

APPENDIX I: CLAUSE 4.6 (GOSFORD LEP 2014): REQUEST FOR EXCEPTION TO THE MAXIMUM PERMISSIBLE BUILDING HEIGHT & FLOOR SPACE RATIO DEVELOPMENT STANDARDS APPLICABLE TO AMENDED DA 46209/2014 FOR PROPOSED MIXED USE DEVELOPMENT ON LOTS A & C DP 355117, LOTS 10 & 11 DP 591670 AND LOTS 1 - 4 DP 382784, NOS. 27 - 37 MANN STREET & NO. 125 GEORGIANA TERRACE, GOSFORD.

### **NOVEMBER 2015**

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#### 1. INTRODUCTION.

Clause 4.6 (2) of Gosford Local Environmental Plan 2014 provides for flexibility in the application of planning controls operating by virtue of development standards, in circumstances where strict compliance with those standards would in a particular case be unreasonable or unnecessary and where there are sufficient environmental planning grounds to justify contravening the development standard.

This request demonstrates that amended DA 46209/2014 for proposed mixed use development as described in section 4 of the accompanying Statement of Environmental Effects and which contravenes the applicable maximum permissible building height and floor space ratio development standards of Gosford Local Environmental Plan 2014, is justified having regard to the particular circumstances of the subject land and the development application.

#### 2. SUBJECT LAND & PROPOSED DEVELOPMENT.

**2.1 Subject Land:** The subject land is described as Lots A & C, DP355117; Lots 10 & 11, DP 591670; and Lots 1 - 4, DP 382784, Nos. 27-37 Mann Street and No. 125 Georgiana Terrace, Gosford.

The subject land has an area of 2,948m2, with a frontage of 60.535m to Mann Street; a frontage to Georgiana Terrace of 48.77m; a frontage to Parlour Lane of 60.35m; and a southern side boundary of 48.765m.

The subject land is steeply sloping, rising from a low point of approximately RL 11.2m at its Mann Street frontage to a highest point of RL 21.49m at Parlour Lane, a rise in elevation of 11.2m.

**2.2 Proposed Development:** The proposed amended Development Application No. 46209/2014 is described in detail in section 4 of the accompanying Statement of Environmental Effects.

In summary, the proposed development involves:

- the retention of the primary building on the heritage listed site (Gosford Heritage Item No. 37 "Creighton's Funeral Parlour"); dismantlement of the west façade of the sandstone garage and a small portion of its south façade in the west corner to be faithfully reconstructed; demolition of the remainder of the garage; and demolition of non-original outbuildings and additions to the rear of the main heritage building, including the fibro laundry, separate two storey brick pavilion and weatherboard shed;
- demolition of all other existing buildings and structures on the overall site;
- the erection of a 20 level (19 storey) mixed use building comprising:
  - Basement car parking level (67 spaces);
  - Ground Floor retail (537.74m2); restaurant within the retained heritage building (148.28m2) and car parking (45 spaces);
  - Level 1 commercial (693.98m2) and 28 car spaces;;
  - Level 2 commercial (3.99.68m2); residential apartments (3); swimming

pool; garbage store; and 38 car spaces);

- Level 2A four (4) residential apartments and car parking (45 spaces); and
- Levels 3 to 17 residential apartments (127).

### • Proposed Mixed Use:

- Retail space 537.74m2;
- Restaurant 148.28m2;
- Commercial -1,093.47m2; and
- Residential 134 apartments (comprising 29 x 1 bed; 75 x 2 bed; 28 x 3 bed; 2 x 4 bed); and
- 223 on-site car spaces, located as follows:
  - Basement 67 spaces;
  - Ground Floor 45 spaces;
  - Level 1 28 spaces;
  - Level 2 38 spaces; and
  - Level 2A 45 spaces.

### 3. DEVELOPMENT STANDARDS TO BE VARIED.

### 3.1 Maximum Permissible Building Height.

Clause 4.3 (2) of LEP 2014 provides that development on the subject land shall not exceed the maximum building height shown on the "Height of Buildings Map".

