

## JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

JRPP No	2014HCC025				
DA Number	46274/2014				
Local Government Area	Gosford City Council				
Proposed Development	Retail & Shop Top Housing (180 Units)				
Street Address	124 Erina Street East GOSFORD				
Applicant Name	AO Gosford Pty Ltd				
Owner Name	Betaco Pty Ltd				
No Submissions	Four (4)				
Regional Development Criteria (Schedule 4A of the Act)	Value greater than \$20 million (\$36.6 million)				
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Act 1979 - Section 79C</li> <li>• Local Government Act 1993 - Section 89</li> <li>• Gosford Local Environmental Plan 2014</li> <li>• Gosford Development Control Plan 2013</li> <li>• SEPP 64 Advertising and Signage</li> <li>• SEPP 65 Design Quality of Residential Flat Buildings</li> <li>• SEPP (Building Sustainability Index BASIX) 2004</li> <li>• Section 94A Contribution Plan – Gosford City Centre</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SEPP 55 Remediation of Land</li> <li>• Rural Fires Act 1997</li> </ul>				
List all documents submitted with this report for the panel's consideration	<b>Architectural Plans</b>				
	<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
	A-001	Cover sheet	1	B01	undated
	A-002	Project Outline	1	B01	24/10/2014
	A-003	BASIX/Nathers Commitments	1	B	28/08/2014
	A-004	Site Analysis	1	B	28/08/2014
	A-010	Site/Roof Plan	1	B	28/08/2014
	A-020	Demolition Plan	1	B	28/08/2014
	A-061	Shadow Analysis Plan	1	B01	27/02/2015
	A-062	Shadow Analysis Plan	1	B	28/08/2014
	A-063	Solar Compliance Diagrams	1	B	28/08/2014
	A-064	Solar Compliance Diagrams	1	B	28/08/2014
	A-065	View Analysis	1	B01	24/10/2014
	A-101	Basement Level 1	1	B01	24/10/2014
	A-111	Ground Floor – Erina Street	1	B02	21/11/2014
	A-112	Level 01 – Henry Parry Drive	1	B02	21/11/2014
	A-113	Level 02 – Henry Parry Drive	1	B01	24/10/2014
	A-114	Level 03	1	B01	24/10/2014
	A-115	Level 04	1	B01	24/10/2014
	A-116	Level 05 – Roof Terrace	1	B01	24/10/2014
	A-121	Level 06-10 Typical	1	B01	24/10/2014

	A-131	Level 11	1	B01	24/10/2014	
	A-132	Levels 12-13	1	B01	24/10/2014	
	A-133	Levels 14-15	1	B01	24/10/2014	
	A-201	North Elevation	1	B	28/08/2014	
	A-202	South Elevation	1	B01	24/10/2014	
	A-203	East Elevation	1	B01	24/10/2014	
	A-204	West Elevation	1	B	28/08/2014	
	A-205	South Elevation Tower 2	1	B	28/08/2014	
	A-206	North Elevation Tower 1	1	B	28/08/2014	
	A-301	Section A	1	B01	24/10/2014	
	A-302	Section B	1		29/08/2014	
	000	Cover Sheet	1	B	29/08/2014	
	001	Landscape Cover Composite Plan	1	B	29/08/2014	
	101	Landscape Plan Level 1	1	B	29/08/2014	
	102	Landscape Plan Level 1	1	B	29/08/2014	
	103	Landscape Plan Level 2	1	B	29/08/2014	
	104	Landscape Plan Level 5 Roof Top	1	B	29/08/2014	
	501	Landscape Details	1	B	29/08/2014	
	A-601	External Finishes	1	B01	27/02/2015	
	C01	Concept Sediment and Erosion Control and Cut/Fill Plan	1	B	22/10/2014	
	C02	Concept Stormwater Management Plan Ground Floor	1	D	22/10/2014	
	C03	Concept Stormwater Management Plan Level 01 and 02	1	D	22/10/2014	
	C04	Erina Street Entry Long Sections	1	B	21/10/2014	
	C05	Henry Parry Drive Entry Long Sections	1	A	21/10/2014	
	<b>Supporting Documents</b>					
		<b>Document</b>	<b>Title</b>	<b>Date</b>		
			Statement of Environmental Effects	August 2014		
			Targeted Phase One Contamination Assessment	August 2014		
			Traffic Assessment	21/10/2014		
			Review of Geotechnical Aspects	27 August 2014		
		TL 40079	Stormwater Management Report Rev C	27/82014		
		CC140104	WMP4 Waste Management Plan	November 2014		
			BASIX Certificate No 570654M	28 August 2014		
			Bushfire Report	August 2014		
			Wind Effects Report	27 August 2014		
			Accessibility Review	28 August 2014		
		CC140104 - CPTED 2	Crime Prevention Through Environmental Design	August 2014		
Recommendation	Deferred Commencement					
Report by	R A Eyre					

## **Assessment Report and Recommendation Cover Sheet**

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# REPORT TO HUNTER & CENTRAL COAST JOINT REGIONAL PLANNING PANEL

**TITLE**            **DEVELOPMENT APPLICATION NO. 46274/2014**  
**APPLICANT: AO GOSFORD PTY LTD**  
**PROPOSED: RETAIL & SHOP TOP HOUSING (180 UNITS) ON LOT: 1 DP: 550047, LOTS: 2, 3, 4 & 5 DP: 19484 NO 122 & 124 ERINA STREET EAST GOSFORD, NO 138, 140 & 142 HENRY PARRY DRIVE GOSFORD**  
Directorate:       Governance and Planning  
Business Unit:    Development

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*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 (JRPP)**

Value greater than \$20 million

**Assessing Officer:** R A Eyre

**Reviewing By:** Manager Development & Compliance  
CEO

**Application Received:** 29/08/2014    **Date of Amended Plans:** 25/11/2014 & 27/02/2015

**Synopsis:** An application has been received for a Retail & Shop Top Housing (180 Units). The application has been assessed against the matters for consideration detailed in 79C of the Environmental Planning and Assessment Act (EP&A Act) 1979.

The proposal provides for a podium with two towers above. The proposed height exceeds the maximum height but has an FSR less than the maximum permitted. The applicant has submitted a written submission under Clause 4.6 of Gosford LEP 2014 to the height standard. The written submission and variation to height are supported.

There are variations to boundary setbacks which do not have significant environmental impacts.

There were four (4) objections to the proposal mainly to the proposed height, shadow impacts and traffic generation.

The proposal will not detract from the character or scenic qualities of the area or have unreasonable impacts on the environment.

All relevant matters under Section 79C of the Environmental Planning and Assessment Act, section 89 of the Local Government Act, the objectives of the zone and the principles of ecologically sustainable development have been considered and the proposal is recommended for **approval** subject to conditions.

**Zone:** B3 Commercial Core

**Area:** 3881.8m<sup>2</sup>

**Topography:** Undulating

**Public Submissions:** Four (4)

**Employment Generating:** Yes    **Value of Work:** \$36,667,100.00

**Political Donations:** None declared

**Relevant Statutory Provisions**

1. Environmental Planning & Assessment Act 1979 - Section 79C
2. Local Government Act 1993 - Section 89
3. Gosford Local Environmental Plan 2014
4. Gosford Development Control Plan 2013
5. SEPP 64 Advertising and Signage
6. SEPP 65 Design Quality of Residential Flat Buildings
7. SEPP (Building Sustainability Index BASIX) 2004
8. Section 94A Contribution Plan – Gosford City Centre
9. SEPP (Infrastructure) 2007
10. SEPP 55 Remediation of Land
11. Rural Fires Act 1997

**Key Issues**

1. Gosford Local Environmental Plan 2014
2. Principal Development Standards
3. Visual Assessment
4. Shadow Impact
5. Gosford City Centre Masterplan
6. Civic Improvement Plan
7. Environmental & Coastal Considerations
8. Bushfire Risk
9. Section 94 Contributions
10. Internal Referrals
11. Public Submissions

**Recommendation**

Deferred Commencement

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**REPORT**

**The Site**

The site is located on the north-west corner of Henry Parry Drive and Erina Street Gosford.

The site has a frontage of 31.1m to Erina Street and a frontage of 87.2m to Henry Parry Drive. The site is an 'L' shape and consists of 5 separate lots.

The northern part of the site contains metal and brick industrial buildings and a number of trees. The southern part of the site is vacant.

