sewer main traversing the property as indicated in the existing site plan. The maximum potential for on-site basement car parking (35 spaces) is therefore provided by the one level of basement car parking and driveway access arrangements.

In the event that the floor area of the proposed restaurant was instead designed as a single large apartment (i.e. three or more bedrooms) the development would be fully compliant with the required on-site car parking rates for residential occupation of the building.

It is the case therefore that the intention to maintain a very popular seafood cafe which activates Masons Parade and generates significant community use of the adjoining foreshore parkland requires flexibility in the application of the car parking rate development standard for commercial activities on the basis that it is not possible to provide the (two) deficient spaces on-site and that the consent authority can be satisfied that the provision of car parking is satisfied elsewhere.

Masons Parade provides substantial unrestricted street parking which is used for commuter parking by city centre workers during work hours and by patrons of the Montis Ashore Fish and Chip shop and the Upper Deck restaurant during day and night time opening hours. Field observation of car parking take-up rates during daytime and evenings indicates that there is ample available street parking in Masons Parade for the patrons of both existing restaurants during daytime hours notwithstanding the daytime commuter car parking. The existing Montis Ashore fish and chip shop provides no on-site car parking although the existing right angle parking bay in Masons Parade is available for use by patrons and customers of the other business premises operating from the site.

*It needs to be acknowledged that the existing fish and chip shop is extremely popular with the community and it provides the principal catalyst for family use of the adjacent park. In the interest of continuing the long established practice of serving food and drink from this site Council is requested to approve the minor deficiency of on-site parking (2 spaces) on the basis that the deficiency is adequately provided elsewhere:
the five right angle car spaces at the Masons Parade street frontage result in additional car spaces over that which would otherwise be available as parallel kerb side parking; and*

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- *the existing traffic generated by both restaurants currently operating at this location is readily accommodated by existing street and reserve parking arrangements.*

It is therefore considered that the environmental planning grounds referred to above demonstrates that requirement for strict compliance with the car parking rate development standard for commercial activities is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

The conditions precedent of Clause 24 (3) (a) and (b) and Clause 24 (4) (a) (i) of Gosford LEP 2007 are therefore considered to be satisfied in this in this request for flexibility in applying the car parking rate development standard."

Assessment Comment

Clause 24 (4)(a)(ii) - The Public Interest.

Clause 24 (4)(a)(ii) of Gosford LEP 2007 requires the consent authority to be satisfied that:
"the proposed development will be in the public interest because it is consistent the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out."

Consistency of the proposed development with the objectives of the zone:

The proposed mixed use development on the subject land is considered to be consistent with the objectives of the B4 -Mixed Use Zone. Refer zone objectives.

Consistency with the objectives of the car parking rate development standard:

Clause 22C (1)(a) of Gosford LEP 2007 does not provide stated objectives for the car parking rates established for commercial activities. However, section 4.3 of DCP 2007 does provide a number of objectives for the provision of on-site car parking. Including the objective to *facilitate an appropriate level of on-site parking provision in the city centre to cater for a mix of development types,*

The proposed development provides an appropriate level of on-site car parking to service the likely demand for on site car parking generated by proposed commercial and residential use. In this regard:

- The required parking rate is able to be satisfied through a combination of on-site basement car parking and five right angle parking spaces provided which are currently provided within the road reserve to Masons Parade street frontage.
- The location of the mixed use development is within convenient walking distance to the Gosford CBD and is well served by public transport which is available along Manns Street and Masons Parade linking the site to other town centres and Gosford railway. The site is also readily accessible by non motorised forms of transport.
- The site currently contains three (3) commercial developments:
 - Montis take-away restaurant approx. 235 m²;
 - Office Furniture Depot approx. 370 m²; and
 - Complete Air Conditioning approx.155 m².

The existing development currently does not provide on site car parking for such commercial uses. As such parking generated by the proposed restaurant having an area 302.8m² with outdoor dining area (122m²), will not increase or significantly alter the car parking demand on surrounding streets.

Clause 21(5) - Matters for consideration by the Director-General.

The proposed development does not raise any matters in relation to environmental planning or the public interest which would prevent the Director-General from granting concurrence to the proposed development pursuant to Clause 24 (4) (a) (ii) of Gosford LEP 2007.

The proposed development's non compliance with the car parking requirements applicable to commercial development under Clause 22C of the GCC LEP is consistent with the zone objectives and underlying objectives of the car parking development standard of Gosford LEP 2007 for reasons provided above. Accordingly, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

Building Separation Variation - Clause 22E

Clause 22E of the Gosford City Centre LEP 2007 requires building separation distances from neighbouring buildings to be not less than that provided in the Gosford City Centre Development Control Plan 2007. The proposal complies with all front, side and rear boundary building setback controls other than the requirement for habitable rooms above 12m in height above ground level, to have a minimum side boundary setback of 9m. The proposal has the setback to the eastern boundary is 8.23 m, representing a minor variation (0.77m/8.5%) to the 9m development standard under section 2.4 Boundary setback and building separation requirements under the DCP.

Applicant's Submission

4.3 Clause 24 (3) – Justification for development that contravenes the 9m side boundary building setback standard.

"The purpose of the 9m minimum side boundary building setback standard for habitable rooms above 12m is to ensure an appropriate level of amenity for building occupants and neighbours. In relation to the proposed development, the provision of an 8.23m setback and the associated internal penthouse room layout (comprising bedrooms/bathrooms) do not result in any adverse amenity/privacy impacts on the neighbouring property. The living areas and principal outdoor open space within each penthouse unit are located on the opposite side (western) of the building.

It is therefore considered that any requirement for strict compliance with the 9m side boundary building setback standard is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

The conditions precedent of Clause 24 (3) (a) and (b) and Clause 24 (4) (a) (i) of Gosford LEP 2007 are therefore considered to be satisfied in this request for flexibility in applying the 9m minimum side boundary building setback standard for habitable rooms above 12m."

Assessment Comment

Clause 24 (4)(a)(ii) - The Public Interest.

Clause 24 (4)(a)(ii) of Gosford LEP 2007 requires the consent authority to be satisfied that:
"the proposed development will be in the public interest because it is consistent the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out."

Consistency of the proposed development with the objectives of the zone:

The proposed mixed use development on the subject land is considered to be consistent with the objectives of the B4 -Mixed Use Zone. Refer zone objectives.

Consistency with the objectives of the building separation development standard:

Clause 22E of Gosford LEP 2007 does not provide objectives for the building separation development standards. However, section 2.4 of Development Control Plan 2007 stipulates the following objectives for the provision of boundary setbacks and building separation:

- To ensure an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing, ventilation, wind mitigation, and privacy,
- To achieve usable and pleasant streets and public domain areas in terms of wind mitigation and daylight access."

The proposal is consistent with such objectives as the proposed setback and internal penthouse room layout (comprising bedrooms/bathrooms) do not result in any amenity/privacy impacts on the neighbouring property (No. 1 Shortland Street) located to the east. The living areas and principal outdoor open space within each penthouse unit are on the opposite side (western) of the building. The reduced setback to the rear eastern boundary does not have any significant impact in terms of accessibility to daylight; view sharing; ventilation; or wind generation on the adjoining premises and has no impact on public domain areas or streetscape.

Clause 21(5) - Matters for consideration by the Director-General.

The proposed development does not raise any matters in relation to environmental planning or the public interest which would prevent the Director-General from granting concurrence to the proposed development pursuant to Clause 24 (4) (a) (ii) of Gosford LEP 2007.

The proposed development's non compliance with the building separation requirements under Clause 22E of the GCC LEP is consistent with the zone objectives and underlying objectives of the development standard for reasons provided above. Accordingly, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

Gosford City Centre Development Control Plan 2007

The following table represents an assessment of the proposal against the main requirements of Gosford City Centre DCP 2007:

