

## Clause 4.6 Variation – Height of Building

Mixed Use Development  
Including Commercial, Residential, Cinema,  
Hotel and Tavern

**Property:**

Lot 1 DP 511513, Lot 1 DP 433839,  
Lots 1 & 3 DP 219637  
50-70 Mann Street Gosford &  
114 Georgiana Terrace

**Applicant:**

New Hong Kong Macau Australia, Pty Ltd

**Date:**

July 2015

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## Document Control Sheet

Issue No.	Amendment	Date	Prepared By	Checked By
A	Final to Client	24 July 2015	SVD	AC

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## 1.0 Introduction

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The applicant seeks to construct a mixed use development comprising predominantly retail, commercial, and residential uses, as well as a cinema, hotel and tavern, at 50-70 Mann Street and 114 Georgiana Terrace, Gosford. The development exceeds the maximum incentive building height of 62.4m and 31.2m, as well as the maximum incentive floor space ratio (FSR) of 6.2:1 and 5.2:1 prescribed by Clause 8.9 of the Gosford Local Environmental Plan (LEP) 2014. For this reason, the applicant seeks to use Clause 4.6 to enable Council to vary these development standards.

This written request is made pursuant to Clause 4.6 of Gosford LEP 2014, and justifies why compliance with Clause 8.9 – *Development Incentives* is unnecessary in the circumstances of the case, and demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

This request also explains how the proposed development will, despite exceeding the building height limit and FSR, be in the public interest given that it will continue to be consistent with the objectives of the Height of Buildings standard (Clause 4.3 and 8.9); the objectives of the FSR standard (Clause 4.4 and 8.9); the objectives of the Gosford City Centre provisions (Part 8) and the objectives of the B4 *Mixed Use* Zone in which the development is proposed to be situated.

Taking the above into consideration, it is felt that contravention of the development standards raise no matter of significance for State or regional environmental planning and there is no public benefit in maintaining the development standards in this particular case. To the contrary, by enabling a greater height and FSR, the development is able to offer a significant public benefit through the large expanse of communal ground floor open space which provides exemplary pedestrian linkages from the city centre through to the waterfront.

To fully examine the extent of public benefit which will be made available through this development, James Marshall & Co. has been engaged to prepare a Social Impact Assessment, the key points from which will be referenced throughout this report. Furthermore, to assess the visual amenity and view impacts of the proposed development, with this often being the key consideration behind building envelope controls, Richard Lamb & Associates has been engaged to prepare a Visual Impact Assessment. Again, key points from these findings will be referenced where relevant.

To satisfy the requirements of Clause 4.6, and to give the Joint Regional Planning Panel and Council the confidence to support the proposed height and FSR variation, the following request has been prepared in accordance with the NSW Planning & Infrastructure guideline *Varying development standards: A guide* and includes other information deemed necessary to make a considered assessment of the proposal.

## 2.0 Background

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The need for the variations outlined above has arisen due to a number of factors, with the primary consideration being the extent of land within the site which is proposed to be utilised for public purposes.

As outlined within the Statement of Environmental Effects (SoEE), the proponent sees the subject site as forming a central link between the City Centre and the Gosford Waterfront. The proposal has therefore been developed with the concept of intuitive pedestrian activity through the site being an imperative. Considerable emphasis has been placed on ensuring that the public will see the site as a logical part of the Waterfront and City Centre link, with design components such as landscaping; width of pedestrian areas; lighting; and suitable uses for tenancies forming part of that consideration.

In making available the land area required for this link, it has been necessary to push the required car parking down into basement levels. While avoiding this type of construction would have been considerably less expensive, the opportunity for the public link through the site would have been lost. In addition, the proposal would be considerably less attractive when viewed from the street – with several levels of car parking being the dominant feature.

The considerable additional costs associated with the construction of the basement car parking levels gave rise to the need for a higher development yield on the site. While these increased yields may have been able to be achieved with a more squat building form, the proponent appreciates the iconic nature of the site, and chose instead to pursue a more slender built form through the design of the three towers over podium levels.

A major observation, which is worth noting, is that despite the extent of the variations being sought for the height of the building, being approximately 200%, the associated increases in FSR are relatively minor, with the overall FSR still being within 50% of the FSR limitation.