The land rises in elevation from about RL 11.20m AHD in the south-west corner to about RL 14.28m AHD at the south-east corner to about RL 15 in the north-west corner, to about RL 23m AHD at the north-east corner.



Site Map

## Background

Development Consent 51598/1991 granted approval on 6/12/2000 for a 6 storey commercial building with a floor area of 10,205m<sup>2</sup>. This consent has lapsed

## Locality

The site is located on the north-west corner of Erina Street and Henry Parry Drive, Gosford.

To the east on the opposite side of Henry Parry Drive is the NRMA regional office.

To the south-east is a single storey shopping complex and Gosford Town Centre.

To the south on the opposite side of Erina Street is the Imperial Shopping Centre.

To the west of the site are other retail/commercial premises including the Gosford Post Office and Centrelink.

To the north is vacant land which has consent (DA34204/2007) for a mixed use development (Commercial and Residential). This development has physically commenced and consists of:

- 101 residential units (12 x 1 bedroom, 86 x 2 bedrooms and 3 x 3 bedrooms)
- Eight home offices and commercial floor space of 1012.2m<sup>2</sup>
- Car parking for 147 spaces in 3 basement levels and 10-12 storeys above. This development was designed with 2 towers orientated in an east-west direction.
- The southern tower has a height of RL 58.7m AHD and the northern tower has a height of RL 64.5m AHD.



Locality

## Proposal

It is proposed to demolish the existing buildings on the site and develop a retail and shop top housing development.

The proposal will include:

- Retail shop of 152m<sup>2</sup> on the corner of Erina Street and Henry Parry Drive.
- Driveway access from both Erina Street and Henry Parry Drive.
- Three (3) basement car parking levels containing 184 spaces.
- 2 x residential towers above the retail shop and car parking levels.
- Tower 1 (the southern tower) will contain 83 residential units in 15 storeys (52 x 1 bedroom and 31 x 2 bedrooms). The roof level of tower 1 is RL 65.8m AHD (not including lift over run & mechanical plant).
- Tower 2 (the northern tower) will contain 97 residential units within 12 storeys (45 x 1 bedroom and 52 x 2 bedrooms). The roof level of tower 2 is RL 59.4m AHD (not including lift over run & mechanical plant).
- A total of 180 residential units (97 x 1 bedroom and 83 x 2 bedrooms).
- Landscaping on Levels 1, 2 and 5, which includes courtyard areas, street setbacks to Henry Parry Drive and roof terrace areas.



## Referrals

The application was referred to the following:

### External Referral:

- Roads & Maritime Services

### Internal Referrals

- Architect
- Engineer
- Building Surveyor
- Environmental Health Officer
- Waste Officer
- Environment Officer
- Water and Sewer Officer

## 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.

### Gosford Local Environmental Plan 2014

The land is zoned B3 Commercial Core under Gosford Local Environmental Plan 2014. In the B3 zone, residential accommodation is prohibited except for shop top housing. Shop top housing means one or more dwellings located above ground floor retail premises or business premises. The proposal is defined as retail premises and shop top housing and is permissible within the zone.

The definition of shop top housing was clarified in the recent court case *Hrsto v Canterbury City Council (No 2) (2014) NSWLEC 121* to meet the definition of shop top housing, the residential component must be in the same building as the retail premises and above the retail premises. This application complies with this requirement.

#### (a) The objectives of the zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of Gosford City Centre as the regional business, retail and cultural centre of the Central Coast.*



- *To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities and social, education and health services.*
- *To provide for residential uses if compatible with neighbouring uses and employment opportunities.*
- *To create opportunities to improve the public domain and pedestrian links throughout Gosford City Centre.*
- *To provide for the retention and creation of view corridors.*
- *To protect and enhance the scenic quality and character of Gosford City Centre.*

In this instance, it is considered that the proposal is consistent with the stated objectives for the following reasons:

- The proposal provides a mixed retail / residential use. Although the retail/commercial floor space is minor and employment generation will be minor, the site is located on the outskirts of the B3 Zone on land unattractive for major Commercial Use
- The site is located in close proximity and walking distance to Gosford Railway Station, Gosford CBD and Kibble Park.
- The proposal will strengthen the role of the City Centre and increase residential population.
- No view corridors are impacted and scenic quality is protected.

The proposal is also consistent with the principles of Ecologically Sustainable Development, as specified within the Local Government Act 1993.

(b) Character

The LEP provides for land uses reflective of the desired character of the City Centre.

The site is located within the Commercial Core Zone.

The Commercial Core is the economic centre of the City Centre and employment focus.

The retail component and employment generation is minor for the proposal and the dominant use is residential. However the site is located on the outskirts of the B3 Zone and provides residential population to support the B3 Zone.

In December 2014, Council adopted a Statement of Strategic Intent which supports relocating the B3 zone south of Erina Street and permitting high rise residential on this and adjoining sites to the north.

(c) Development Incentives

The subject site is located within the Development Incentives area of Gosford City Centre. Under Clause 8.9 of the Gosford LEP 2014, a 30% bonus applies to height and FSR for applications lodged on/or before 31 August 2014.

As a result of the 30% bonus, the maximum height is 39m and FSR is 6:175:1.

## Principal Development Standards

(a) **Gosford LEP 2014**

Item	Permissible	Proposed	Compliance
Height	39m	40m & 51.8m	N
FSR	6.175:1	4.876:1	Y

Height

Under Clause 8.9 of GLEP 2014, the maximum height for development on the site is 39m.

This is a development standard.

Tower 1 (the southern tower) has a height of 51.8m. This is a variation of 12.8m or 32.8%.

Tower 2 (the northern tower) has a height of 40m. This is a variation of 1m or 2.5%.

Clause 4.6 of GLEP 2014 states:

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by 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.*

The applicant has submitted a written request to vary the height development standard of Clause 4.3(2) and 8.9 of the GLEP 2014. The submission contends that adherence to the development standard is unreasonable and unnecessary and there are sufficient environmental grounds to justify contravening the development standard, for the following reasons:

- The building offers a high quality building form.
- Overshadowing to the south is mainly over the roof of the Imperial Shopping Centre. There is no overshadowing of Kibble Park or William Street Mall.
- The height variation to the southern tower does not have any significant additional impacts to the approved building to the north.
- The proposal reflects the topography in this location.
- No view corridors are impacted.
- The proposal is consistent with the City Centre Development incentives.

The above is agreed to for the following reasons:

## Planning Comments

### (a) Zoning of the land

The proposed height is consistent with the objectives of the B3 zone particularly:

- To maximize public transport patronage and encourage walking and cycling. The site is located within 400m of Gosford Railway station and near the centre of Gosford and Kibble Park.
- The site is located on the outskirts of the B3 zone and the provision of residential use as shop top housing is consistent with Council's aims of increasing population in the City Centre.
- The proposal does not affect view corridors identified in Chapter 4.1 of Gosford DCP 2013.
- The proposal is located on the edge of the City Centre and does not impact the scenic quality and character of the City Centre when viewed against the backdrop of Rumbalara Reserve to the north-east.

### (b) Development Standard

The Development Standard being varied is under Clause 8.9 of Gosford LEP 2014.

The maximum height is 39m under the incentive provisions of Clause 8.9.

The height of Tower 1 is 51.8m and the height of Tower 2 is 40m.

These are variations of 12.8m (32.8%) and 1m (2.5%) respectively.