Development Control	Required	Proposed	Compliance
Site Calculations			
Total Site area		1715.2m ²	N/A
Total Floor Area		2429.1m ²	N/A
Site Requirements			
Floor Space Ratio	Maximum 2:1	1.416:1 (2429.1m ²)	Yes
Building Footprint (Site coverage)	Max 75% (1286.4m ²)	47.2% (809.3m ²)	Yes
Soft Landscaping			
Deep Soil Planting Area (15% min)	Min 15% (257m ²)	21% (361.8m ²)	Yes

of total site)			
Parking and Access			
Res Parking / 1 bed unit - 1/unit	3 units = 3 spaces	Total 35 basement car spaces	
Res parking / 2 bed unit - 1.2/ unit	17 units =21 spaces		
Res parking / 3 bed unit - 1.5 / unit	2 units = 3 spaces		
Total Resident Spaces	22 units = 27 spaces	27 resident spaces	Yes
Visitor Spaces (0.2 per unit)	5 Spaces	5 visitor spaces	Yes
Total (visitor and resident)	32 spaces	32 basement car spaces	Yes
Disabled Parking (Min 4% or 2)	2 spaces	2 spaces	Yes
Motorcycle Parking (1/15 units)	2 Spaces	Adjoining lift area	Yes
Bicycle Parking (1 sp / 3 units + 1 visitor /12 units	10 Spaces	Small bicycle storage area	Yes
Commercial (Restaurant) 302.8m2 +Outdoor seating area	1 space per 75m ² (424m2) 6 spaces	3 basement car spaces	No variation to LEP shortfall 3 spaces
Vehicle Footpath Crossings and Vehicular Driveways and Manoeuvring	1 vehicle access point	1 vehicle access	Yes
	max 5.4m wide	6.1m double lane	No
	Minimum setback 1.5	Setback to eastern residential boundary 0.7m	No
Building Form / Setbacks			
Building to street alignment s2.1	Min 2m to Max 2.5m (Masons Parade)	2.1 min and variable 4.8 to 7.4 (Masons Parade)	No
	Min 3m to Max 4m (Shortland Street)	2.1 to 3.5m (Shortland Street)	No
Street Frontage Height s2.2	12 to 16m	12.15m (Masons Parade) 12.26m (Shortland Street)	Yes
Building Depth & Bulk s2.3	Max Base Height 12-18m; Max 500m ² gross floor plate area; Max base depth 18m	Not triggered does not exceed building height 16m	N/A
"City Edge - Mixed Use" s2.4 Side Building setback -commercial use	Minimum 6m	6.8m (eastern boundary)	Yes
Front Building setback (commercial use)	Street setback (as per street alignment)	Min 2.1m maximum variable	No
Rear Building setback (commercial use)	Minimum 6m	6.8 m minimum	Yes
Front Setback (12m to 24m height Residential use)	Non-hab. rooms 6m min Habitable rooms 6m	Non-habitable - Edge of balcony 2.1m Habitable 6m (Shortland) to 7.4m (Masons Parade)	No Yes
Side Setback (12m to 24m height Residential use)	Non-hab. side 4.5m Habitable side 9m	Southern boundary Non-habitable - 8m Habitable 8m	Yes No
Rear Setback (12m to 24m height -Residential use)	Non-hab. rooms 6m Habitable rooms 9m	Non-habitable - 6.8 Habitable 6.7m	Yes No
Ceiling Height (residential)	2700mm min floor to ceiling heights	2700mm to all levels	Yes
Ceiling Heights (active retail/ restaurant)	3600m for restaurant	3100mm for restaurant	No
Pedestrian Amenity			
Building Exterior	External walls high quality and durable materials and finishes with self cleaning attributes Use of Curtain Wall glazing not permitted	Articulated facades High quality and durable finishes with sample board provided. Curtain wall glazing proposed.	Yes No
Active Street Frontage	Ground level Café or restaurant if accompanied by an entry from the street Glazed entry 50% or max12m street frontage	Restaurant provides operable street front with alfresco dining terrace provided to activate Masons Parade Street frontage	Yes
Corner Treatments	Architectural emphasis An additional storey may	Increased height at corner site	Yes

	be permitted onto the specified street frontage height range		
Pedestrian Access and Mobility	Barrier free access to minimum 20% of units, continuous access paths of travel and unimpeded internal access 15% of all dwellings capable of adaptation Compliance with AS1428 and DDA 1992 Ground floor location	3 units (15%) units 5, 11 and 17 nominated as adaptable units. Lift access available	Yes Yes No - not located on ground floor
Mixed Use Buildings Flexible Building Layout	variable tenancies and use on first floor	Residential only	No
Residential Development Controls			
Housing Choice and Mix	1 bedroom units 10% to max 25% 2 bedroom units not more than 75%	3X1-bedroom units (14%) 17 X 2-bedroom (77%) 2 X 3 bed (9%) Insignificant variation 2 bedroom units more than 75%	No
Adaptive Re use	Residential units provided on ground floor level to be capable of reuse for future commercial uses.	Two units ground floor not designed for adaptive reuse	No
Adaptable Housing	15% of units to be adaptable housing (slope less than 20%)	Conditioned to comply with AS4299 -1995	Yes
Storage	7.5m3 for 1 bed units 10m3 for 2 bed units 12.5m3 for 3 bed units 50% of storage provided within dwelling	Conditioned to comply	Yes

Variations Sought

The proposed development is demonstrated to be generally consistent with the design guidelines/controls of DCP 2007 except in relation to the following controls:

- building street alignment setback to Shortland Street and Masons Parade;
- eastern side boundary setback of the proposed penthouse;
- flexible building layouts to allow variable tenancies and uses on first floor;
- design of ground floor residential units to be capable of adaptation for commercial use;
- minor variation to the maximum 75% housing mix control for the proportion of two bedroom apartments;
- ground floor location for adaptable (disabled) units;
- minimum floor to ceiling heights (restaurant);
- maximum width of driveway - double lane crossing;
- minimum driveway setback to the eastern side boundary; and
- curtain wall glazing provided to the entry foyer.

Assessment of variations sought to the Gosford City Centre DCP are considered as follows:

Building Setback to Shortland Street/Masons Parade

Requirement:

Section 2.1 of DCP 2007 provides that the street building alignment and street setbacks for any building on the subject land is to range between a minimum of 2.0m and a maximum of 2.5m to Masons Parade and a minimum of 3m and a maximum of 4m to Shortland Street. The building setback to Masons Parade varies between 2.1 and variable 4.8m to 7.4m and to Shortland Street from 2.1m and 3.5m and thereby does not comply with the specified setback range as indicated in the ground floor plan.

Applicant's Submission

"Council is requested to approve the variation from the required setback range in order to facilitate the design of the proposed restaurant area and accommodate the proposed loading dock/garbage room. It is noted that the existing building on the land has a zero building setback to Shortland Street. The proposed building setback to Shortland Street achieves the stated objectives of the required DCP setback design control:

- the proposed setback is appropriate to the function of the ground floor restaurant space;*
- the street edge is appropriately defined by the proposed building;*
- the building setback creates an appropriate transition between public and private space;*
- the "restaurant" active area is located close to the pedestrian activity area;*
- the building design allows an outlook to, and surveillance of the street;*
- appropriate street front landscaping and alfresco dining is provided; and*
- solar access to the public domain, including the adjacent parkland is maintained by the proposed development."*

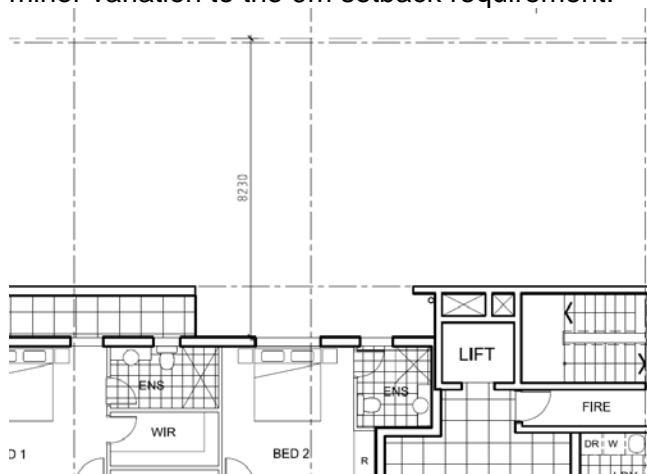
Assessment Comment

Variation is supported as the proposal achieves the stated objectives of the standard and the setback provides appropriate transition to street and public domain areas without adverse impact on the streetscape.

Side Boundary Setback - Penthouse level

Requirement

Section 2.4 stipulates that for residential uses above 12m in height, the minimum required side boundary setback for habitable rooms of any residential use is 9m. The penthouse of the proposed development complies with this guideline, in relation to its setback to the southern boundary (11.38m). However the setback to the eastern boundary is 8.23 m, representing a minor variation to the 9m setback requirement.



Applicant's Submission

"As the design penthouse setback and the related internal room layout do not result in any amenity impacts on the neighbouring property, Council is requested to approve this minor variation to the 9m minimum setback guideline for development exceeding 12m in height".

Assessment Comment

The extent of variation is considered minor and proposed separation distances raises no significant adverse amenity impacts in terms of daylight access, ventilation, privacy, acoustic amenity, outlook and view sharing for future occupants and adjoining residents.

Mixed Use Buildings - Flexible Building Layout

Adaptive reuse for commercial use

Requirement

Section 2.5 - Mixed Use Buildings: DCP 2007 contains a number of controls aimed to encourage a variety of mixed use developments in the city centre including a requirement to: *"Provide flexible building layouts which allow variable tenancies or uses on the first floor of a building above the ground floor."*

Applicant's Submission

"The proposed development is principally a residential flat building except for the proposed ground floor restaurant which is intended to continue the long established use of this site as a seafood restaurant. Additional commercial tenancies located in the first floor of a new building on this site are not considered economically viable. Providing a flexible first floor building layout to accommodate commercial tenancies is therefore not appropriate under the circumstances."

Assessment Comment

The first floor of the building has been specifically designed for residential apartments. Commercial tenancies located in the first floor of the proposed building located on the City edge are not considered economically viable by the applicant. As such, provision of a flexible first floor building layout to accommodate commercial tenancies is not considered to be warranted in this instance.