It is also noted that the overarching design criteria being applied by the proponent is consistent with the recently adopted “*Gosford City Centre Statement of Strategic Intent*”, which was adopted by Council at the December 9<sup>th</sup> meeting of 2014.

The “*Statement of Strategic Intent*” was prepared for Council as a response to the considerable interest sparked in the development of the City Centre as a result of the “Bonus Incentives” in the LEP. In reviewing the many applications lodged for development in the City Centre, it was noted that many of these designs were more reflective of newer trends in development and design within city centres. These designs typically involved building heights in excess of the LEP controls – even taking into account the 30% bonus provisions.

Council recognise that they currently have the potential to facilitate a successful revitalisation of the City Centre, and recognise that in order to not miss this opportunity, a new approach to building design is required.

The “*Statement of Strategic Intent*” therefore, identifies alternate building forms, and places a level of importance on the Waterfront and City Centre link which are each reflected in the subject proposal.

The alternate building forms discussed in the Council Strategy specifically nominate podium and tower construction as a more appropriate response to the development of a city centre. The document outlines several of the advantages of this design response, including greater solar access, decreased impact on views, avoidance of excessive bulk, and the greater opportunities for fine grain podiums at a human scale.

In summary, the proponent recognises that due to the size and location of the site, it represents a unique opportunity for Gosford. In response to that unique potential, the proponent has sought to design a building which will not preclude public access through it, but rather, will encourage that level of access, and in doing so, provide that all important pedestrian link from the City Centre to the Waterfront.

In providing for that public access, it is necessary to push the car parking down to basement levels, resulting in substantial additional costs. In order to offset these costs, a greater development yield is required. It is fortuitous that the design response selected – being towers above a podium level – is consistent with the Design Guidelines outlined in the recently adopted “Statement of Strategic Intent”.

In light of the background outlined above, the applicant seeks to use Clause 4.6 to enable Council to vary the height development standards depicted under Clause 4.3(2) and 8.9 of the Gosford Local Environmental Plan 2014 (LEP); as well as the FSR requirements contained within Clause 4.4 and 8.9.

## 3.0 Description of the Planning Instrument, Development Standard and Proposed Variation

### 3.1 WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?

The proposed development and subject land is required to comply with Gosford Local Environmental Plan 2014.

### 3.2 WHAT IS THE ZONING OF TO THE LAND?

The subject site is located within the *B4 Mixed Use Zone*.

### 3.3 WHAT ARE THE OBJECTIVES OF THE ZONE?

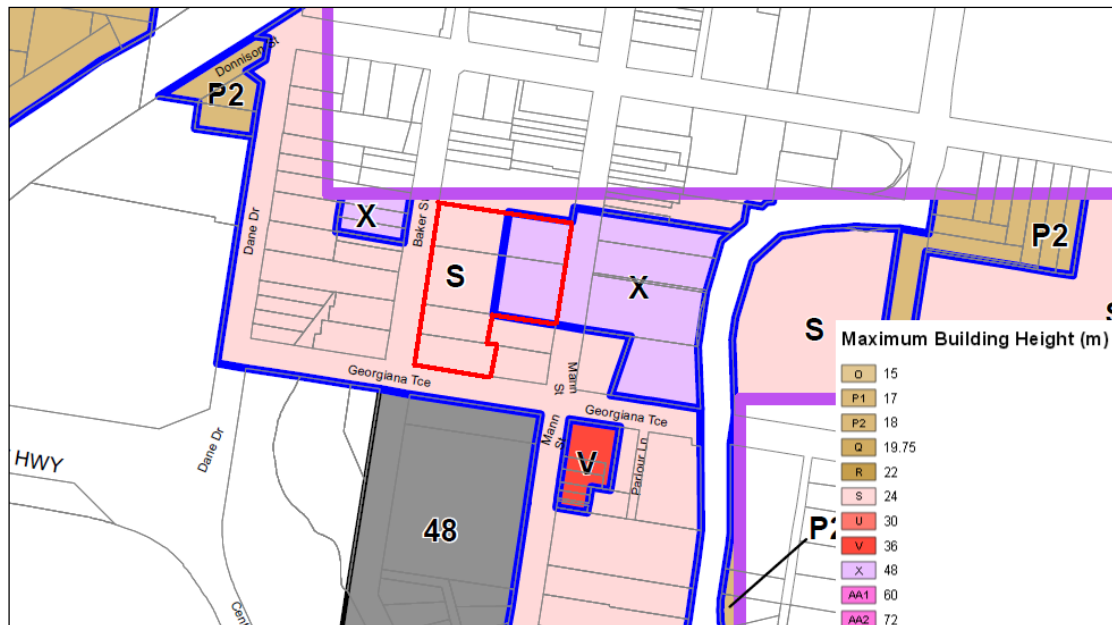
The objectives within the *B4 Mixed Use Zone* are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities, social, education and health services and higher density residential development.*
- *To allow development in Point Frederick to take advantage of and retain view corridors while avoiding a continuous built edge along the waterfront.*
- *To create opportunities to improve the public domain and pedestrian links of Gosford City Centre.*
- *To enliven the Gosford waterfront by allowing a wide range of commercial, retail and residential activities immediately adjacent to it and increase opportunities for more interaction between public and private domains.*
- *To protect and enhance the scenic qualities and character of Gosford City Centre.*