The objectives of the development standard under Clause 4.3 of Gosford LEP 2014 are:

(1) *The objectives of this clause are as follows:*

- (a) *to establish maximum height limits for buildings,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity,*
- (e) *to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
- (f) *to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

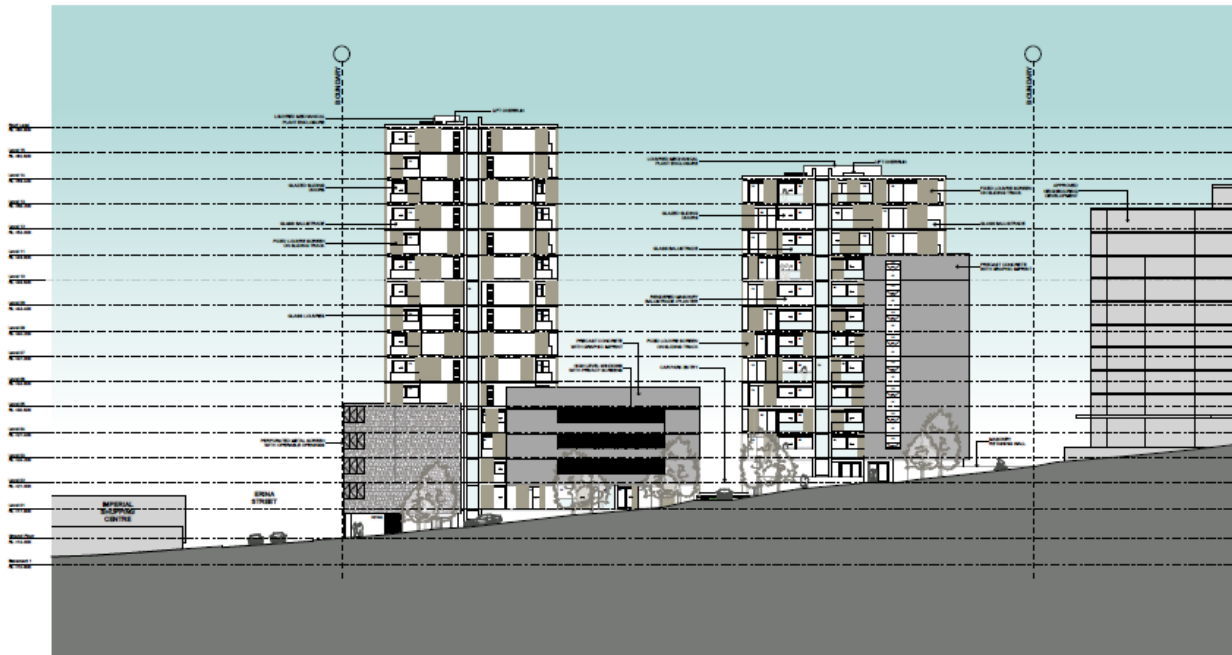
Whilst the proposed height exceeds that identified under Clause 8.9 of GLEP 2014, the proposal complies with the objectives for the height of buildings.

The design/urban form is appropriate for the site and provides a built form and density on the edge of the B3 zone which does not impact view corridors or excessive overlooking of public open space.

The main shadow impact will be to the south on Erina Street and the roof of the Imperial Shopping Centre.

The northern Tower 2 has a height of 40m. This is essentially one storey higher than the approved building on the northern side. Lowering the building by one (1) metre to comply with the 39m height limit would not result in any additional views or reduction in

impacts. Most of the units on the higher levels in the approved adjoining building have living areas/balconies oriented mainly to the northern side.



*East Elevation viewed from Henry Parry Drive*

(c) Conclusion

The applicant's written request has adequately justified that compliance with the development standard is unreasonable and unnecessary in this instance and there are sufficient environmental planning grounds to justify varying the development standard. The proposed variation is a response to the topography of the site and the proposal otherwise complies with the allowed FSR.

The proposed design is one which relates to the size and shape of the site and likely future development in this location. The proposed development is in the public interest as it is consistent with the zone and development standard objectives and particularly the objective to revitalize the Gosford City Centre.

The development will not have unreasonable impacts on adjoining properties and is consistent with the objectives and desired character of the B3 Zone.

Council may assume the concurrence of the Director-General to vary the development standard under Clause 4.6 of the Gosford LEP 2014 in this case.

### **Gosford DCP 2013**

The proposal is consistent with the requirements of the DCP except for the following matters.

(i) Chapter 4.1 of Gosford DCP 2013 is relevant to the application.

The land is located in the Commercial Core character area, and the proposal complies with the intended character by providing higher density housing that supports the city centre.

A detailed assessment against relevant DCP provisions has been undertaken. The proposal is considered to be consistent with relevant DCP requirements, apart from variations to building setbacks, and dwelling mix, which are addressed below. Other minor variations have been addressed in the assessment of the proposal.

The proposal does not provide a third pipe alternate water supply as per Chapter 4.1.5.3 of the DCP, which is similar to other recent approvals for development in the City Centre. At its meeting of 9 December 2014 Council resolved that a separate report be brought back to Council for consideration of amendment to Chapter 4.1 of DCP 2013, to delete the requirement for a third pipe system in the Gosford City Centre.

(ii) Street Setback

The street setback required to Henry Parry Drive is 5m to 6m up to 36m height (above 36m height, the street setback required is 6m-8m). The setback proposed is 4.25m. This is a variation of 0.745m (14.9%) – 1.75m (29.1%).

The approved building to the north has a setback to Henry Parry Drive of 3.5m to 4m.

Therefore, the proposed development provides for a greater setback than that approved on the adjoining property and a transition/increase in setback towards the intersection with Erina Street.

Therefore the proposed setback to Henry Parry Drive is considered suitable and the variation is supported.

The setback to Henry Parry Drive provides for a transition in building setbacks and permits landscaping within the setback area. This results in a more desirable streetscape along Henry Parry Drive.

(iii) Dwelling Mix

Clause 4.1.6.2 of DCP 2013 requires a maximum of 10%-25% studio and one bedroom units and maximum 75% two bedroom units.

The proposal includes 54% one bedroom and 46% two bedrooms. As the site is located within the B3 zone which may require a higher number of studio or smaller units for students, single people, etc. The site is also located in close proximity to public transport/Gosford Railway Station. It is considered the higher proportion of one bedroom units is appropriate.

**Visual Assessment**

The proposed development does not obstruct view corridors identified in Figure 2.14 of Chapter 14.1 Gosford City centre DCP 2013.

The height of the towers is located below that of the line between Rumbalara Reserve to the east and Waterview Park to the west.

The applicant has submitted view analysis of the proposal when viewed from Kibble Park and from the Gosford waterfront.



*After*



*After*



*Before  
View From Kibble Park*



*Before  
View from Gosford Waterfront*

When viewed from the Gosford waterfront the building is not visible and would be blocked in any case by higher development likely to be constructed to the south-west of the site.

When viewed from Kibble Park, Tower 1 will be highly visible and stand out above the Imperial Shopping Centre, however this will occur with any development due to the relatively low height of the Imperial Shopping Centre.

When viewed from properties further to the west, the top of the towers will be below the ridgeline of Rumbalara Reserve.

### **Shadow Impact**

Shadow impacts in the early morning will be mainly to the west and south-west over the Imperial Shopping Centre and adjoining western properties. The adjoining western properties will be affected even by a building complying with the height limit, as well as the approved building to the north.

Shadow impacts around midday all year will be mainly over Erina Street and the Imperial Shopping Centre.

In the afternoon in June and September, the proposal, as well as the approved development to the north, will cause shadow impacts to the east over Henry Parry Drive and properties on the eastern side of Henry Parry Drive.

The additional shadow caused by the height variation is not significantly greater than that caused by a building complying with the height limit, even in June.

### **Gosford City Centre Masterplan**

The Masterplan was adopted by Council on 9/3/2010.

The Masterplan serves as a document for the community and Council to understand the changes needed to help Gosford grow as the Regional Capital.

The NSW Government Regional Cities Strategy designated Gosford as the Regional Capital for the Central Coast just as Newcastle is the Hunter Regional City and Wollongong is the Illawarra Regional City.

Gosford serves the current regional population of 300,000 which is expected to grow to 400,000 by 2031.

The subject site is located within the City Core precinct of the Masterplan.

The overarching principles for the built form in the City Core are:

- locate higher buildings at the City Core and along the main north/south axis
- ensure taller buildings do not overwhelm views of the ridges, and waterfront development retains significant view corridors
- encourage mixed use buildings within the City Centre, with active edges during day and night, weekday and weekend
- introduce green/open space in and around buildings
- reinforce the urban nature of Mann street as the City heart
- maintain the human scale with setbacks for levels above two to three storeys
- new waterfront development should be generally four storeys with possible increased heights at the western end of the harbour
- consolidate similar uses, such as recreation facilities, and encourage multi-use of any new facilities and services
- distinguish Gosford's retail from other centres with a focus on the streets and public domain, rather than enclosed malls and arcades
- include Aboriginal elements in the city's design

The higher buildings on this site and the adjoining site are located on the north-south axis of Henry Parry Drive.

Gosford DCP 2013 identified view corridors which should be maintained including views from Kibble Park to Waterview Park. The proposed building complies with the principles for the built form and does not obstruct critical view lines.