Housing Choice and Mix

In addition to the requirement for flexible building layout under section 2.5 of the DCP, section 6.1 stipulates that: "(a) Where residential units are proposed at ground level within the City Edge and Special Activities zones, a report must be provided with the development application demonstrating how future commercial uses can be accommodated within the ground level design. The report must address:

- "- access requirements including access for persons with a disability,*
- any upgrading works necessary for compliance with the Building Code of Australia, and*
- appropriate floor to ceiling heights (refer to Section 2.5 Mixed Use Buildings)".*

Applicant's Submission

"The proposed development provides two residential units at ground level, neither of which is designed for adaptive reuse for commercial purposes. It would be unreasonable for the council to require the design of ground floor residential units in this case which would be capable of future commercial use. The attraction of such uses to this location, being well removed from the City Centre, would be uncertain and unlikely. Consequently, it is not economically viable to design the residential component of the ground floor to also be capable of commercial use at some future time. Council is therefore requested to approve a variation to the control contained in section 6.1 (a) and to instead approve the Ground Floor Plan of the proposed development, as submitted."

Assessment Comment

The application of this requirement is more appropriate in the core City Centre CBD and recreational areas to assist street activation, promote lively streets and public spaces in the city centre and increase the diversity and range of shopping and recreational activities. Establishment of full retail/commercial ground level is not warranted considering the location of the site at the City fringe. It is considered that the restaurant use and outdoor alfresco dining areas achieve the desired objective to assist in street activation.

Housing Mix

Requirement

Section 6.1 requires that *"two bedroom apartments are not to be more than 75% of the total mix of apartments within each development."* The proposed development has a minor exceedence of the 75% guideline, with 77% of the apartments being two bedroom apartments representing 17 units of a total of 22 units.

Assessment Comment

The requirement allows 16.5 units rounded up to 17. The extent of variation is considered insignificant and inconsequential.

Adaptable Units Location

Requirement

Section 6.1 (e) stipulates that: *"Where possible, adaptable dwellings shall be located on the ground floor, for ease of access. Dwellings located above the ground level of a building may only be provided as adaptable dwellings where lift access is available within the building. The lift access must provide access from the basement to allow access for people with disabilities."*

Applicant's Submission

"It is not possible for the adaptable units to be located on the ground floor. Required lift access is available from the basement to each of the nominated adaptable units."

Assessment Comment

Variation to this requirement is supported as the adaptable units are capable of being modified when required by the occupant to comply with the AS4299-1995 for adaptable standard and will be accessible by lift.

Minimum floor to ceiling heights

Requirement

"Section 2.5 (b) stipulates minimum floor to ceiling heights of 3.3 metres for commercial office, 3.6 metres for active public uses, such as retail and restaurants, and 2.7 metres for residential". The applicant has submitted amended plans 11 October 2010 which increase the finished floor to finished ceiling heights on all residential levels to 2700 mm to achieve compliance with the minimum floor to ceiling height requirements under the Residential Flat Design Code and GCC DCP. While the restaurant FFL to ceiling height has been increased to 3.15metres it remains non compliant with the minimum floor to ceiling height requirement under the DCP.

Applicant's Submission

"The proposed development now fully complies with the requirement to provide a minimum floor to ceiling height for residential floor space, by providing a height of 2.7m. Any development on the subject land is limited by a maximum building height control of 15m and a minimum habitable floor level of 2.45m AHD. When these two numerical controls are applied to a new building, the specified minimum floor to ceiling heights of 3.6m for active public uses (restaurants) cannot be achieved in the design of an economic development required to deliver sufficient gross realisable floor area to ensure the economic viability of the project.

The proposed commercial ground floor area provides for a floor to ceiling height of 3.15m. Council's approval is sought to vary the minimum 3.6m floor to ceiling height guideline of DCP 2007 for active public uses so as to provide for a minimum height of 3.15m for this particular building component. Otherwise, the only alternative would be to further increase the exceedence of the proposed development from the maximum permissible 15m building height in order to comply with the specified minimum floor to ceiling heights."

Assessment Comment

Under the Residential Flat Design Code the objectives of ceiling height controls are;

- To increase the sense of space in apartments and provide well proportioned rooms,
- To promote the penetration of daylight into the depths of the apartment
- To contribute to flexibility of use;
- To achieve quality interior spaces while considering the external building form requirements.

The applicant has submitted amended plans which have increased the floor to ceiling heights to achieve compliance with respect to all residential levels. The restaurant will have a finished floor to ceiling height of 3.15 metres representing a shortfall of 450mm. It is considered that following such amendments the proposed units have an acceptable sense of space particularly given the unit's outlook from balconies and living areas over open grassed foreshore reserve land and the waterways of Brisbane Waters.

The 3m floor to ceiling height of the restaurant, although non compliant with the Residential Flat Design Code (3.3m) and DCP ceiling height (3.6m) controls is considered acceptable as the restaurant has been designed to achieve a satisfactory level of sunlight penetration with largely glazed facades and a sense of space for patrons is provided by the addition of open alfresco dining areas which activate the street frontage.

Maximum Driveway Width

Requirement

Section 3.6 of the DCP stipulates that “wherever practical, vehicle access is to be a single lane crossing with a maximum width of 2.7m over the footpath and perpendicular to the kerb alignment. In exceptional circumstances, a double lane crossing with a maximum width of 5.4m may be permitted for safety reasons”:

Applicant's Submission

The proposed development provides for a 6.1m wide double lane crossing as indicated on the Proposed Site Plan. This width of driveway is required for the safe entry/exit of vehicles. Council is requested to approve this variation to the DCP requirement for a maximum width of 5.4m for a double lane crossing.

Assessment Comment

The driveway width has been increased to 6.1 metres to provide for adequate and safe manoeuvring area for trucks accessing the loading and waste collection areas. Additional driveway width is also required to ensure safe sight distance for two way access to the basement car park. The extent of driveway hardstand area does not detract from the principal street frontage (Masons Parade) being located behind the building away from public view accessed from the secondary street frontage (Shortland Street). The location of the vehicle access does not disrupt pedestrian movements, threaten safety or interfere with the active use of the street frontages. Variation to this requirement is therefore supported.

Minimum Boundary Setback for Driveways

Requirement

Section 4.2 - Vehicular Driveways and Manoeuvring Areas: DCP 2007 contains the following controls in relation to provision of driveways, relevant to the proposed development:

"(a) Driveways should be provided from secondary streets where possible; located to take into account any services within road reserves; located a minimum of 6m from any road intersection; and if adjacent to a residential development, set back a minimum of 1.5m from the side property boundary".

Applicant's Submission

"The Proposed Site Plan indicates that the proposed driveway complies with DCP 2007 in that it is provided from the secondary street, Shortland Street; it is located to take into account the location of services within the road reserve; and the driveway is located beyond a 6m distance from the intersection with Masons Parade.

However, the proposed driveway does not satisfy the requirement for a minimum 1.5m setback from the eastern property boundary where it is adjacent to the old style residence at No 1 Shortland Street. The proposed development provides for a 0.7m setback to the side boundary where the basement/driveway ramp retaining wall reaches ground level. The top of the retaining wall is to be landscaped in the manner indicated on the Landscape Plan. The driveway design does not have any significant adverse amenity impacts on the adjoining residence, due to the relative location and level of the basement access ramp and that there are only two small facing windows in the neighbouring dwelling."

Assessment Comment

The proposal provides a landscape setback of 700mm metres containing *Syzygium luehmannii* small leaved Lilly Pilly "Royal flame" shrub/hedge plantings to the side common residential boundary as indicated in the ground floor plan below:

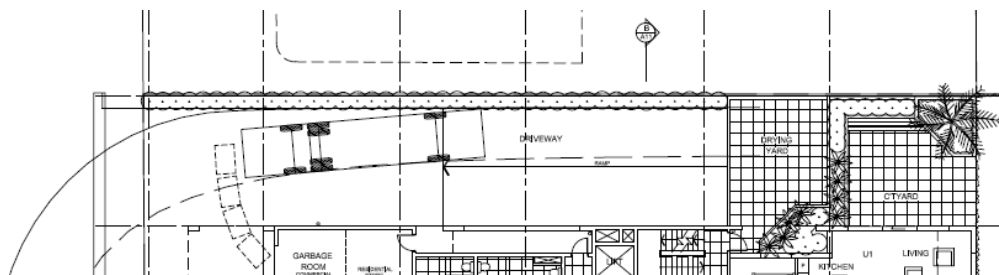


Figure ... Setback to eastern residential boundary

The reduced landscaped setback facilitates truck turning movements for the collection of waste. An increase in setback by an additional 800mm to achieve the required 1.5m width will not result in any significant reduction in amenity impacts for the adjoining development having regard to the scale of the proposal. An increased landscape setback will also not alter the level of noise associated with vehicle use (waste collection and deliveries) on the adjoining dwelling to the east having regard to the current commercial and retail uses operating from the site.

Building Exteriors - Glazing

Requirement

"Section 5.3 - Building exteriors (h) stipulates that: "Highly reflective finishes and curtain wall glazing are not permitted above ground floor level".