The "Building Heights Map" shows the subject land to be partly subject to a maximum permissible building height control of 36m (i.e. the Mann Street frontage) and partly 24m (rear of the land fronting Georgiana Terrace and Parlour Lane).

Clause 8.9 of LEP 2014 permits these 'baseline' maximum permissible building height controls to be exceeded by up to 30% in relation to development applications made on/before the 31st August 2014. As DA 46209/2014 was lodged prior to that date on the 22<sup>nd</sup> August 2014, the maximum permissible building heights are 46.8m and 31.2m respectively within each of the two height 'zones' across the subject land.

The Building Height Variations Diagrams provided in Annexure A show that:

- the proposed development (i.e. the residential tower) exceeds the maximum 46.8m permitted building height applying to part of the subject land by up to 10.02m (21.4%) at the central topmost roof element; and
- a minor part of the footprint of the residential tower as indicated on the FSR Calculation Diagram in Annexure B (at the mid-southern elevation), exceeds the maximum 31.2m permitted building height applying to part of the subject land by up to 23.89m (76.57%).

Clause 4.6 (2) of LEP 2014 allows the consent authority to exercise an appropriate degree of flexibility in applying the maximum permissible building height development standard to the proposed development. This assessment addresses the matters required by Clauses 4.6 (3) - (5) of LEP 2014 in order to satisfy the Council and the Director-General that any requirement

for the proposed development to strictly comply with the maximum permissible building height is unreasonable or unnecessary in the particular circumstances.

Council is requested to agree to the proposed development's non-compliance with the maximum permissible building heights of 31.2m and 46.8m of Clause 8.9 (3) of LEP 2014, having regard to the matters addressed in this assessment.

### 3.2 Maximum Permissible Floor Space Ratio.

Clause 4.4 (2) of LEP 2014 provides that development on the subject land shall not exceed the maximum permissible floor space ratio shown on the "Floor Space Ratio Map".

The "Floor Space Ratio Map" shows the subject land to be partly subject to maximum permissible floor space ratio of 4:1 (i.e. the Mann Street frontage) and partly 3:1 (rear of the land fronting Georgiana Terrace and Parlour Lane).

Clause 8.9 of LEP 2014 permits these 'baseline' maximum permissible floor space ratio controls to be exceeded by up to 30% in relation to development applications made on/before the 31st August 2014. As DA 46209/2014 was lodged prior to that date on the 22<sup>nd</sup> August 2014, the maximum permissible floor space ratios are 5.2:1 and 3.9:1 respectively within each of the two floor space ratio 'zones' across the subject land.

The Floor Space Ratio Variations Diagram provided in Annexure B shows that:

- the gross floor area of the proposed development is located almost entirely within that part of the subject land where a maximum permissible FSR control of 5.2:1 applies (i.e. + 30%). This results in a gross floor area of 15,201.65m2 and a FSR of 8.1:1 within that area:
- within the remaining part of the site permitting a maximum FSR of 3.9:1, only 2,031.73m2 of gross floor area is proposed, resulting in FSR of 1.88:1, within that area; and
- averaged across the entire site, the floor space ratio of the proposed development is 5.84:1.

(Note: The calculation of GFA includes internal car parking areas located above natural ground level.)

Clause 4.6 (2) of LEP 2014 allows the consent authority to exercise an appropriate degree of flexibility in applying certain development standards to particular development. This assessment addresses the matters required by Clauses 4.6 (3) and (5) in order to satisfy Council and the Director-General that any requirement for the proposed development to strictly comply with the maximum permissible floor space ratio applying over part of the subject land, is unreasonable or unnecessary in the particular circumstances.

Council is requested to agree to the proposed development's non-compliance within the area to which the maximum permissible floor space ratio development standard of 5.2:1 of Clause 8.9 (3) of LEP 2014 applies and to permit the proposed development having a FSR of 8.1:1 within that area, having regard to the matters addressed in this assessment.