The scale of the proposal at street level and above is consistent with that envisaged in the Masterplan.

Whilst a 100% site cover is permitted, landscaping has provided some green space around the building and roof terraces.

### **Civic Improvement Plan**

The CIP (2007) provides a planning context and framework for improvements to the public domain in the Gosford City Centre. One of the aims of the CIP is to integrate the urban form and landscape. The CIP does this in part by identifying Mann Street as the "Civic Spine" and Erina Street between Mann Street and Albany Street as an east-west spine, both of which are required to have street tree planning/streetscape improvements.

In 2011, Council prepared “Streetscape Design Guidelines” for the Gosford City Centre (Occulus Landscape Architects).

Streetscape/tree planting and footpath improvement works over the Erina Street frontage of the site should be carried out by the applicant in accordance with these guidelines. The guidelines provide for permeable paving along the Erina street frontage.

While a 100% site cover is permitted on B3 zoned land, the proposed development provides extensive landscaping within the building setback areas and on decks/courtyards.

### **Environmental and Coastal Considerations**

(a) Acid Sulfate Soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in Clause 7.1 of Gosford Local Environmental Plan 2014 have been considered.

(b) 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.

Refusal of this application is not warranted.

(c) Coastal Zone

State Environmental Planning Policy No.71 – Coastal Protection does not apply to the land, however the provisions of Clause 5.5 Gosford LEP 2014 require Council to consider matters in relation to the Coastal Zone. These matters have been considered in the assessment of this application and are considered consistent with the stated aims and objectives.

(d) Design Excellence

The requirements for design excellence in Clause 8.5 of Gosford LEP 2014 have been considered in the assessment of the application and the proposal is considered to be consistent with the requirements, including;

- The architectural design and materials are appropriate for the location.
- The proposal improves the quality and amenity of the public domain.
- The proposal does not impact view corridors.
- The proposal does not overshadow Kibble Park, Williams Street Plaza, Burns Park or the waterfront.
- The proposal is generally consistent with the DCP and does not have significant additional impacts on adjoining properties.





#### External finishes

#### Bushfire Risk

The land is identified as bushfire prone land due to Rumbalara Reserve on the opposite side of Henry Parry Drive.

A Bushfire Report has been submitted with the application which identifies that:

- a building construction standard of BAL 12.5 shall apply;
- the entire property be managed as an Inner Protection Area (IPA);
- an Evacuation Plan be prepared.

Under S79BA of the EPA Act, 1979, consultation with the NSW Rural Fire Service (RFS) is required if Council is satisfied that a development **does not** conform to relevant bushfire specifications and requirements. In this case, the Bushfire Report has been prepared and certified by a suitably qualified consultant. This satisfies the requirements of S79BA(1)(b) of the Act and consultation with the RFS is unnecessary.

#### Section 94 Contributions

The land zoned B3 Commercial Core is subject to contribution plan S94A Contribution Plan-Gosford City Centre.

Under this plan, the contribution is 4% of the value of the development.

However, Council at its meeting on 7/2/2014 resolved:

*“B Council permit a reduction in the Section 94A Development Contributions Plan – Gosford City Centre (CIP) contribution from 4% to 1% for all development applications lodged from the 22 February 2011 and within 24 months of making the local environmental plan in respect of the Gosford City Centre Incentive Provisions. Upon the expiration of the 24 month period from the date of gazettal of the Local Environmental Plan for the Gosford*

*City Centre Incentive Provisions the development contribution is to revert to 4% as contained within the Section 94A Development Contributions Plan – Gosford City Centre.”*

The 1% contribution applies to development applications lodged prior to 31 August 2014 and therefore applies to this application.

Council also resolved at its meeting on 22/7/2014 that:

- “A Council permit a reduction in the Section 94A Development Contributions Plan – Gosford City Centre (CIP) contribution from 4% to 2% for all development applications lodged from 1 September 2014 until the 1 January 2015. Upon the expiration of this period the contributions are to revert to the 4% as contained within the adopted plan.*
- B Council request the Chief Executive Officer to track the amount of infrastructure contributions forgone in this incentive and incorporate a means in the Long Term Financial strategy to reimburse the contribution plan over the term of the plan to ensure delivery of the plans objectives and report back to Council.”*

The 1% contribution required is \$366,671.00. In accordance with Part B of Council's Resolution, the reimbursement of the CP required by Council is \$1,100,013.00.

Council also resolved at its meeting on 22/2/2011, that any consent granted under the incentive provisions would be limited to a period of 2 years and contributions payable prior to the issue of an Occupation Certificate, after which the contribution would revert to 4%.

The purpose of the reduced contribution was to encourage development to be built, not just approved. Therefore if a development commences within the two (2) year consent period, but is not completed within five (5) years, the contribution should revert back to 4%.

**(Refer Recommendation D & G)**

### **External Referrals**

#### Roads & Maritime Services (RMS)

The application was referred to the RMS under SEPP (Infrastructure) 2007 as Henry Parry Drive is a State Road.

The RMS advise in summary that they have no objections to the proposal subject to conditions which include:

- *‘Left in’ and ‘Left out’ on both Henry Parry Drive and Erina Street.*
- *Vehicles able to entry and exit the site simultaneously*
- *No construction vehicle access on Henry Parry Drive.*
- *Road design plans to be approved by the RMS.*

The RMS also advise that there is no proposal to acquire any part of the property.

### **Internal Referrals**

#### **(a) Environmental Officer**

*“SEPP 55 - Remediation of Land*

*In respect to potential site contamination and assessment in accordance with SEPP 55 (Remediation of Land), a Phase 1 Contamination Assessment has been conducted (Pacific Environmental, 27 August 2014). Based on the findings of this report, it is considered that the potential for contamination is generally low and that the site appears to be compatible with residential, commercial or industrial land use from a contamination standpoint.*

*The following findings are worthy of mentioning:*

- The site soils have no significant history or visible evidence that would preclude the development or use of the site for the accepted criteria for residential development with access to soils or commercial/industrial development.*
- The site exhibits no visual or documentary evidence that would preclude its meeting the NEPMA Criteria for analytes analysed;*
- Any future development will require the removal of the oily water interceptor pit that adjoins the site motor vehicle service pit. No other remediation action is recommended.*

*Given this, deferred conditions of consent are provided below to ensure that SEPP 55 issues are appropriately addressed and reviewed by an independent NSW EPA Accredited Site Auditor.” (Refer Recommendation B and Condition Ai)*

(b) Building Surveyor

*“The application has been assessed against the requirements of BCA 2014 and will generally comply with the BCA.*

*The application is supported by a Disabled Access Report prepared by Philip Chun Accessibility dated 26 August 2014 and concurrence is given to the findings and recommendations of the report.*

*The site is bounded by a Medium Hazard Landslip area and therefore Chapter 6.4 of DCP 2013 does not apply. However, a Review of the Geotechnical Aspects prepared by Cardno Pty Ltd dated 27 August 2014 supports the development. Structural Engineering and Geotechnical Engineering details will be prepared at Construction Certificate Stage in accordance with Part B of the BCA and based upon the recommendations from this document.”*

(c) Environmental Health Officer

No objections. Conditions provided relating to Food Regulations.

(d) Architect and SEPP 65 Assessment

*“Apart from the non-complying height, the application appears to be generally consistent with the context.*

*The additional 4 stories on the southern section of Tower 1 are compensated by a reduction of 4 stories on the northern section. This assists in disguising the bulk and scale of the building. It also creates a 22 metre gap between Tower 1 and 2 to permit views of Rumbalara between them and also improve solar access.*

*The deep recesses on Henry Parry Drive adds some articulation and provide natural light to the lift lobbies.*

*The use of variations in finishes assists in further disguising visual bulk and adding visual interest. The effectiveness of the textured concrete when viewed from a distance is still questioned but is a minor issue and considered acceptable”.*

The landscaping of the building setbacks and courtyards is supported by Council's Architect, even though the some of the landscaping is on the building structure.

(e) Waste Management Assessment Officer

No objections subject to conditions.

(f) Engineer

Council's Engineer has assessed the application and raises no objections to the proposal subject to relevant conditions being included in the conditions of consent.

### Public Submissions

The following table is a summary of public submissions. Attachment 1 provides a more detailed assessment.