Applicant's Submission

"Except for the curtain wall glazing provided to the entry foyer, the proposed development has no highly reflective finishes or curtain wall glazing above ground floor level. Where used, the curtain wall glazing is substantially recessed into the main building entry and is not highly visible to the street. Council is requested to approve this variation to the DCP guideline seeking to limit the use of highly reflective finishes."

Assessment Comment

The curtain wall glazing to the foyer is not a dominant visual element in the front building façade as this portion of the building is recessed and proposed palm tree plantings will partially screen this area of the building. A condition has been imposed restricting visible light reflectivity from building materials used on the facades of new buildings to a limit not exceeding 20%.

(Refer Condition No 2.2.)

Draft Gosford Local Environmental Plan 2009

The application has been assessed under the provisions of Draft Gosford Local Environmental Plan 2009 in respect to zoning, development standards and special provisions. The assessment concluded the proposal is consistent with the Draft Plan.

State Environmental Planning Policy No. 65 (SEPP 65) - Design Quality of Residential Flat Development

SEPP 65 applies to the erection of a new residential flat building comprising three or more storeys and four or more self contained dwellings. The proposed development comprises a building of five storeys above ground level and 22 residential units. The design and assessment of the proposed development is therefore subject to the provisions under SEPP 65.

The proposal was referred to the Central Coast Design Review Panel on 29 April 2009 a copy of the minutes is attached in relation to the ten SEPP 65 Design Quality Principles as follows:

SEPP 65 - CCCR Panel Comments

Panel's Recommendation

A *Recommend approval with minor amendment.*

Panel's Comments

"Context

- *The proposal suits the locality, which is undergoing change, and consequently would make a positive contribution to the desired future character.*
- *The context analysis and massing model submitted with the DA is commended.*
- *Redevelopment of the subject property would isolate the existing property to the east in Shortland Street. It is assumed that some future development may be achievable on this property in isolation, however this would require Council's dispensation regarding the relevant provisions under the Gosford City Plan LEP and DCP.*

Scale

- *The massing and height of the proposal are appropriate in the context.*

Built Form

- *Façade design: It is suggested that the treatment of façade elements including balconies and balustrades could be further refined to ensure that the architectural detailing and screen elements are fully integrated. This could include increased modulation in plan to further differentiate between units.*
- *East elevation: It is suggested that the unfenestrated area of the façade be patterned or textured to provide articulation and relief.*
- *The front balconies at the edge of the entry space could be set back from that space to assist with the proportions of the space and also help with privacy concerns.*

Density

- *The numerical maximum has been complied with.*

Resource, Energy and Water Efficiency

Ensure that the following are incorporated:

- *passive and active solar design (including solar hot water);*
- *efficient energy systems;*
- *capture and reuse of grey and rain water; and*
- *biologically active forms of stormwater management.*

Landscape

- *Planting in entry court: It is confirmed that the two central palm trees should be in planter areas which are flush with the surrounding paving.*
- *The whole of the entry courtyard paving should be permeable to maximise the benefit of having deep soil area for absorption.*

-
- *It is suggested that the northern edge of the proposal be provided with tree planting similar to the western frontage.*
 - *Additional tree planting should be located at the rear of the drying yard area on the eastern side to break up the building facade on this side.*
 - *Investigate the possibility of providing large scale shrubs and tree planting along the eastern side of the driveway.*
 - *Provide high visual quality fencing to the eastern and southern boundaries.*
 - *The existing creek should be included in the overall landscape plan, including removal of weeds and rehabilitation of the banks with endemic species.*

Amenity

- *Entry courtyard: It is noted that the courtyard width does not comply numerically with the RFDC. Privacy screens need to be provided to the ends of the front balconies to ensure that overlooking of bedrooms is prevented.*
- *Ensure that west-facing glass has adequate solar protection.*

Safety & Security

- *It is recommended that a check be carried out regarding fire escape distances under the BCA, for the one stair provided.*

Social Dimensions

- *Satisfactory.*

Aesthetics

- *Ensure during the design development stage that all external attachments and materials, textures and colours are integrated with the overall development to the satisfaction of Council."*

Amended Plans

Partly, in response to the issues raised by the SEPP 65 Panel, the applicant has submitted amended plans and has advised the following in relation to relevant design issues:

1. Landscaping provision to eastern boundary and driveway setback

"The proposed driveway is located off the low side of Shortland Street which is split in elevation and services a limited number of properties that generates very little traffic and as such the access point has minimal impact on the public domain or pedestrian safety. The driveway catchment generates very little storm water runoff. The impact of the driveway on the adjoining property has been mitigated through the use of conventional common boundary fencing methods used extensively in the area and the fence is further softened through the use of landscape planting. The available area for parking has been limited by a number of factors including the existing Council sewer main. This has prevented an extra level of parking forcing the driveway configuration closer than the required 1.5m. to the common boundary. On balance, the objectives of cl.4.2 have been met without unduly impacting on the adjoining property.

2. Level of articulation to eastern elevation

The SEPP 65 panel suggested that: the unfenestrated area of the eastern façade be patterned or textured to provide articulation and relief. In response the applicant advises that:

"Sufficient articulation is provided to the eastern elevation. In addition, the use of a number of colours on the finished surfaces, the shadows generated, the glazing pattern and the use of patterned concrete combine to create an interesting and varied elevation which doesn't seek to disguise' the bulk and scale but enhance it. The building is effective and visually pleasing which responds positively to Council's design criteria."



Architect's Comments

"The application generally complies with the objectives of the RFDC. It is well articulated, uses a number of techniques to break up the bulk and scale of the building and provides good amenity for residents. The footpath upgrade and street planting makes a major contribution to the streetscape and is strongly supported."

It is supported subject to the following recommendation.

- 1. Landscaping on the eastern boundary should allow for some larger trees to screen and soften the building from future development on the adjoining site. The species proposed in this location grows to only about 2 metres and do not provide adequate screening to the 15 metre building."*

Assessment Comment

Amendments to the design have partly addressed issues raised by the panel subject to conditions of consent to increase landscape provision eastern boundary.

(Refer Condition 5.18)

Noise Impact

The proposal has potential to impact on the amenity of adjoining residential developments in terms of noise emissions associated with vehicle deliveries, waste collection, restaurant operations including use of outdoor dining areas and operating plant and equipment. Proposed hours of operation of the restaurant are 9.00am to 11.00pm Monday to Sunday and public holidays.

By letter the applicant was advised that "the development should be designed to ensure that amenity impacts arising from noise generating activities restaurant, outdoor dining, plant and equipment, loading and unloading arrangements and vehicle noise do not unreasonably compromise the amenity of surrounding residences to the east. An acoustic study should be undertaken to establish existing noise levels and provide a mitigation strategy, demonstrating the measures to be taken to effectively mitigate noise."

In response to issues raised the applicant has advised the following:

"The waterfront precinct includes a variety of uses including restaurants, take away outlets, retail outlets, residential flat buildings and the occasional single dwelling. The development has been designed with the commercial component facing Mason's Pde well away from the properties to the east. Garbage collection and the occasional delivery vehicle at the north east corner of the building will not increase the existing impact on the neighbour. Council has the power to limit the times that deliveries are allowed however the likely nature of the proposed use i.e. restaurant, means that its deliveries will be during the day. No further acoustic studies or mitigation strategies are warranted."

Council Health Surveyor has raised no objections to the proposal. The application will be conditioned limiting hours of operation for the restaurant to those hours nominated by the applicant and delivery vehicles restricted to daytime deliveries. Amplified music shall not be played within outdoor dining areas after 10pm.

(Refer Condition Nos. 6.1, 6.2, 6.4 and 6.5)

Engineering Requirements

Traffic Impact

The application does not fall under Schedule 3 Traffic Generating Developments under SEPP (Infrastructure) 2007 and does not require referral to the RTA or Council Development Committee (CDC). The applicant has submitted a traffic report prepared by B J Bradley & Associates (20 September 2010) in response to Council request which has advised that the proposed development will generate approximately 2 trips more than the three (3) existing commercial developments on the site in the weekday peak periods. The proposed development will not increase traffic generation to a level which would have unacceptable impacts on road network capacity and result in congestion.

The B J Bradley & Associates report also includes an assessment of the access to and from the development which recommends: "...line marking and signposting together with the provision of a convex mirror will ensure that the basement parking area operates in a safe manner."

Road Works & Access

The development will require the construction of kerb and gutter and footpath within Masons Parade and Shortland Street. Council's City Services Directorate has prepared design plans for an upgrade of Masons Parade. It is not known when the upgrade will occur, therefore, the application shall be conditioned for half road construction in the event that the site is redeveloped before Council carries out its intended works.

Brisbane Water 1% AEP Flooding

The land is identified as being affected by Brisbane Water Foreshore Flood Study (and also by Council's Flood Management Policy. The Flooding and Drainage Development Engineer has assessed the development and provided comments and proposed conditions.

