

APPENDIX J: CLAUSE 4.6 (GOSFORD LEP 2014) - REQUEST FOR EXCEPTION TO THE 31.2M MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARD APPLICABLE TO THE PROPOSED RESIDENTIAL FLAT BUILDING TO BE ERECTED ON PART LOTS A & B DP 88695, NOS. 21 - 23 MANN STREET, GOSFORD.

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1. INTRODUCTION.

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

This request demonstrates that the proposed exceedence of the applicable 31.2m maximum permissible building height development standard of Gosford Local Environmental Plan 2014 in relation to the proposed residential flat building described in detail in section 3 of the accompanying Statement of Environmental Effects, is justified having regard to the particular circumstances.

2. SUBJECT LAND & PROPOSED DEVELOPMENT.

2.1 Subject Land: The subject land is described as part Lots A & B DP 88695 (being proposed Lot 102 in a boundary adjustment between Lots A & B DP 88695), Nos 21 - 23 Mann Street, Gosford.

The subject land has an area of 3,428m², with a frontage of 60.555m to Henry Parry Drive; a northern boundary of 56.845m; a western boundary of 59.525m; and a southern boundary of 56.675m.

The subject land rises towards Henry Parry Drive from a low point of approximately RL 17m at its western boundary to a highest point of approximately RL 25m near its frontage to Henry Parry Drive, a variation of 8m.

2.2 Proposed Development: The proposed development is described in detail in section 3 of the accompanying Statement of Environmental Effects.

In summary, the proposed development involves:

- the demolition of all existing buildings, structures and concrete car park/storage pavement on the subject land;
- the erection of a residential flat building comprising 16 storeys (140 apartments); three basement car parking levels (197 resident/visitor spaces);
- the provision of 26 'Telstra' car parking spaces within Basement Level 1 to accommodate the existing 'Telstra' car spaces located on the subject land, an arrangement required to be accommodated on an ongoing basis within proposed Easement 'D' shown on the survey plan at Figure 4 of the accompanying Statement of Environmental Effects; and
- the proposed upgrade of the pedestrian footpath along the Henry Parry Drive property frontage and connecting into Georgiana Terrace.

3. DEVELOPMENT STANDARD TO BE VARIED.

(i) Maximum Permissible Building Height.

Clause 4.3 (2) of LEP 2014 provides that development on the subject land shall not exceed the maximum building height shown on the "Height of Buildings Map", which shows the subject land to be subject to a maximum permissible building height of 24m.

Clause 8.9 of LEP 2014 permits the 24m 'baseline' maximum permissible building height control to be exceeded by up to 30% in relation to development applications made on/before the 31st August 2014, in which case the maximum permissible building height for development on the subject land is 31.2m. This 'incentive' provision applies to the proposed development.

The Building Sections Diagrams provided in Annexure A show that the proposed development exceeds the 31.2m maximum permitted building height, by having a maximum building height to the parapet of 47.7m (resulting in a maximum exceedence of 16.5m) and a maximum height to the top of the plant room of 48.9m (resulting in a maximum exceedence of 17.7m).

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

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

(ii) Purpose of the Proposed Maximum Permissible Building Height Variation.

As explained in the Architectural Design Report provided in Appendix B of the accompanying Statement of Environmental Effects, the proposed building's proportions have been developed in consideration of providing for greater view sharing from neighbouring residences and an appropriate built form when viewed from a distance.

A taller, narrower structure is considered a more appropriate design strategy having regard to protecting the amenity of surrounding residences; making a positive visual contribution to the urban landscape; and providing access to scenic backdrop hillside views, when viewed from a distance. The alternative of presenting a building which fully complied with the maximum permissible building height and floor space ratios applicable to the subject land, would result in a building of 'bulkier' building mass, causing greater view loss and amenity impacts on neighbouring residential properties; and narrowing access to scenic backdrop hillside views, when viewed from afar.

A comparative diagrammatic analysis of a fully complying 'bulkier' building and the proposed taller, narrower structure is provided in Annexure B, which shows that the building form of the proposed development provides for greater view sharing and a reduced visual barrier, than would a fully complying development.

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

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

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

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

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

The following assessment demonstrates that the proposed development is consistent with the design outcomes sought by the objectives in Clause 4.3 (1) - Height of Buildings (LEP 2014):

- ***"(a) to establish maximum height limits for buildings,"***

Design Response: Whilst LEP 2014 provides for a 31.2m maximum permissible building height on the subject land, Clause 4.6 permits the consent authority to exercise flexibility in applying this development standard to a particular development in order to achieve better design outcomes.