Issue	Submission	Comment
Prohibited Use	Non-compliance with shop top housing	Development meets definition of "shop top housing"
Height	Exceeds height limit	Submission under Clause 4.6 of GLEP 2014 justified height variation
SEPP 65	Does not meet requirements	Satisfactory. Design Verification Report submitted.
Views	Impacts adjoining property	View corridors maintained.
Overshadowing	Significant impact	Impacts mainly Imperial shopping Centre – not significant
Parking/Traffic	Significant impact on roads	Traffic report satisfactory to Council and RMS
Impact on adjoining property	Noise, dust, excavation during construction	Addressed by conditions requiring Construction Management Plan.

### Conclusion

The proposal complies with the definition of Shop Top Housing albeit the extent of commercial use is minor. The residential component is all located above the retail use and car parking levels. Whilst employment generated by the retail component will be minor, the site is located towards the outskirts of the B3 Zone. The majority of use for residential is supported in this case as it is needed to generate demand for businesses and employment.

The proposal complies with the maximum FSR and car parking required. There are some variations to building setbacks, however these are not significant. The Roads and Maritime Services have no objections to the proposal subject to conditions.

The proposed height of the two towers exceeds the maximum height by 1m and 12.8m. Whilst the height variation of one tower is significant, it does not have any significant additional impacts and is appropriate given the natural slope of the site.

Therefore the written submission under Clause 4.6 of Gosford LEP 2014 is supported and the Panel may assume the concurrence of the Director-General of the Department of Planning and Environment.

There were four (4) public objections to the proposal. However, the issues raised do not justify refusal of the proposal or are mitigated by conditions of consent.

All relevant matters under Section 79C of the Environment Planning and Assessment Act, Section 89 of the Local Government Act, the objectives of the zone and the principles of ecologically sustainable development have been considered.

**Attachments:** Public Submissions summary  
Plans

**Tabled Items:** Nil

## **RECOMMENDATION**

- A The Joint Regional Planning Panel assume the concurrence of the Director - General of the Department of Planning under Clause 4.6 of Gosford Local Environmental Plan 2014 for the variation to the development standards of Clause 8.9 to permit the proposed development
- B The Joint Regional Planning Panel as consent authority in accordance with Section 80(3) of the Environmental Planning and Assessment Act, 1979, grant deferred commencement consent to Development Application No 46274/2014 for the proposed Retail and Shop Top Housing (180 Units) on LOT: 1 DP: 550047, LOTS: 2, 3, 4, 5 DP: 19484 No 122 & 124 Erina Street East GOSFORD, No 138, 140 & 142 Henry Parry Drive GOSFORD, is subject to the following conditions being met to the satisfaction of Council within eighteen (18) from the date of this consent. Such satisfaction will be achieved by:

- i Submit to Council a Site Audit Statement and Site Audit Summary Report by a NSW Office of Environment and Heritage (former Environment Protection Agency) Accredited Site Auditor stating the land is suitable for its intended use.

Upon compliance with the conditions of deferred commencement and written notification by Council, the consent shall become operative subject to the attached conditions

- C The applicant be advised of Joint Regional Planning Panel decision and of their right to appeal in the Land and Environmental Court under Section 97 of the Environmental Planning and Assessment Act 1979 six (6) months after the date on which the applicant receives notice in respect to Council's decision.
- D The consent be limited to **two (2) years**.
- E The objectors are notified of Joint Regional Planning Panel's decision.
- F The Roads & Maritime Services be notified of the Joint Regional Planning Panel decision.
- G Council's Section 94 Officer be advised of the S94 reimbursement required of \$1,100,013.00.

## **CONDITIONS**

### **DEFERRED COMMENCEMENT**

- A This consent shall not operate until the following have been satisfied:
- 1 Submit to Council of a Site Audit Statement and Site Audit Summary Report by a NSW Office of Environment and Heritage (former Environment Protection Agency) Accredited Site Auditor stating the land is suitable for its intended use.

Evidence must be produced to the consent authority sufficient to enable it to be satisfied that above conditions have been complied within eighteen (18) months of the date of this approval, otherwise this consent will lapse.

- B Upon compliance with the conditions of deferred commencement Council will issue an operative consent (including stamped plans) that is subject to the attached 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**      **CKDS Architecture**  
**Site Image Landscape Architects**  
**Northrop**

Drawing	Description	Sheets	Issue	Date
A-001	Cover sheet	1	B01	undated
A-002	Project Outline	1	B01	24/10/2014
A-003	BASIX/Nathers Commitments	1	B	28/08/2014
A-004	Site Analysis	1	B	28/08/2014
A-010	Site/Roof Plan	1	B	28/08/2014
A-020	Demolition Plan	1	B	28/08/2014
A-061	Shadow Analysis Plan	1	B01	27/02/2015
A-062	Shadow Analysis Plan	1	B	28/08/2014
A-063	Solar Compliance Diagrams	1	B	28/08/2014
A-064	Solar Compliance Diagrams	1	B	28/08/2014
A-065	View Analysis	1	B01	24/10/2014
A-101	Basement Level 1	1	B01	24/10/2014
A-111	Ground Floor – Erina Street	1	B02	21/11/2014
A-112	Level 01 – Henry Parry Drive	1	B02	21/11/2014
A-113	Level 02 – Henry Parry Drive	1	B01	24/10/2014
A-114	Level 03	1	B01	24/10/2014
A-115	Level 04	1	B01	24/10/2014
A-116	Level 05 – Roof Terrace	1	B01	24/10/2014
A-121	Level 06-10 Typical	1	B01	24/10/2014
A-131	Level 11	1	B01	24/10/2014
A-132	Levels 12-13	1	B01	24/10/2014
A-133	Levels 14-15	1	B01	24/10/2014
A-201	North Elevation	1	B	28/08/2014
A-202	South Elevation	1	B01	24/10/2014
A-203	East Elevation	1	B01	24/10/2014
A-204	West Elevation	1	B	28/08/2014
A-205	South Elevation Tower 2	1	B	28/08/2014
A-206	North Elevation Tower 1	1	B	28/08/2014
A-301	Section A	1	B01	24/10/2014
0-302	Section B	1	B	29/08/2014
000	Cover Sheet	1	B	29/08/2014
001	Landscape Cover Composite Plan	1	B	29/08/2014
101	Landscape Plan Level 1	1	B	29/08/2014
102	Landscape Plan Level 1	1	B	29/08/2014
103	Landscape Plan Level 2	1	B	29/08/2014
104	Landscape Plan Level 5 Roof Top	1	B	29/08/2014
501	Landscape Details	1	B	29/08/2014
A-601	External Finishes	1	B01	27/02/2015
C01	Concept Sediment and Erosion Control	1	B	22/10/2014

	and Cut/Fill Plan			
C02	Concept Stormwater Management Plan Ground Floor	1	D	22/10/2014
C03	Concept Stormwater Management Plan Level 01 and 02	1	D	22/10/2014
C04	Erina Street Entry Long Sections	1	B	21/10/2014
C05	Henry Parry Drive Entry Long Sections	1	A	21/10/2014

### Supporting Documentation

Document	Title	Date
	Statement of Environmental Effects	August 2014
	Targeted Phase One Contamination Assessment	August 2014
	Traffic Assessment	21/10/2014
	Review of Geotechnical Aspects	27 August 2014
TL 40079	Stormwater Management Report Rev C	27/82014
CC140104	WMP4 Waste Management Plan	November 2014
	BASIX Certificate No 570654M	28 August 2014
	Bushfire Report	August 2014
WC139-01F02-WS	Wind Effects Report	27 August 2014
	Accessibility Review	28 August 2014
CC140104 - CPTED 2	Crime Prevention Through Environmental Design	August 2014

#### 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 ANY CONSTRUCTION CERTIFICATE

- 2.1. No activity is to be carried out on site until any 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. Submission of a dilapidation report 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 any construction certificate.
- 2.3. The preparation of a comprehensive Soil and Water Management Plan in accordance with 'The Blue book' – Managing Urban Stormwater: Soils and Construction and approved by the Principal Certifying Authority.
- 2.4. Provide a minimum 4.0m vertical ceiling height in areas serviced by waste trucks.



- 2.5. The fitout of any 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
- 2.6. Provide details of any 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.