Sea Level Rise

The subject land has been identified as being potentially affected by sea level rise of up to 0.9m by the year 2100. Council's adopted sea level rise planning level of 0.9m is consistent with the NSW State Government's Sea Level Rise Policy Statement. All applications to develop the land need to consider sea level rise. However Council does not currently have relevant strategic plans with respect to management of sea level rise for the area and no specific sea level rise development controls apply to this land. Hence, the minimum floor level of RL 2.45m AHD has been recommended by Council's Flooding and Drainage Development Engineer.

Drainage Easement

The property is subject to a proposed drainage easement. Council has not set a definite width of the proposed drainage easement. Consequently, the building is being set back from the top of the watercourse bank.

Easements & Restrictions

The development site is encumbered with a proposed drainage easement inside the southern boundary of Lot B DP155888. The width of the proposed easement is not known exactly. Structures will need to be founded below the zone of influence of the drainage channel and proposed easement.

Flooding and Drainage Issues

Building Setback to drainage channel

It is proposed to build up to the southern boundary and fence line of the site. The southern boundary of the site is adjacent to a drainage channel which runs east to west and discharges to Brisbane Water via culverts at Masons Parade. A setback of between 3.2m to 3.8m is proposed from the top of bank of the drainage channel to the proposed building. This set back distance, from the top of bank of the waterway, is less than the 4m offset specified by Gosford City Council's policy D6.47, "Setback Policy - Creeks, River & Lagoons", Section 2.1.2. This section specifies a 4m wide vehicular and machinery access along the waterway for maintenance where a suitable easement does not exist. Therefore, the proposed development does not comply with Council's Development Control Plan No. 115 - Building in Flood Liable Areas.

The access provided by the proposed setback distance has been inspected by Council maintenance staff and deemed to be sufficient to maintain the waterway.

Increase in flood levels

Council's drainage and development engineer has advised that: "Available data suggests that during a flood event of sufficient size to raise flood levels in the channel to the level of the proposed building, the flood level will actually exceed the level of the southern bank and floodwater will inundate several properties to the south. As this area is low lying and relatively large compared to the area of the channel, any increase in flood levels in the channel will be negligible over the extents of this area. Due to this factor, I am satisfied that the proposed development is unlikely to have an adverse effect on neighbouring properties."

Car Park Floor levels

The minimum crest level of the entry into the underground car park requires has not been amended to the minimum floor level of 2.45m AHD as requested and have been conditioned to comply.

Climate change and sea level rise

Climate change and sea level rise have been considered in the assessment of this application.

Climate change and sea level rise will be felt through:

- increases in intensity and frequency of storms, storm surges and coastal flooding;
- increased salinity of rivers, bays and coastal aquifers resulting from saline intrusion;
- increased coastal erosion;
- inundation of low-lying coastal communities and critical infrastructure;
- loss of important mangroves and other wetlands (the exact response will depend on the balance between sedimentation and sea level change); and
- impacts on marine ecosystems.

Internationally there is a lack of knowledge on the specifics of climate change and the likely impact it will have on the subject development. Government action may mitigate the impact of climate change and the question of sea-level rise may be able to be addressed through the construction of containment works or through Council's policies that may be developed over time.

In the absence of any detailed information at the present however, refusal of this application is not warranted.

Public Submissions

Three (3) public submissions were received in relation to the application. Those issues associated with the key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submission is detailed hereunder.

1. Visual Privacy

The development will create a complete loss of privacy for my property and even if a screen was erected between my property and the proposed development to counter the problem it would substantially block adequate ventilation to my property.

Comment

Proposed fencing and landscaping provides adequate privacy screening to the existing single storey dwelling at 1 Shortland Street at ground level which adjoins the eastern boundary. There will be loss of privacy at higher level from windows on upper floors however such impact is considered to be unavoidable having regard to the height and scale of development permitted within the zone under the provisions of the GCC LEP. While the adjoining house is nearing the end of its economic life, it is sited on a residential sized allotment and opportunity to redevelop this site will be constrained by the fact that

the site will be located in isolation between two larger development sites with limited opportunity for amalgamation with adjoining developments once development consent has been granted.

Separation distance from the windows of these upper levels ranges from 6.7m (first to third floors) to 8.23 metres (fourth floor). The proposal is generally compliant with the setback and building separation requirements under the DCP/LEP applicable to development on the city edge with the exception of the penthouse level as discussed elsewhere in the report.

2. Amenity - loss of views natural sunlight and breezes

The development will substantially block the views, natural sunlight and all breezes which my property now enjoys. Virtual total loss of sunlight resulting from the multi-storey development will deprive my property of any natural clothes drying.

Comment

The adjoining single storey cottage currently has two small windows facing the site boundary. Water views over the development site are presently restricted by the existing commercial development and outbuildings on the subject site. Natural sunlight access will not be significantly compromised by the proposal and overshadowing impact is not considered to be unreasonable. Shadow Diagrams submitted by the applicant demonstrate that the indoor and outdoor living areas will receive a minimum of three hours sunlight to principal living rooms and to at least 50% of their private open space areas between 9.00am and 3.00pm on 21 June in accordance with the solar access controls under Section 6(j) of the GCC DCP 2007.

3. Flooding Impact

The development will increase the risk of flooding to my property:

The application is accompanied by a *Flooding Investigation report* prepared by Northrop and supplementary report dated 29 March 2010. Council's flooding and drainage engineer has advised the following with respect to flood levels and impact to the dwelling house to the east:

"The proposal involves some filling of the channel overbanks. Summarising DCP115; filling is allowed if the cumulative effect of filling does not raise the flood level by more than 10mm.

Review of the submitted flood study by Northrop indicates the following with regards to flood levels at 1 Shortland Street (directly upstream of the proposed development):

- 1. There is generally a 10mm increase in the 1% AEP flood level across lot 4 DP159244, 1 Shortland Street. There is no increase in the 1% AEP flood levels towards the east of this lot and further upstream (further to the east).*
- 2. The finished floor level at 1 Shortland Street is RL 2.01m AHD*
- 3. Pre-development water levels in the channel (near the residence at 1 Shortland Street) range from 2.05m AHD downstream (western boundary) to 2.12m AHD upstream (eastern boundary).*

-
4. *Post-development water levels in the channel (near the residence at 1 Shortland Street) range from 2.06m AHD downstream (western boundary) to 2.12m AHD upstream (eastern boundary).*
 5. *Items 2-4 above indicate that the residence at 1 Shortland Street will be inundated during the 1% AEP storm event in both the existing (pre-development) scenario and the post-development scenario.*
 6. *Flood levels for events less than the 1% AEP event are not known, however any increase in flood level can be expected to be less than the 10mm increase for the 1% AEP event.*

There is a limited increase in flood levels across 1 Shortland Street, and this is in the order of an additional 10mm during the 1% AEP storm event. This increase is permitted under DCP115."

There is likely to be significant flooding of the neighbouring property to the south (two storey brick restaurant) and adverse effects, before further effects of flooding (due to the proposed building) occur. As this area would be considered flood storage (and beyond the bounds of the modelled cross section), the computed 20mm increase in flood levels (over a 3m section of channel) is unlikely to propagate fully to this area. In addition, the neighbouring property has a floor level of RL1.28m AHD. This is significantly below the 1% AEP channel flood level (with or without the post development additional 20mm increase) and therefore significant flooding of this building would be expected with or without the proposed development. The modelled increase in flood levels due to the proposed building is unlikely to cause the neighbouring property to the south to suffer further additional adverse effects.

(Refer Flooding and Drainage comments)

4. Car Parking

The development will also create greater problems in connection with vehicular access and parking for myself and my guests. I already experience lack of access to my property as a result of adjoining property owners and their guests parking across my driveway and at the front of my property:

Comment

The proposal provides adequate parking for residents and their visitors within a basement car park. The proposed minor deficiency of on-site car parking for restaurant patrons will not have adverse impacts on streetscape or residential amenity. Masons Parade provides capacity for parallel parking and right angle parking bays which are currently utilised by patrons of the existing fish and chip shop. The demand for restaurant parking would generally reflect the existing street parking arrangements associated with the existing fish and chip shop.

(Refer Car Parking Assessment)

5. Noise Impact

A substantial increase in noise from the additional residents adjacent to my property. As well, the proposed development also includes a restaurant which will, no doubt, mean that patrons of the restaurant will be creating greatly increased noise late into the night.

Comment

The site currently contains three (3) commercial developments:

- Montis take-away restaurant approx. 235 m²;
- Office Furniture Depot approx. 370 m²; and
- Complete Air Conditioning approx. 155 m².

Such activities presently generate noise consistent with normal retail/commercial use. The proposal has potential to generate additional noise associated with vehicles accessing basement car park, external plant and equipment, restaurant operations, deliveries and waste collection. The application will be conditioned requiring restaurant operations (music, outdoor areas etc) are managed to ensure noise levels are maintained within reasonable limits (i.e. not to exceed 5dB above background noise levels) to minimise disturbance to adjoining residents and future occupants of residential apartments within the development.