# 4. CONSIDERATION AS TO WHETHER NON COMPLIANCE WITH THE APPLICABLE 31.2 AND 46.8M AND MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARDS OF GOSFORD LEP 2014 IS REASONABLE IN THE PARTICULAR CIRCUMSTANCES.

## 4.1 "Is the planning control in question a development standard"?

The 31.2m and 46.8m maximum permissible building height requirements applying to the subject land under Clauses 4.3 (2) and 8.9 of Gosford LEP 2014 are development standards for the purposes of Clause 4.6 (Exceptions to development standards) and may therefore be varied by the consent authority pursuant to the provisions of Clauses 4.6 (2) - (5) of LEP 2014.

### 4.2 "What are the underlying objectives or purpose of the development standard"?

The underlying objective or purpose of the maximum permissible building height development standards applicable to the subject land and the proposed development is stated within the objectives to Gosford LEP 2014 - Clause 4.3 (1) - Height of Buildings.

The following assessment demonstrates that the proposed development is consistent with the maximum building height objectives of LEP 2014:

• ''(a) to establish maximum height limits for buildings,''

**Design Response:** The subject land is affected by two maximum building height zones, the coverage of which is indicated on the 'key plan' shown in each of the diagrams provided in Annexure A (i.e. the permitted maximum 46.8m (36m + 30%) building height applies within 'Zone V' and the 31.2m (24m + 30%) maximum permitted building height applies within 'Zone S').

As can be seen on the northern and southern elevation building height diagrams in Annexure A the proposed development:

- exceeds the maximum 46.8m permitted building height applying to part of the subject land by up to 10.02m (21.4%) at the central topmost roof element; and
- a minor part of the footprint of the residential tower as indicated on the FSR Calculation Diagram in Annexure B (at the mid- southern elevation), exceeds the maximum 31.2m permitted building height applying to part of the subject land by up to 23.89m (76.57%).

The originally lodged development application substantially complied with the maximum permitted building height development standards. However, that application proposed to demolish Heritage Item No. 37 and to develop over a larger floor plate.

This amended application however now retains the principal heritage building at considerable cost to the proposed development. The proposed additional building height (+ 2 levels) and commensurate increase in residential units is sought to compensate for the costs associated with retention of the heritage building.

The topmost height of the proposed development (RL.71.75m AHD) is commensurate with the height of a neighbouring residential flat building (RL. 70m AHD) recently approved at No. 23 Mann Street, Gosford, under Consent No. 46272/2014.

"(b) to permit building heights that encourage high quality urban form,"

**Design Response:** The proposed development exhibits high quality urban form which complies with the applicable building height development standards other that for the minor exceedence described above.

• ''(c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,''

**Design Response:** The proposed building height exceedence does not reduce the opportunity for either the proposed development, or public areas to receive satisfactory exposure to sunlight. Comparative shadow diagrams provided in Annexure C show that the proposed development, in comparison to a complying development on the same building footprint, does not adversely affect the public domain, or neighbouring residential properties.

• ''(d) to nominate heights that will provide an appropriate transition in built form and land use intensity'',

**Design Response:** The design height of the proposed development (RL 71.75m AHD) results in a development that is commensurate with the height of a neighbouring residential flat building (RL.70m AHD) recently approved on the neighbouring property at No. 23 Mann Street, Gosford, under Development Consent No. 46272/2014.

- ''(e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,''
- **Design Response:** It is demonstrated in the Architectural Design Statement provided in Appendix B of the accompanying Statement of Environmental Effects and the Visual Impact Assessment provided in Appendix K of the accompanying Statement of Environmental Effects, that the proposed development does not cause significant visual impact; does not adversely impact on view corridors from public spaces; and provides for view sharing.
- ''(f) to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.''