- 2.7. The proposed building shall be built to comply with *AS3959-2009 Construction of Buildings in Bush Fire Prone Areas* **Sections 3 and 5 (BAL 12.5)** and **Appendix 3 in Planning for Bushfire Protection**.
- 2.8. All work required to be carried out within the Henry Parry Drive public road reserve must be separately approved by Council and Roads and Maritime Services, 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 RMS road design specifications, 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. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in Henry Parry Drive.
- b. Full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath across the full frontage of the site in Henry Parry Drive. Landscaping, signage, fencing or display materials shall not compromise required sight lines to pedestrians or other vehicles in or around the car park or entrances. Minimum sight lines for pedestrian safety are outlined in AS2890.1 (Figure 3.3).
- c. Tapered heavy-duty vehicle crossing located in Henry Parry Drive that has a minimum width of 10.5m at the boundary and 20.5m behind the heavy duty gutter crossing, and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom. The vehicle crossing shall be graded at 2% from the rear of the gutter crossing to the property boundary. Design vehicles (12.5 HRV & B85) must be able to simultaneously enter and exit the site from the access and vice versa. In addition, all left-turn movements into the site, including for the design service vehicle, must be negotiated from the kerbside lane.
- d. Heavy-duty gutter crossing with a minimum thickness of 200mm concrete reinforced with 1 layer of SL72 steel fabric top and bottom. The length of the heavy-duty gutter crossing shall suit the proposed tapered heavy-duty vehicle crossing in Henry Parry Drive.
- e. All redundant dish crossings and/or damaged kerb and gutter in Henry Parry Drive shall be removed and replaced with new kerb and gutter.
- f. All redundant vehicular crossings in Henry Parry Drive shall 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.



- g. Medium strip and line marking to prevent right turn in and right turn out movements to / from Henry Parry Drive, generally in accordance with Appendix B of Technical Note prepared by Cardno (Sydney), Project Number 80515005, dated 24 November 2014.
- h. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee.

The engineering plans must be approved by Roads and Maritime Services and by Council prior to the issuing of any Construction Certificate required under this consent. All works are to be undertaken at no cost to Roads and Maritime or Council.

- 2.9. All work required to be carried out within the Erina Street East 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. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in Erina Street East. Footpath paving shall be permeable paving in accordance with "Streetscape Design Guidelines" prepared by Oculus Landscape Architect dated 2011.
- b. Full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath across the full frontage of the site in Erina Street East. Footpath treatment shall be in accordance with the Gosford City Centre "Streetscape Design Guidelines", dated September 2011 prepared by Oculus. Landscaping, signage, fencing or display materials shall not compromise required sight lines to pedestrians or other vehicles in or around the car park or entrances. Minimum sight lines for pedestrian safety are outlined in AS2890.1 (Figure 3.3).
- c. Tapered heavy-duty vehicle crossing located in Erina Street East that has a minimum width of 6m at the boundary and 8m behind the heavy duty gutter crossing, and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom. Design vehicles (B99 & B85) must be able to simultaneously enter and exit the site from the access. In addition, all left-turn movements into the site, including the service vehicles, must be able to be negotiated from the kerbside lane.
- d. Heavy-duty gutter crossing with a minimum thickness of 200mm concrete reinforced with 1 layer of SL72 steel fabric top and bottom. The length of the heavy-duty gutter crossing shall suit the proposed tapered heavy-duty vehicle crossing in Erina Street East.
- e. All redundant dish crossings and/or damaged kerb and gutter in Erina Street East are to be removed and replaced with new kerb and gutter.
- f. All redundant vehicular crossings in Erina Street East are to be removed and the footway formation reinstated with full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath. Footpath treatment shall be in accordance with the Gosford City Centre "Streetscape Design Guidelines", dated September 2011 prepared by Oculus.
- g. The piping of stormwater from within the site to Council's piped drainage system located in Erina Street East, including the extension of the piped stormwater system within Erina Street East.
- h. Medium strip and line marking to prevent right turn in and right turn out movements to / from Erina Street East, generally in accordance with Appendix B of Technical

Note prepared by Cardno (Sydney), Project Number 80515005, dated 24 November 2014.

- i. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee.

The engineering plans must be approved by Council prior to the issuing of any Construction Certificate required under this consent. All works are to be undertaken at no cost to Roads and Maritime or Council.

- 2.10. The preparation of a Construction Traffic Management Plan (CTMP) including a Vehicle Movement Plan and Traffic Control Plan. The CTMP shall be prepared with the intention of causing minimal impact to the operation of the road network during construction of the development. The Construction Traffic Management Plan (CTMP) shall be prepared and approved by the Principal Certifying Authority and provide for:

- Delivery and storage of materials.
- Workers parking and amenities.
- Hours of construction.
- Noise and dust mitigation.
- Process of handling complaints.

- 2.11. The submission of a dilapidation report prior to issue of any 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.

- 2.12. The payment of a security deposit of \$100,000 into Council's trust fund prior to the issue of any 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.

- 2.13. 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 any Construction Certificate. Contributions may be applicable to the Section 307 Certificate.

- 2.14. 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". Engineering details prepared and certified by a practising structural engineer must be submitted to the Water Authority (Council) prior to the issue of any Construction Certificate. The submission of contractor's documentation and sewer inspection fees may apply. The applicant is to contact Council's Water and Sewer Quality Inspector a minimum one week prior to commencement of any work involving building over / adjacent to sewer mains.

- 2.15. 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. A stormwater detention system must be designed in accordance with Council's DCP2013 Chapter 6.7 - 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.

- c. Nutrient/pollution control measures must be designed in accordance with Council's DCP 2013 Chapter 6.7 - Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.
- d. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to Council's drainage system located in Erina Street East.

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

### 3.. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. Any 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. The erection of a sign 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 provision of temporary closet accommodation throughout the course of building operations by means of a chemical closet complying with the requirements of the Department of Environment and Climate Change or temporary connections to Council's sewer where available, such connections to be carried out by a licensed plumber and drainer.
- 3.6. Public access to the construction site is to be prevented, when building work is not in progress or the site is unoccupied.

These prevention measures must be in accordance with the NSW WorkCover publication titled, '*Site Security and Public Access onto Housing Construction Sites*' and installed prior to the commencement of any demolition, excavation or building works and be maintained throughout construction. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

- 3.7. The erection of a suitable hoarding or fence between the building or site of the proposed building and any public place to prevent any materials from or in connection with the work, falling onto the public place.

If it is intended or proposed to erect the hoarding or fence on the road reserve or public place, a separate application made under the *Roads Act 1993* will need to be lodged with Council together with the associated fee.

- 3.8. Prior to commencement of any demolition work, the property's sewer connection must be disconnected at the Inspection Shaft and capped.
- 3.9. The Structural Engineer's details are to be certified that they have been prepared in accordance with the details and recommendations of the Geotechnical Report prepared by Cardno and dated 27 August 2014.
- 3.10. The removal of more than 10 square metres of non-friable asbestos or asbestos containing material must be carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist. Friable asbestos (of any quantity) must only be removed by a licensed removalist with a friable (Class A) asbestos removal licence.

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

Any such contract must indicate whether any non-friable 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 non friable asbestos material or friable asbestos material is to be delivered.

If the contract indicates that non friable asbestos material or friable asbestos material will be removed to a specified landfill site, the person having the benefit of the complying development certificate must give the principal certifying authority a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.

The person having the benefit of the consent must provide the principal certifying authority with a clearance certificate to be prepared by a competent person such as a qualified hygienist at completion of asbestos removal/work from the site.

If a residential premise is a workplace, the licensed asbestos removalist must inform the following persons before licensed asbestos removal work is carried out:

- the person who commissioned the work
- a person conducting a business or undertaking at the workplace
- the owner and occupier of the residential premises
- anyone occupying premises in the immediate vicinity of the workplace (as described in section 467 of the NSW Work Health and Safety Regulation 2011).

- 3.11. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council immediately upon discovery.
- 3.12. Submission of an application for approval to discharge liquid trade waste into Council's sewerage system. The application and details of the proposed method of treatment, together with the required fee is to be submitted to Council prior to the commencement of works.
- 3.13. The entering into of a Works Authorisation Deed (WAD) with Roads and Maritime Services. In this regard the developer is required to submit concept and detailed design plans and all relevant additional information, as may be required in Roads and Maritime Services' WAD documentation, for each specific change to the classified (State) road network for Roads and Maritime Services' assessment and final decision concerning the work.
- 3.14. The submission of design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime Services for assessment, in accordance with Technical Direction GTD2012/001. This is to be submitted at least six (6) weeks prior to commencement of construction and the developer is to meet the full cost of the assessment by Roads and Maritime.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

- 3.15. 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.