(Refer Condition Nos. 6.1, 6.2, 6.4 and 6.5)

6. Visual Impact

The proposed development, equivalent to 6 storeys (5 levels plus roof structure), will have significant scenic and amenity impacts on the existing development (mainly residences) surrounding the development site. All development at RL 19.8 or below, which includes the majority of development in Shortland St and Mulkarra Ave, will be impacted by the visual intrusion of the proposed structure; some residences significantly.

Comment

The proposal has been designed to reflect the current planning controls applicable to the site under the provisions of the Gosford City Centre DCP and LEP. Many of the surrounding properties have been developed under previous planning regimes with lower density and height controls applicable. As the proposal is one of only two such developments developed under the current planning controls it will appear visually intrusive at first until other sites are redeveloped in a similar manner. Many surrounding sites contain single storey dwellings nearing the end of their economic life which are likely to be redeveloped in the near future as the development potential on surrounding land is realised.

7. Size and Bulk of building and visual impact on public reserve

The size and bulk of the building, as the first line of development adjoining the foreshore reserve, will have long-term impacts on the waterfront reserve and its amenity. Development along this alignment should be far less intrusive, limited to 2 or possibly 3 storeys maximum. This would significantly improve the aesthetic quality of the reserve and the waterfront. Also, all development east of the site will have to be at far greater height (not allowed under current zoning) to provide any view to the waterfront and Brisbane Water. Such views and scenic amenity should not be the exclusive right of properties fronting the foreshore reserve.

Comment

The formulation of the height controls and building height map under the LEP would have had regard to appropriate heights for the natural environmental setting. The minor encroachment of a small portion of the building over the 15m height control by approximately 1 metre does not pose any significant additional impact on the natural setting. The proposed building is one of the first buildings designed under the new planning regime for this precinct and may initially impact on its foreshore setting and existing development. However such impact is acceptable and reflects the scale of development generated by the controls.

The proposal does not detract from the scenic quality or amenity of the foreshore public reserve land.

8. Non compliance with relevant controls under the GCC DCP and LEP

There are several provisions of the Gosford City Centre Local Environmental Plan and Development Control Plan 2007 that are not met by the proposed development (eg. building setbacks and heights). We object to any relaxation of limits and requirements imposed by Council's planning controls.

Comment

The proposal seeks variation to the maximum height, car parking and building separation development standards under the GCC LEP and various development guidelines under DCP 2007. Such variations have been considered in the assessment of the application, as detailed in the report.

Conclusion

The application for a proposed mixed use development comprising a ground floor restaurant and 22 residential units on lots A and B DP 155888 N0s. 63 to 65 Masons Parade Gosford has been assessed in accordance with the relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, Gosford City Centre LEP and DCP, relevant SEPPs and DCPs. Despite various minor non-compliances with several development standards and controls under both the GCC LEP and DCP, the proposal is considered to be satisfactory and is consistent with the underlying objectives of such standards and the broader objectives for the zone and locality. Variation to such standards do not result in any significant adverse impacts on the amenity and privacy of neighbours or visual impact on the public domain including parkland and foreshore located to the west. The application is therefore recommended for approval.

Attachments:

Attachments A & B

Figure 1: Architect's drawing of proposed development

Figure 2: Existing Streetscape - Masons Parade

Figure 3: Aerial Photograph showing location of subject site

Figure 4: Zoning Map

RECOMMENDATION

- A The Joint Regional Planning Panel as consent authority grant consent to Development Application No. 37745 for 22 Unit Residential Flat Building, Restaurant and Basement Carpark (JRPP) on Lot: A DP: 155888, Lot: B DP: 155888, 65 Masons Parade POINT FREDERICK, 63 Masons Parade POINT FREDERICK subject to the conditions attached

- B In accordance with Section 95(1A) of the Environmental Planning & Assessment Act 1979, this consent shall be valid for a period of five (5) years.
- C The objector(s) be notified of JRPP decision.
- D The External Referrals be notified of JRPP's decision.

CONDITIONS

1.. PARAMETERS OF THIS CONSENT

1.1. Approved Plans and Supporting Documents

The development shall be implemented substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

Architectural Plans by Slater Architects / Terras Landscape Architects

Drawing	Description	Sheets	Issue	Date
13601: A00	Existing Site Plan	1	2	5.11.2009
A01	Proposed Site Plan	1	6	23.7.2010
A02	Basement Floor Plan	1	5	23.7.2010
A03	Ground Floor Plan	1	9	15.8.2010
A04	First Floor Plan	1	4	5.11.2009
A05	Second Floor Plan	1	2	5.11.2009
A06	Third Floor Plan	1	2	5.11.2009
A07	Penthouse Floor Plan	1	4	5.11.2009
A08	Roof Plan	1	5	15.4.2010
A09	Elevations (East and West)	1	8	7.10.2010
A10	Elevations (North and South) & Section A-A	1	7	7.10.2010
A11	Section B-B	1	5	7.10.2010
7865.5	Landscape Plan	1	B	12.11.2009

Supporting Documentation

Document	Title	Date
	Statement Of Environmental Effects (Doug Sneddon Planning Pty Ltd)	November 2009
	Amended Supplementary Report (Doug Sneddon)	October 2010
STW01 STW02	Stormwater and Erosion Control Diagram	5.11.2009
Ref:2006159 Sheets 1 and 2	Survey Plan (Chase Burke and Harvey)	24.8.2006
Ref: 13601	SEPP 65 Report/ Contextual Site Analysis and Design Principles (Slater Architects)	September 2009
SH01 SH02	Shadow Diagrams (June 21 and March 21)	5.11.2009
270366M	BASIX Certificate and ABSA Plans	13.11.2009
	Traffic Report (BJ Bradley & Associates) and	20.09.2010

	Diagram 13601Bradley-100921-A02	
7865.5	Landscape Design Report (Terras Landscape Architects)	12.11.2009
TL080050L02 TL080050E01	Flooding Investigation and letter (Northrop)	7.10.2009 2.08.2010
	Waste Management Report (M. Cassidy)	31.5.2010
Ref:13601	Colour Scheme and Finishes	September 2008
	Photomontage (Slater Architects)	

1.2. Building Code of Australia

All building works must be carried out in accordance with the Building Code of Australia.

2.. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

2.1. No activity is to be carried out on site until a Construction Certificate has been issued. Other than:

- a Site investigation for the preparation of the construction, and/or
- b Implementation of environmental protection measures, such as erosion control etc that are required by this consent.

2.2. The finished surface material, colours and texture of any building and/or hard paved areas must be non-glare and generally in accordance with the Colour Scheme and Finishes Plan Ref:3601, dated September 2008

2.3. The payment of **\$414,690.00** in accordance with the Gosford City Council Section 94A Development Contribution Plan - Gosford City Centre. (Account No D9001.823 - Hot Key 710)

The total contribution amount of \$414,690.00 is to be paid prior to the issue of a Construction Certificate.

The basis of the calculation and the total contribution amount is subject to quarterly review. An adjustment amount will become payable if the contribution is not paid prior to the next review.

A Construction/Subdivision Certificate is not to be issued by a certifying authority until the developer has provided the certifying authority with a copy of a receipt issued by Council that verifies that the section 94 contributions have been paid in accordance with the wording of this condition. A copy of this receipt is to accompany the documents required to be submitted by the certifying authority to Council under Clause 104 of the Environmental Planning and Assessment Regulation 2000.

A copy of the Contribution Plan may be inspected at the office of Gosford City Council, 49 Mann Street Gosford or on Council's website

www.gosford.nsw.gov.au/customer/document_gallery/contribution_plans

2.4. Surface water collected on driveways, parking areas and other impervious areas are to be treated so as to control pollution in accordance with one or more of the methods detailed

in Section 10 of the Water Cycle Management Guidelines referenced by DCP 165 - Water Cycle Management.

- 2.5. A dilapidation report is to be prepared by a practising structural engineer at no cost to Council or adjoining property owners, detailing the structural adequacy of adjoining properties, including Council's property, and their ability to withstand the proposed excavation. This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works. The report must be submitted to Council and relevant adjoining property owners prior to the issue of a construction certificate.
- 2.6. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's "Civil Construction Specification", "GCC Design Specification for Survey, Road and Drainage Works" and "Policy 'D6.46 Erosion Sedimentation Control'".

The required works to be designed are as follows:

- a. Half width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum 5.5m wide road pavement across the full frontage of the site in Masons Parade. (N.B The proposed works must not impede the overland flow from the culvert)
- b. Half width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum 5.5m wide road pavement across the full frontage of the site in Shortland Street.
- c. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in Masons Parade and Shortland Street (Except where it will obstruct the secondary flow path from the box culvert.
- d. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the full frontage of the site in Masons Parade and Shortland Street.
- e. Tapered heavy-duty vehicle crossing that has a minimum width of 8.5m at the kerb line and 6.1m at the property boundary, and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- f. All redundant vehicular crossings to be removed and footway formation reinstated.
- g. All redundant vehicular crossings to be removed and the footway formation reinstated with turf and a 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location.
- h. The piping of stormwater from within the site to Council's drainage system located in Masons Parade.

The engineering plans must be approved by Council prior to the issuing of a Construction Certificate required under this consent.