**Design Response:** The proposed development does not result in any overshadowing of public open spaces, or cause the loss of scenic views enjoyed from those public open spaces.

### 4.4 "Matters for Consideration by the Director-General".

Clause 4.6 (4) (b) of Gosford LEP 2014 requires the concurrence of the Director-General to be obtained for development that contravenes a development standard.

Under Clause 4.6 (5), the Director - General is required to consider the following matters in deciding whether to grant concurrence.

## **4.4.1** "Whether contravention of the development standard raises any matter of significance for State or regional environmental planning".

It is demonstrated in the accompanying Statement of Environmental Effects and in this request, that the proposed development is consistent with State and regional planning policies/strategic directions seeking to encourage the revitailisation of Gosford City Centre.

Approval of the proposed development and the proposed exceedence of the applicable maximum permissible building height development standards in this particular case, would not raise any matter of significance for State or regional planning.

### 4.4.2 "The public benefit of maintaining the development standard".

The accompanying Statement of Environmental Effects demonstrates that the proposed exceedence of the permissible maximum building height development standards does not have adverse scenic/visual impacts, or amenity impacts on either the public domain, or neighbouring properties; and will not undermine the maintaining of the maximum building height development standards applicable elsewhere within the B4 Mixed Use zone.

# **4.4.3** "Any other matters required to be taken into consideration by the Director-General before granting concurrence."

There are no other matters currently specified to be taken into consideration by the Director-General before granting concurrence.

# 5. CONSIDERATION AS TO WHETHER NON COMPLIANCE WITH THE APPLICABLE 5.2:1 MAXIMUM PERMISSIBLE FLOOR SPACE RATIO DEVELOPMENT STANDARD OF GOSFORD LEP 2014 IS REASONABLE IN THE PARTICULAR CIRCUMSTANCES.

### 5.1 "Is the planning control in question a development standard"?

The 5.2:1 maximum permissible floor space ratio requirement applying to part of the subject land under Clauses 4.4 (2) and 8.9 of Gosford LEP 2014, is a development standard for the purposes of Clause 4.6 (Exceptions to development standards) and may therefore be varied by the consent authority pursuant to the provisions of Clauses 4.6 (2) - (5) of LEP 2014.

### 5.2 "What are the underlying objectives or purpose of the development standard"?

The underlying objective or purpose of the maximum permissible floor space ratio development standard is expressed in the objectives contained in Clause 4.4 (1) of Gosford Local Environmental Plan 2014.

The following assessment demonstrates that the proposed development's exceedence of the 5.2:1 floor space ratio development standard applicable to part of the subject land, is consistent with the applicable objectives:

• ''(a) to establish standards for the maximum development density and intensity of land use,"

**Response:** The subject land has a site area of 2,948m2 and the proposed development has a total gross floor area of 17,233.380m2, resulting in a floor space ratio over the entire site of 5.84:1. (Note: The calculation of GFA includes internal car parking areas located above natural ground level).

However, as indicated in the Floor Space Ratio Variation Diagram provided in Annexure B, the subject land is split into two FSR zones, Zone V, having an applicable "incentive' FSR of 3.9:1 and Zone X having an applicable "incentive" FSR of 5.2:1.

For urban design and architectural reasons expained in the accompanying Statement of Environmental Effects and the Architect's Design Report, the proposed development is configured so that the resulting gross floor area is almost entirely located within "Zone X" (GFA 15,201.65m2) where the resulting FSR is 8.1:1 and a smaller gross floor area is located within "Zone V" (GFA 2,031.73m2) where the resulting FSR is 1.88:1.

This amended application however now retains the principal heritage building at considerable cost to the proposed development. The proposed additional building height (+ 2 levels) results in a commensurate increase in residential units and floor space ratio in order to compensate for the costs associated with retention of the heritage building.

As indicated in the accompanying Statement of Environmental Effects the proposed exceedence of the maximum permissible floor space ratio does not result in any adverse impacts on the public domain, or the residential amenity of neighbouring properties.