## 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 Erosion Sedimentation Control Policy D6.46.
- 4.3. 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*.
- 4.4. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made is responsible to notify the neighbour and responsible for the protection and preservation of the adjoining allotment of land.
- 4.5. 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.
- 4.6. All recommendations of the geotechnical report must be implemented during works. This includes, but is not limited to, the carrying out of all inspections as required by the geotechnical engineering report with a view to the geotechnical engineer providing written certification to the Principal Certifying Authority's satisfaction that all works have been carried out on site in accordance with the recommendations contained within the geotechnical engineers report.
- 4.7. A water car must be on site or accessible to the site management to suppress excess dust leaving the site.
- 4.8. Appropriate measures must be applied to prevent windblown or traffic generated dust.
- 4.9. The required fill material will only comprise of Virgin Excavated Natural Material (VENM) as defined under Schedule 1 of the *Protection of the Environment Operations (POEO) Act 1997*.

This definition is as follows:

*"virgin excavated natural material" means natural material (such as clay, gravel, sand, soil or rock fines):*

- (a) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities, and*
- (b) that does not contain any sulfidic ores or soils or any other waste,*

The placement of any other type of fill material other than that defined under VENM is classified as prohibited under this consent.

The applicant shall provide Council with validation documents verifying and certifying that the material complies with the definition of VENM under Schedule 1 of the *POEO Act 1997*.

Any exposed soil surface areas shall be grassed / landscaped to minimise soil erosion.

- 4.10. The approved Soil and Water Management Plan shall be implemented.
- 4.11. The internal road strength used by the waste trucks must be sufficiently strong enough to withstand a truck loading of 22.5 tonnes.

- 4.12. No obstructions to the wheel out of the waste bins being permitted including grills, speed humps, barrier kerbs etc.
- 4.13. 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
- 4.14. Comply with all commitments as detailed in the Waste Management Plan dated 25 November 2014 by Barker Ryan Stewart.
- 4.15. Garbage chutes to be constructed in accordance with Appendix F: Garbage Chutes, Chapter 7.2 – Waste Management of Gosford DCP 2013 and all relevant BCA requirements.
- 4.16. Waste storage enclosures/rooms to be constructed in accordance with Appendix D and Appendix G, Chapter 7.2 Waste Management of Gosford DCP 2013 and all relevant BCA requirements.
- 4.17. All plumbing work to be carried out by a licenced plumber who has a current licence registered with NSW Office of Fair Trading.  
The work must be inspected by Council's plumbing inspector and the inspection fee to be paid to Council's Customer Service Section before an inspection can be carried out.  
Also the licence plumber must submit a notice of work for plumbing and drainage application 2 days prior to Council before an inspection can be carried out.  
This falls under the Plumbing Code of Australia from 1 January 2013.
- 4.18. 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.
- 4.19. 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.
- 4.20. The floor of the carwashing area is to be graded and drained to and connected to a silt arrestor pit. The silt arrestor is to be connected to the sewer in accordance with the requirements of Council's Trade Waste Section.
- 4.21. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. No construction vehicle access shall be permitted to Henry Parry Drive.
- 4.22. All works are to be undertaken at no cost to Roads and Maritime Services or Council.
- 4.23. 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'.

- 4.24. The required sight lines for pedestrians or other vehicles in or around the car park or entrances shall not be compromised by landscaping, signage, fencing or display materials. Minimum sight lines for pedestrian safety are outlined in AS2890.1 (Figure 3.3).
- 4.25. Vehicles larger than a 12.5m Heavy Rigid Vehicle are prohibited from entering the site.
- 4.26. Right-turn in / right-turn out vehicular movements to / from the proposed development are prohibited on both Henry Parry Drive and Erina Street East.
- 4.27. The Engineering works within private property that formed part of any construction certificate shall be constructed in accordance with the plans and details approved with any construction certificate.

## 5.. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

- 5.1. Application for any 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 any occupation certificate has been issued.
- 5.3. The requirements of the BASIX certificate for development and shown on the approved plans must be complied with prior to the issue of any occupation certificate.
- 5.4. The submission of 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 any Occupation Certificate together with the creation of a S88B instrument under the Conveyancing Act to this effect and at the applicant's cost.
- 5.5. The payment to Council of a contribution in accordance with the Gosford City Council Section 94A Development Contribution Plan - Gosford City Centre, as follows:.
  - a. If the development is completed within five (5) years of the date of this consent and a Final Occupation Certificate issued, the contribution is **\$366,671.00**.
  - b. If the development is not completed within five (5) years from the date of this consent, the contribution is **\$1,466,684.00**.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Gosford City Council Section 94A Development Contribution Plan – Gosford city Council. The basis of the calculation and the total amount is to be indexed quarterly in accordance with the Consumer Price Index (All Groups index) for Sydney issued by the Australian Statistician as outlined in the contribution plan.

The contribution is to be paid prior to the issue of Occupation Certificate.

An Occupation 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 Contributions Plan may be inspected at the office of Gosford City Council, 49 Mann Street or on Council's website.



- 5.6. The preparation of an Evacuation Plan be prepared in accordance with Australian Standard AS 3745-2010 "Emergency Control Organisation and Procedures for dwellings, structures and workplaces" and the Rural Fire Service's "Bushfire Evacuation Plan Guideline" and will remain in draft format until completed by the management committee.
- This plan should address all residential buildings/units within the site and include information on;
  - Under what conditions and circumstances should the complex be evacuated (e.g. Large bushfire event);
  - Where occupants will be evacuated to;
  - Roles and responsibilities of persons coordinating the evacuation;
  - Roles and responsibilities of persons remaining on site after the evacuation; and
  - The procedure to contact emergency services (e.g. NSW Rural Fire Service) and inform them of the evacuation and where they will be evacuated to.
- 5.7. The erection of an 1.8 metre high fence must be erected along the length of the side and rear boundaries behind the building line.
- 5.8. The Consolidation of Lot 1 DP 550047, Lot 2 DP 19484, Lot 4 DP 19484, Lot 3 DP 19484, Lot 5 DP 19484 into a single allotment under one Certificate of Title prior to the issue of any Occupation Certificate.
- 5.9. The driveway, vehicle manoeuvring area and 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.
- 5.10. The street number is to be at least 100mm high and be clearly visible from the street frontage.
- 5.11. 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.
- 5.12. The erection of signage in the Temporary Bin Holding Area and the Waste Truck Manoeuvring area/s requiring the area to be kept clear of vehicles and/or other obstructions.
- 5.13. The erection of signage within the waste room on each residential level to ensure no recyclable material is disposed of via the garbage chute.
- 5.14. Council is to be notified upon completion of work and following the issue of the occupation certificate, prior to trading commencing to enable the premises to be inspected by Councils Environmental Health Officer and if the premises are to be registered with the Council as a food premises.
- 5.15. Right turn movements to and from the proposed accesses on Henry Parry Drive and Erina Street shall be restricted by use of a physical barrier (such as a concrete median).
- 5.16. All road works under the WAD shall be completed prior to issuing an Occupation Certificate (interim or final) for the proposed development.
- 5.17. 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 any 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'.

- 5.18. 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 any Occupation Certificate.
- 5.19. All road works required under the Works Authorisation Deed (WAD) shall be completed prior to issue of an Occupation Certificate (interim or final) for the proposed development.
- 5.20. Prior to the issue of any occupation certificate, the internal engineering works within private property that formed part of any construction certificate shall be completed in accordance with the plans and details approved with any construction certificate.
- 5.21. Fencing, Structures, or landscaping with a mature height greater than 300mm shall not be located within a 4m x 4m splay corner located at the road intersection.
- 5.22. Prior to the issue of any Occupation Certificate the Deposited Plan (DP) must be amended to:
- Include an 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.
    - a To create a 'Restriction as to User' over all lots containing an on-site stormwater detention system and/or a nutrient/pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

And,

- Include an instrument under the Conveyancing Act 1919 for 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 on-site stormwater detention system and/or a nutrient/pollution facility that:
    - (i) The facility will remain in place and fully operational.
    - (ii) The facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner
    - (iii) Council's officers are permitted to enter the land to inspect and repair the facility at the owners cost.
    - (iv) Council is indemnified against all claims of compensation caused by the facility.