- 2.7. A pavement report for works within a public road reserve shall be prepared by a practising Geotechnical Engineer. This report must be submitted with the engineering plans and approved by Council under the Roads Act, 1993.

The pavement depths must be determined in accordance with Council's specifications and the following traffic loadings:

Name of Street	Traffic Loading (ESAs)
Masons Parade	2 x 10 ⁶
Shortland Street	1 x 10 ⁶

- 2.8. A dilapidation report must be submitted to Council prior to issue of a Construction Certificate and/or approval of engineering plans under the Roads Act. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.9. A security deposit of \$33,000 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.10. Satisfactory arrangements must be made for the provision of water and sewer services to the land. A copy of the Certificate of Compliance under Section 307 of the Water Management Act 2000, must be obtained from the Water Authority (Council) prior to the issue of a Construction Certificate. Contributions may be applicable to the Section 307 Certificate.
- 2.11. Development constructed near or over the sewer main and/or adjacent to Council's water main must comply with Council's guidelines for "Building Over or Near Council Sewer and Water Mains". Details prepared by a practising structural engineer must be submitted to and approved by the Water Authority (Council) in accordance with the Water Management Act 2000 prior to the issue of a Construction Certificate.
- 2.12. Design of the following engineering works within private property:
 - a. Driveways/ramps and car parking areas must be designed according to the requirements of the current Australian Standard AS2890 for the geometric designs, and industry Standards for pavement designs.
 - b. The provision of line marking and signposting within the development , together with the provision of a convex mirror as recommended in the Letter Report prepared by B J Bradley & Associates dated 20 September 2010, to ensure that the basement parking area operates in a safe manner.
 - c. A stormwater detention system must be designed in accordance with Council's DCP165 - Water Cycle Management and Council's 'GCC Design Specification for Survey, Road and Drainage Works'. The stormwater detention system shall limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1%AEP storm event. A runoff routing method is to be used. An on-site stormwater detention report including an operation and maintenance plan shall accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
 - d. Nutrient/pollution control measures must be designed in accordance with Council's DCP165 - Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.

The design of these details and any associated reports shall be included in the construction certificate.

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- 2.13. Piping of all stormwater from impervious areas within the site to Council's drainage system located in Masons Parade.
- 2.14. The minimum floor level of all habitable rooms in the development must be RL 2.45m AHD.
- 2.15. All building materials used or located below RL 2.45m AHD must be of a type that is able to withstand the effects of immersion.
- 2.16. Structures constructed adjacent to a Council stormwater system and/or drainage easement and within the zone of influence must have footings designed in accordance with Council's "Guidelines for Building Adjacent to a Drainage Easement". Details prepared by a practising structural engineer shall form part of the Construction Certificate.
- 2.17. The minimum crest level of the driveway entry into the underground car park shall be RL 2.45m AHD.
- 2.18. No structures are to be erected between the southern boundary of the building and the drainage channel to the south.
- 2.19. A vertical ceiling height of 4.0m must be provided in areas services by waste trucks.
- 2.20. An Acid Sulphate Soils Management Plan is to be submitted to and approved by Certifying Authority prior to the issue of a Construction Certificate.
- 2.21. **Compliance with the Act, Regulation and the Food Standards Code**
- The fitout of the food premises is to comply with the Food Act, 2003, Food Regulation 2010, Food Standards Code and the Australian Standard AS4674 for the Design, Construction and Fitout of Food Premises. Details of compliance are to be included in the plans and specifications for the **Construction Certificate** to the satisfaction of the certifying authority

Reason:- to ensure the fitout complies with relevant standards

3.. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. A construction certificate for the building work is to be issued and the person having the benefit of the development consent must appoint a principal certifying authority prior to the commencement of any building works.
- The principal certifying authority (if not the Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than 2 days before the building work commences.
- 3.2. A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- 3.3. Site works are not to commence until the sediment control measures have been installed in accordance with the approved plans.

3.4. A sign is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The sign shall indicate:

- a) The name, address and telephone number of the principal certifying authority for the work; and
- b) The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
- c) That unauthorised entry to the work site is prohibited.

The sign is to be removed when the work has been completed.

3.5. The submission to and approval by Council prior to the commencement of any works, of details for the disposal of any spoil gained from the site and /or details of the source of fill, heavy construction materials and proposed routes to and from the site. Details shall be provided prior to the commencement of works and at latter stages of construction if details change.

3.6. Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 318 of the *Occupational Health and Safety Regulation 2001*.

The person having the benefit of this consent must provide the principal certifying authority with a copy of a signed contract with such a person before any development pursuant to the development consent commences.

Any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed, and if so, must specify the landfill site (that may lawfully receive asbestos) to which the bonded asbestos material or friable asbestos material is to be delivered.

In this condition, bonded asbestos material, bonded asbestos removal work, friable asbestos material and friable asbestos removal work have the same meanings as in clause 317 of the *Occupational Health and Safety Regulation 2001*.

Note 1. Under clause 317 removal work refers to work in which the bonded asbestos material or friable asbestos material is removed, repaired or disturbed.

Note 2. The effect of subclause (1) (a) is that the development will be a workplace to which the *Occupational Health and Safety Regulation 2001* applies while removal work involving bonded asbestos material or friable asbestos material is being undertaken.

Note 3. Information on the removal and disposal of asbestos to landfill sites licensed to accept this waste is available from the Department of Environment, Climate Change and Water.

3.7. **Mechanical Ventilation/Exhaust System**

Details of proposed mechanical ventilation systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia (BCA) and Australian Standard AS1668 Parts 1 & 2 (including exhaust air quantities and discharge location points) are to be submitted to and approved by the PCA **prior to a Construction Certificate being issued** for the subject works.

A certificate being submitted at the completion of the installation from a practising Mechanical Engineer certifying that the construction, installation and operation of the exhaust hood ventilation system meets the requirements as AS 1668.1 and/or AS 1668.2.

Reason:- to ensure compliance with the BCA and AS 1668

4.. DURING WORKS

- 4.1. Clearing of land, excavation, and/or earthworks, building works, and the delivery of building materials shall be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

a No work is permitted on Sundays and Public Holidays

b No work is permitted on:

- Saturdays when a public holiday is adjacent to that weekend.
- Construction industry awarded rostered days off.
- Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and/or
- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.

- 4.2. Erosion and Siltation control measures must be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls shall comply with Council's Code of Practice of Erosion and Sedimentation Control.

- 4.3. A report prepared by a registered Surveyor is to be submitted to the Principal Certifying Authority at each floor level of construction of the building (prior to the pouring of concrete) indicating that the finished floor level is in accordance with the approved plans.

- 4.4. To minimize the opportunity for crime, the development must incorporate the following:

- a Adequate lighting to AS1158 is to be provided to common areas.
- b The ceiling of the car park must be painted white.
- c Landscaping adjacent to mailboxes and footpaths must not provide for the concealment opportunities for criminal activity.
- d The development must be designed to avoid foot holes or natural ladders so as to minimize unlawful access to the premises.
- e Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.

- 4.5. Building materials must not be stored nor construction work carried out on the road reserve unless associated with a separate approval under the *Roads Act 1993*.

- 4.6. This development is subject to Council's DCP106 – Controls for Site Waste Management. The Waste Management Plan submitted as supporting documentation with this development consent is required to be implemented during all stages of demolition and construction.

- 4.7. Buildings are to be demolished in a safe and systematic manner in accordance with the requirements of Australian Standard *AS 2601-2001 - Demolition of Structures*, and disposed of in an approved manner.

- 4.8. The works within the road reserve that required approval under the Roads Act shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design

Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.

- 4.9. The engineering works within private property that formed part of the Construction Certificate shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.
- 4.10. The location of all electrical fixtures and/or gas outlets are to be at a minimum height of RL 2.45m AHD.
- 4.11. Filling or debris must not be placed within any watercourse or drain.
- 4.12. No structures are to be erected between the southern boundary of the building and the drainage channel to the south.
- 4.13. The internal road strength used by the waste trucks must be sufficiently strong enough to withstand a truck loading of 22.5 tonnes.
- 4.14. The road surface used by the waste trucks must be constructed of reinforced concrete.
- 4.15. No obstructions to the wheel out of the waste bins being permitted including grills, speed humps, barrier kerbs etc.
- 4.16. The driveway design and loading area layout is to be designed in accordance with AS 2890.2-2002 Parking Facilities - Off Street Commercial Vehicle Facilities.
- 4.17. The waste truck servicing grade is to be 3% or less for the following areas:
- Within the enclosure
 - For bulk bin roll out pads
 - Within the 13m bulk bin and truck service area
- 4.18. **Cooling and/or Freezing Chamber**

The refrigerated/cooling/freezing chamber, which is of sufficient size for a person to enter must have-

- (a) a door which is capable of being opened by hand from inside without a key; and
- (b) internal lighting controlled only by a switch is located adjacent to the entrance doorway inside the chamber; and
- (c) an indicator lamp positioned outside the chamber which is illuminated when the interior light is switched on; and
- (d) An alarm that is-
 - a. located outside but controllable only from within the chamber; and
 - b. able to achieve a sound pressure level outside the chamber of 90dB(A) when measured 3m from the sounding device.