As explained in section 3 (ii) above, the proposed development of a taller, narrower structure on the subject land results in a building of more appropriate proportions, with improved amenity outcomes for neighbours. The proposed exceedence of the maximum permissible building height is therefore consistent with the objectives of Clause 4.6.

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

Design Response: As explained in the Architectural Design Statement provided in Appendix B of the accompanying Statement of Environmental Effects, the proposed development exhibits high quality urban form.

- ***"(c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,"***

Design Response: The proposed building height exceedence does not reduce the opportunity for either the proposed development, or public areas to receive satisfactory exposure to sunlight.

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

Design Response: The design height of the proposed development results in development that provides for a gross floor area consistent with the maximum permissible floor space ratio (residential density) applicable to the site.

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

Design Response: It is demonstrated in the Visual Impact Assessment provided in Appendix M of the accompanying Statement of Environmental Effects that the proposed development does not cause significant visual impact; does not adversely impact on view corridors from public spaces; and provides for greater view sharing than would a development fully complying with the applicable maximum permissible building height/floor space ratio development standards.

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

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

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

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

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

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

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

Approval of the proposed development and the proposed exceedence of the 31.2m maximum permissible building height development standard in this particular case, would not raise any matter of significance for State or regional planning.

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

The accompanying Statement of Environmental Effects demonstrates that the proposed exceedence of the 31.2m maximum permissible building height development standard does not have adverse scenic/visual impacts, or amenity impacts on either the public domain, or neighbouring properties.

As the purpose of the proposed building form and maximum permissible building height exceedence is to result in a building of improved architectural proportions and aesthetic design and to provide greater opportunity for view sharing, approval of the proposed development will not undermine the maintaining of the maximum building height development standards applicable elsewhere within the B4 Mixed Use zone.

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

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

6. CONCLUSION.

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

- the proposed development is in the public interest as it will facilitate the economically viable redevelopment of the subject land in a manner consistent with the strategic planning objectives for the revitalisation of Gosford City Centre;
- the proposed development is consistent with objectives for development within the *B4 Mixed use* zone applying to the subject land under Gosford Local Environmental Plan 2014;
- the proposed development is consistent with the objectives of the maximum building height development standard as expressed in Clause 4.3 (1) of Gosford Local Environmental Plan 2014;
- the particular circumstances relating to the subject land and the proposed development are unique to this application and will not lead to similar development applications which would cumulatively undermine the planning objectives for the locality;
- the proposed exceedence in maximum permissible building height does not result in any additional GFA or residential density to that permitted under the maximum permissible floor space ratio applicable to the subject land and the proposed development; enhances view sharing from neighbouring properties; and does not have adverse scenic/visual impacts or amenity (privacy/overshadowing) impacts on either the public domain, or neighbouring residential properties; and
- there is no public benefit to be derived, or planning purpose to be served, in requiring the proposed development to strictly comply with the applicable maximum permissible building height development standard of LEP 2014, having regard to the particular circumstances.

Gosford City Council is therefore requested to exercise its discretion under Clause 4.6 (2) of Gosford Local Environmental Plan 2014 and approve the exceedence of the 31.2m maximum permitted building height development standard in respect to the erection of the proposed

residential flat building on part Lots A & B DP 88695 (being proposed Lot 102 in a boundary adjustment between Lots A & B DP 88695), Nos 21 - 23 Mann Street, Gosford, in the manner detailed in section 3 of the accompanying Statement of Environmental Effects.

This request demonstrates that there are sufficient environmental planning grounds for the proposed development to contravene the 31.2m maximum permissible building height development standard applying to the subject land and the proposed development under Clauses 4.3 (2) and 8.9 of Gosford Local Environmental Plan 2014. Approval will result in a building of appropriate architectural form and improved amenity outcomes for residential neighbours, without adverse impacts on the public domain.

Doug Sneddon
20th August 2014.

ANNEXURE A: SECTIONS SHOWING THE HEIGHT OF THE PROPOSED DEVELOPMENT RELATIVE TO THE APPLICABLE 31.2M MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARD.

ANNEXURE B: COMPARATIVE VIEW ANALYSIS OF THE PROPOSED BUILT FORM AND A FULLY COMPLYING (HEIGHT/FSR) DEVELOPMENT.