Registered title documents showing the restrictive and positive covenants must be submitted to and approved by the Principal Certifying Authority prior to the issue of any occupation certificate.

## 6.. ONGOING OPERATION

- 6.1. Waste storage to be as indicated on Drawing No. A-111 and A-112, issue B02, dated 21 November 2014 prepared by CKDS Architecture.

- 6.2. Residential bulk waste bins to be placed in the Temporary Bin Holding Area for servicing on the evening before the designated collection day and returned to the approved bulk waste bin storage locations immediately after servicing.
- 6.3. Commercial waste to be serviced by a Private waste collection contractor. Any commercial activity generating food waste or other putrescibles waste is required to engage a Private waste collection contractor and service waste at an increased frequency to minimise odour/vermin nuisance.
- 6.4. Compaction of waste is not permitted.
- 6.5. Recyclable waste is not to be disposed of via garbage chutes. All recyclable waste to be placed into the interim recyclable waste storage room on each floor adjacent to the garbage chute/s for manual transfer to the Principal waste storage enclosure.
- 6.6. Servicing of the interim recyclable waste storage are to be managed to ensure sufficient storage space for users at all times.
- 6.7. Waste vehicle manoeuvring to be in accordance with the Traffic Impact Assessment Report by Cardino, Job Reference No. 80515005 dated October 2014, Version 3 dated 24 November 2014.
- 6.8. The entire site should be managed as an **Inner Protection Area (IPA) for the lifetime of the development.**
- 6.9. Fuel management within the site should be maintained with regular maintenance of the landscaped areas, managed lawns in accordance with an IPA and RFS guidelines: *Standards for Asset Protection Zones* (NSW RFS, 2005).
- 6.10. No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.
- 6.11. 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.
- 6.12. All car parking areas and spaces required by this consent are to be maintained and periodically reline-marked. Such spaces are to be made available to all users of the site at all times during trading hours.
- 6.13. 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.  
  
Visitor car parking spaces are to be physically identified on site, and maintained free of obstruction. Under no circumstances are these spaces to be used for the storage of goods or waste products.
- 6.14. Left in / Left out movements only will be permitted on both Henry Parry Drive and Erina Street.
- 6.15. All left turn movements into the site, including the design service vehicle, must be able to be negotiated from the kerbside lane.

- 6.16. The maximum size vehicle permitted to access the site is a 12.5m service vehicle.
- 6.17. Vehicles must be able to simultaneously enter and exit the site from all accesses.
- 6.18. Vehicles larger than a 12.5m Heavy Rigid Vehicle are prohibited from entering the site.
- 6.19. Maintenance of the on-site stormwater detention facility in accordance with the operation & maintenance plan.
- 6.20. Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.
- 6.21. Right-turn in / right-turn out vehicular movements to / from the development are prohibited on both Henry Parry Drive and Erina Street East.

## 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. *Ausgrid* 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. Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in

any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

- 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. The conditions of consent set by Council do not guarantee Roads and Maritime's final consent to the specific road work for which it is responsible, on the road network. Roads and Maritime must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work.
- 7.5. There is potential for road traffic noise to impact on development on the site. In this regard, the applicant, not Roads and Maritime, is responsible for providing noise attenuation measures in accordance with the Office of Environment and Heritage's criteria for new residential developments. The NSW Road Noise Policy (July 2011).

Where the Office of Environment and Heritage external noise criteria would not feasibly or reasonably be met, Roads and Maritime recommends the development apply internal noise objectives for all habitable rooms under ventilated conditions that comply with the Building Code of Australia.

- 7.6. 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.
- 7.7. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 7.8. The Roads and Maritime Works Authorisation Deed (WAD) process, including acceptance of design documentation and construction, can take a considerable amount of time. The developer is to be aware of this and shall allow sufficient lead time within the project development program to accommodate this process. It is therefore suggested that the developer work through the process as soon as possible with Roads and Maritime.
- 7.9. 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](http://www.gosford.nsw.gov.au) to download a form from the Water & Sewerage forms index.

## 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 six (6) months of this determination.

## **10.. RIGHT OF APPEAL**

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

## ATTACHMENT 1

### Public Submissions

Four (4) 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. **The proposed development does not comply with the definition of shop top housing and is a prohibited use. Building 2 comprised residential apartments with no retail or business premises on the ground floor. The majority of residential units in building 1 are not located above the single retail area of 125m<sup>2</sup>.**

**The B3 zone prohibits any form of residential accommodation except for shop top housing.**

Comment

The proposal complies with the definition of shop top housing as all residential units are located above the retail shop on the corner of Erina Street and Henry Parry Drive.

2. **The proposed building grossly exceeds the maximum height and is out of scale with existing and proposed character of the locality.**

**The maximum height is 39m and the buildings have heights of 51.8m for building 1 and 40m for building 2.**

**The approved building on the adjoining site to the north complied with the relevant development control standards.**

Comment

The northern Tower 2 has a height of 40m. This is essentially one storey higher than the approved building on the northern side. Lowering the building by one (1) metre to comply with the 39m height limit would not result in any additional views or reduction in impacts. Most of the units on the higher levels in the approved adjoining building have living areas/balconies oriented mainly to the northern side.

3. **The proposed twin towers are not located in a manner that compliments the natural topography of the area. The proposed development will project a built form skyline that does not follow the natural contours of the site.**

Comment

The site varies in level about 12m diagonally across the site. Tower 1 located on the southern side of the site is the highest due to the lower land level and has two (2) additional storeys higher than Tower 2.

4. **The proposed development does not comply with SEPP 65 requirements in relation to solar access and design quality. In particular building 2 does not meet the numerical guidelines for solar access.**

**The twin towers are not well designed because:**

- **the siting of the buildings do not respond to the slope of the land;**
- **of the excessive height;**
- **the bulk and scale is out of context with existing built form and Council's vision for the City.**

Comment

Council's Architect has assessed the proposal under SEPP 65. Whilst the proposal has some variations, it is considered approval is warranted based on the design.

- 5. The proposed towers affect view impacts from the adjoining property to the north and the approved building on this site. Building 2 has an east-west alignment whereas a north-south alignment would create a thinner building and increase views from the adjoining proposed development.**

Comment

Tower 2 is located on the northern side of the site. An east-west orientation is more appropriate on this part of the site, due to the 'L' shape of the land.

- 6. The proposal should be a planning proposal as the height exceeds that permitted under the bonus provisions.**

Comment

The applicant has submitted a written submission under Clause 4.6 of GLEP which enables Council to consider a height above the height standard. The additional height is not considered to warrant refusal of the proposal.

- 7. The proposal exceeds the maximum FSR and height under the incentive bonus and there is no justification for the variations.**

Comment

The proposal complies with the maximum FSR under the bonus incentives of Clause 8.9 of the GLEP 2014. A written submission under Clause 4.6 of the Gosford LEP 2014 has been submitted and is supported.

- 8. The proposal does not comply with the zone objectives particularly retention of view corridors, scenic quality and character.**

Comment

The proposal complies with the objectives of the B3 zone and do not impact view corridors identified in Figure 2.14 of Chapter 4.1 of DCP 2013. The incentives are to generate development with and around the Gosford City Centre.

- 9. The proposal will create significant overshadowing and privacy issues.**

Comment

The shadow impacts are mainly to the south and west are mostly over adjoining commercial buildings such as the Imperial Shopping Centre. There is adequate separation for privacy between adjoining and proposed buildings. The additional shadow impact is not considered to be significant.



- 10. Car parking and traffic generation will have a significant impact on the City Centre. A Traffic Management/Upgrading plan should be put in place.**

Comment

The proposal provides adequate car parking on site. The traffic impact has been considered by the RMS who have no objection to the proposal subject to conditions.

- 11. Buildings on adjoining properties may have structural damage due to the deep excavation proposal.**

Comment

Any excavation must be structurally supported. (Required by conditions of consent)

- 12. There will be inconvenience caused to adjoining residents, tenants etc by noise, vibration, dust etc during construction.**

Comment

This is unavoidable during any building construction but will be mitigated by a Construction management Plan. (Required under the conditions of consent)

- 13. There will be loss of natural light to the building to the west.**

Comment

The building to the west will be impacted by any development on this site above 2 storeys. The B3 zone and Gosford City Centre is in process of intensive redevelopment.

[\*\*<<Insert Attachment Link/s Here >>\*\*](#)