The door required by (a) above must have a doorway with a clear width of not less than 600mm and a clear height of not less than 1.5m.

Reason: to ensure compliance with the Building Code of Australia (BCA).

5.. PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

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- 5.1. Application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.
 - 5.2. The premises not being occupied until an occupation certificate has been issued.
 - 5.3. A 1.8 metre high fence must be erected along the length of the rear eastern and side southern boundaries behind the building line.
 - 5.4. A concrete kerb, or alternative of similar standard, must be provided to the driveways and around areas of landscaping to prevent encroachment of vehicles.
 - 5.5. Lots A and B DP 155888 must be consolidated into a single allotment under one Certificate of Title prior to the issue of an Occupation Certificate.
 - 5.6. The driveway, vehicle manoeuvring area and 35 car parking spaces as shown on the approved plan must be properly constructed, graded, drained, sealed and line marked including directional arrows with impervious paving material, in accordance with Australian Standard 2890.1-2004 Off Street Parking.
 - 5.7. The street number is to be at least 100mm high and be clearly visible from the street frontage.
 - 5.8. Mail receptacles shall be provided and appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post.
 - 5.9. Units numbered 5, 11 and 17 in the proposed mixed use development shall be capable of modification when required by the occupant to comply with the provisions of AS4299-1995 the Australian Adaptable Housing Standard.
 - 5.10. The requirements of the BASIX certificate for development and shown on the approved plans must be complied with prior to the issue of an occupation certificate.
 - 5.11. Works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', and documentary evidence for the acceptance of such works obtained from the Roads Authority prior to the issue of an Occupation Certificate.

Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.

- 5.12. Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of the Occupation Certificate.
- 5.13. The internal engineering works within private property that formed part of the Construction Certificate shall be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', prior to the issue of an Occupation Certificate.
- 5.14. Prior to the issue of an Occupation Certificate the Deposited Plan must be amended to include a Section 88B Instrument under the Conveyancing Act 1919 for the following

restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.

- a To create a Restriction as to User over all lots containing an on-site stormwater detention system restricting any alteration to such a facility or the erection of any structure over the facility or the placement of any obstruction over the facility.
- b To create a Restriction as to User over all lots containing a nutrient/pollution facility restricting any alteration to such a facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

5.15. A Section 88E instrument under the Conveyancing Act 1919 must establish the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).

- a To ensure on any lot containing an on-site stormwater detention system that;
 - The facility will remain in place and fully operational,
 - The facility is maintained in accordance with the operation and maintenance plan so that it operates in a safe and efficient manner,
 - Council staff are permitted to inspect and repair the facility at the owners cost,
 - Council is indemnified against all claims of compensation caused by the facility.
- b To ensure on any lot containing a nutrient/pollution control facility that:
 - The facility will remain in place and fully operational,
 - The facility is maintained in accordance with the operation and maintenance plan so that it operates in a safe and efficient manner,
 - Council staff are permitted to inspect and repair the facility at the owners cost,
 - Council is indemnified against all claims of compensation caused by the facility.

5.16. Certification from a consulting engineer shall be submitted to Council stating that all slabs and/or footings within the zone of influence associated with the Council stormwater system and/or drainage easement have been constructed in accordance with the Construction Certificate.

5.17. Council will require an indemnity against claims for loss or damage to the pavement or other driving surface and against liabilities losses, damages and any other demands arising from any on-site collection service prior to the issue of an Occupation Certificate together with the creation of a S88B instrument under the Conveyancing Act to this effect and at the applicant's cost.

5.18. Landscaping on the eastern boundary should allow for some larger trees to screen and soften the building from future development on the adjoining site. The species proposed in this location grows to only about 2 metres and do not provide adequate screening to the 16 metre building. Dense screen planting which will achieve a mature height of 3 metres including tree specimens shall be planted in along the eastern boundary between the edge of the driveway and eastern boundary fence. Details to be submitted prior to the issue of an Occupation Certificate.

5.19. Street tree plantings are to be as nominated on the approved Landscape Plan. Advanced specimens (min 25lt pot size) are to be provided and are to be located at 10 metre intervals and adequately staked/protected to prevent vandalism. Trees are not to be located within an authority's underground service easement and are not to affect overhead service wires if present or be closer than: -

- 12m from an intersection, or

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- 3m from a driveway or access way, or
 - 3m from a power pole.

Street trees are to be planted prior to the issue of the Occupation Certificate.

6.. ONGOING OPERATION

6.1. The hours of operation of the proposed restaurant use are to be restricted to those times listed below, i.e.:

- 9.00am to 11.00pm Monday to Sunday and public holidays.

Any variation to these hours is to be subject to the prior consent of Council.

6.2. The playing of amplified music in outdoor dining areas associated with the restaurant use shall be prohibited after 10.00pm.

6.3. Nothing associated with the business is to be located on the footpath or adjoining public area, including the parking of vehicles, storage of goods, materials, waste or the like.

6.4. The sound level output from the development or business shall not exceed 5dBA above the ambient noise level measured at the boundary of the property.

6.5. All deliveries associated with the restaurant use must be made between the hours of 7.00am and 8.00pm.

6.6. No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.

6.7. Provision must be made for illumination of the common areas in the front of the site, throughout the hours of darkness.

6.8. All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area or to motorists on nearby roads.

6.9. The consent of Council must be obtained prior to any change of use of the premises as defined in the planning instrument.

6.10. Five (5) visitor car parking spaces and three spaces for commercial (restaurant) use/staff are to be physically identified on site, and maintained free of obstruction. These spaces are not to be used for the storage of goods or waste products.

6.11. Car parking areas and spaces required by this consent are to be maintained and periodically reline-marked. The tree allocated Commercial (restaurant) spaces are to be made available to all users of the site at all times during trading hours.

6.12. All loading and unloading of goods are to be conducted wholly within the site. Loading facilities, internal docks or goods handling areas are to be maintained free of obstruction for the sole use of delivery vehicles.

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- 6.13. No advertisement shall be erected on or in conjunction with the proposed development without prior development consent unless the advertisement is exempt development under Council's exempt and complying development schedule.
- 6.14. Maintenance of the on-site stormwater detention facility in accordance with the operation & maintenance plan.
- 6.15. Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.
- 6.16. To ensure the survival and establishment of the landscaping, all works associated with the approved Landscape Plans are to be maintained for a period of 12 months from the date of the issue of an Occupation Certificate.
- 6.17. At the completion of the landscaping maintenance period any areas of lawn and plantings, including adjoining road reserve areas that are in a state of decline, damage or missing are to be replaced or restored to a healthy and vigorous condition and compliant with the approved detailed Landscape Plans and Development Consent Conditions.
- 6.18. **Emission control**

There are to be no emissions or discharges from the premises which will give rise to an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

Emission control equipment shall be provided in the mechanical exhaust system serving the cooking appliances, to effectively minimise the emission of odours, vapours and oils.

Reason: - to minimise any potential odour/smoke nuisance.

7.. ADVICE

- 7.1. The public authorities may have separate requirements and should be consulted in the following aspects:
- a *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c *Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e *Gosford City Council* in respect to the location of water, sewerage and drainage services.
- 7.2. All work carried out under this Consent should be done in accordance with WorkCover requirements including the Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 7.3. It is the sole responsibility of the owner, builder and developer, to ensure that the proposed building or works complies with the requirements of the *Disability Discrimination Act*.

NOTE: The *Disability Discrimination Act* (DDA) is a Federal anti-discrimination law.

The DDA covers a wide range of areas including employment, education, sport and recreation, the provision of goods, services and facilities, accommodation and access to premises. The DDA seeks to stop discrimination against people with any form of disability including physical, intellectual, sensory, psychiatric, neurological, learning, disfigurement or presence in the body of a disease-causing organism. Whilst this development consent issued by Council is in accordance with the relevant provisions of the current *Building Code of Australia*, it does not indicate nor confirm that the application complies with the requirements of the DDA.

- 7.4. A fee for the approval of engineering plans under the Roads Act 1993 applies. The amount of this fee can be obtained by contacting Council's Customer Services on (02) 4325 8222.
- 7.5. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 7.6. Developers should make early application for a Section 307 Certificate under the Water Management Act 2000 from the Water Authority (Council). For a copy of the application form 'Application for Certificate under Section 305' contact Customer Service on (02) 4325 8200 or visit Council's web site www.gosford.nsw.gov.au to download a form from the Water & Sewerage forms index.
- 7.7. The Waste Management Plan will be complied with in accordance with the agreement signed by Mark Cassidy dated 31 May 2010.

8.. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

9.. REVIEW OF DETERMINATION

- 9.1. Subject to provisions of Section 82A of the Act the applicant may make an application seeking a review of this determination, providing it is made in time for Council to determine the review within twelve (12) months of this determination.

10.. RIGHT OF APPEAL

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- 10.1. Sections 96(6) or 97 of the Act, where applicable, confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 60 days or 12 months respectively, from the date of determination.
- 10.2. To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.

<<Insert Attachment Link/s Here >>