• "(b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,"

**Response:** The floor space ratio in this particular case is a 'density' control. Building buk and scale are controlled through the applicable maximum permitted building height and the various building siting and bulk/scale nummerical guidelines of Gosford DCP 2013 - Chapter 4.1.

The analysis provided in the Architectural Design Statement provided in Appendix B of the accompanying Statement of Environmental Effects and the Visual Impact Assessment provided in Appendix K of the accompanying Statement of Environmental Effects, demonstrates that the proposed development is compatible with the desired character of the locality as expressed in Gosford LEP 2014 and Gosford Development Control Plan 2013.

• ''(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,"

**Response:** As demonstrated in the accompanying Statement of Environmental Effects, the proposed exceedence of the 5.2:1 FSR development standard does not have any unacceptable amenity impacts on either the public domain, or neighbouring properties.

• ''(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,''

**Response:** The subject land is located within an area likely to undergo substantial transformation, consistent with the Council's planning objectives for the revitalisation of Gosford City Centre.

The accompanying Statement of Environmental Effects and Architect's Design Report demonstrates that the proposd development maintains an appropriate visual relationship with neighbouring properties and the exceedence of the 5.2:1 FSR control over part of the subject land does not cause unreasonable impacts upon residential neighbours, or the locality generally.

• ''(e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,''

**Response:** The subject land has an area of 2,948m2, with extensive frontages to Mann Street (60.535m); Georgiana Terrace (48.77m); Parlour Lane (60.35m); and has a southern side boundary of 48.765m.

For urban design and architectural reasons expained in the accompanying Statement of Environmental Effects and the Architect's Design Report, the proposed development is configured so that the resulting gross floor area is almost entirely located within "Zone X" (GFA 15,201.65m2) where the resulting FSR is 8.1:1 and a smaller gross floor area is located within "Zone V" (GFA 2,031.73m2) where the resulting FSR is 1.88:1.

The proposed development is configured so as to retain the primary heritage building on the land and to optimise view sharing for the 'Broadwater Apartments''. The topmost height of the proposed development (RL.71.75m AHD) is commensurate with the height of a neighbouring residential flat building (RL. 70m AHD) recently approved at No. 23 Mann Street, Gosford, under Consent No. 46272/2014. It is considered that the proposed development provides an appropriate correlation with the size of the subject land and recently approved neighbouring development.

• ''(f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design'',

**Response:** As indicated in the perspectives and elevation diagrams provided in the accompanying Statement of Environmental Effects, the proposed development achieves a high degree of articulation and modulation of design.

• ''(g) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,"

**Not Applicable:** The subject land is zoned B4 Mixed Use.

• ''(h) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.''

**Not Applicable:** The subject land is zoned B4 Mixed Use.

### 5.4 "Matters for Consideration by the Director-General".

Clause 4.6 (4) (b) of Gosford LEP 2014 requires the concurrence of the Director-General to be obtained for development that contravenes a development standard.

Under Clause 4.6 (5), the Director-General is required to consider the following matters in deciding whether to grant concurrence.

# **5.4.1** "Whether contravention of the developments standard raises any matter of significance for State or regional environmental planning".

It is demonstrated in the accompanying Statement of Environmental Effects and in this request, that the proposed development is consistent with State and regional planning policies/strategic directions seeking to encourage the revitailisation of Gosford City Centre.

Approval of the proposed development and the proposed exceedence of the 5.2:1 maximum floor space ratio development standard in this particular case, would not raise any matter of significance for State or regional planning.

### 5.4.2 "The public benefit of maintaining the development standard".

The accompanying Statement of Environmental Effects demonstrates that the proposed exceedence of the permissible 5.2:1 maximum floor space ratio applicable to part of the subject land does not have adverse scenic/visual impacts or amenity impacts on either the public domain, or neighbouring properties.

Owing to the unique circumstances applying to the subject land and the proposed development, which accommodates the retention of the primary heritage building on the subject land, approval of the proposed development will not undermine the maintaining of the maximum floor space ratio development standards applicable elsewhere within the B4 Mixed Use zone.

#### 6. CONCLUSION.

It is considered that any requirement for the proposed development to strictly comply with the applicable 31.2m and 46.8m maximum permissible building height development standards of Clause 4.3 (2) and 8.9 of Gosford LEP 2014 and the maximum 5.2:1 permissible floor space ratio development standard of Clause 4.4 (2) and 8.9 of Gosford LEP 2014, would be unreasonable or unnecessary in the particular circumstances:

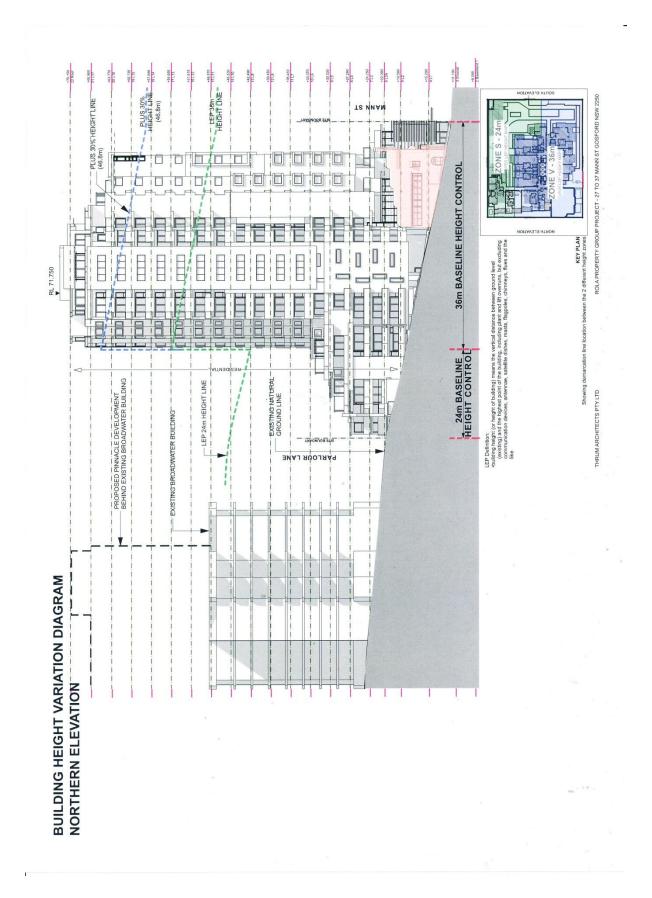
- the proposed development is in the public interest as it will facilitate the economically viable redevelopment of the subject land in a manner consistent with the strategic planning objectives for the revitalisation of Gosford City Centre and will result in the retention and protection of the primary heritage building on the land, for which it is reasonable for the consent authority to agree to increased building height and floor space ratio in approving DA 46209/2014;
- the proposed development is consistent with objectives for development within the *B4 Mixed use* zone applying to the subject land under Gosford Local Environmental Plan 2014;
- the proposed development is consistent with the objectives of the maximum building height development standard as expressed in Clause 4.3 (1) of Gosford Local Environmental Plan 2014 and the objectives of the maximum permissible floor space ratio development standard as expressed in Clause 4.4 (1) of Gosford Local Environmental Plan 2014;
- the particular circumstances relating to the subject land and the proposed development are unique to this application and will not lead to similar development applications which would cumulatively undermine the planning objectives for the locality;
- the proposed exceedence in maximum permissible buildIng height does not significantly increase the bulk and scale of the proposed development; does not cause additional view loss from neighbouring residential properties, or surrounding residential hillsides; and does not have adverse scenic/visual impacts or amenity (privacy/overshadowing) impacts on either the public domain, or neighbouring residential properties;
- the proposal to configure the proposed development almost entirely within the area to which the maximum permissible 5.2:1 FSR applies, resulting in a FSR of 8.1:1 over that part of the site, does not significantly increase the intensity of land use over the entire site; and
- there is no public benefit to be derived, or planning purpose to be served, in requiring
  the proposed development to strictly comply with the applicable maximum
  permissible building height and floor space ratio development standards of LEP 2014.

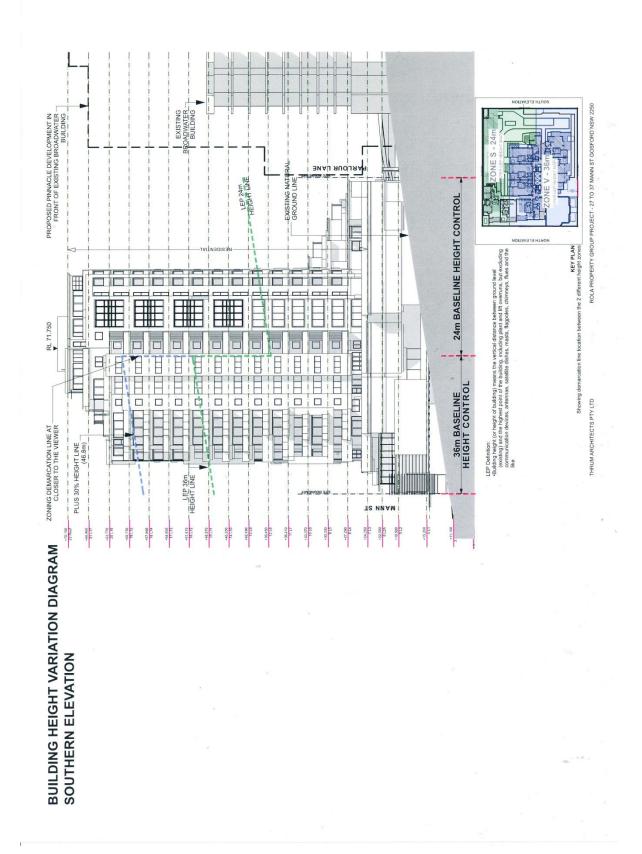
Gosford City Council is therefore requested to exercise its discretion under Clause 4.6 (2) of Gosford Local Environmental Plan 2014 and approve the exceedence of the applicable maximum building height and floor space ratio development standards for the proposed mixed use development on Lots A & C, DP355117; Lots 10 & 11, DP 591670; and Lots 1 - 4, DP 382784, Nos. 27-37 Mann Street and No. 125 Georgiana Terrace, Gosford, in the manner detailed in section 4 of the accompanying Statement of Environmental Effects.

This request demonstrates that there are sufficient environmental planning grounds for the proposed development to exceed the 31.2m and 46.8m maximum permissible building height development standards applying to the subject land under Clauses 4.3 (2) and 8.9 of Gosford Local Environmental Plan 2014 and the 5.2:1 maximum permissible floor space ratio development standard applying to part of the subject land under Clauses 4.4 (2) and 8.9 of Gosford Local Environmental Plan 2014.

Doug Sneddon 25<sup>th</sup> November 2015.

ANNEXURE A: PROPOSED BUILDING HEIGHT VARIATI	ON DIAGRAMS.





ANNEXURE B: PROPOSED FLOOR SPACE RATIO VARIATION DIAGRAM.	

GFA / FSR ZONE DEMARCATION CALCULATIONS DIAGRAM

MIXED USE DEVELOPMENT 27-37 MANN ST, GOSFORD

THRUM ARCHITECTS PTY LTD

ANNEXURE C: MID-WINTER & MID-SUMMER COMPARATIVE SHADOW DIAGRAMS FOR BOTH THE DESIGN HEIGHT OF THE PROPOSED DEVELOPMENT AND A DEVELOPMENT COMPLYING WITH THE APPLICABLE MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARD OF GOSFORD LEP 2014.