### 3.4 WHAT IS THE DEVELOPMENT STANDARD BEING VARIED? E.G. FSR, HEIGHT, LOT SIZE

#### Height of Building

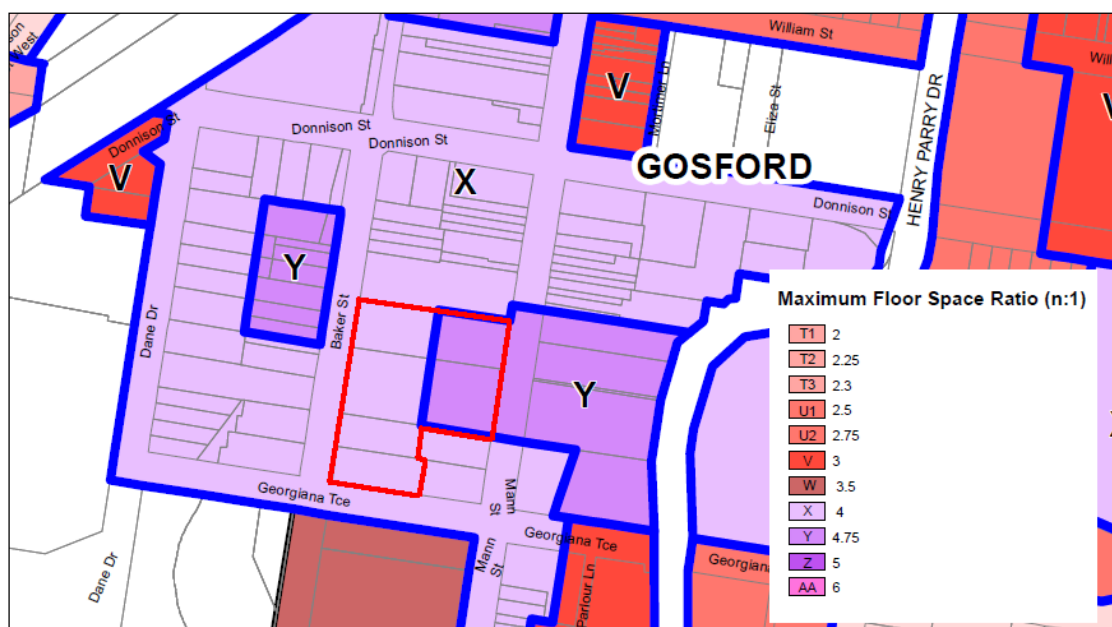
Councils Height of Building Map shows a maximum height for buildings on the subject site as being 48m along the Mann Street Frontage and 24m along the Baker Street frontage (see Figure 1). Given the location of the site within the Gosford City Centre however, it is afforded a 30% bonus pursuant to the provisions of Clause 8.9 which brings the maximum height up to 62.4m and 31.2m respectively. This Clause 4.6 request is therefore submitted in relation to Clause 8.9(3)(a).



**Figure 1:** Height of Buildings Map (Source: Gosford LEP Maps)

## FSR

Councils FSR Map shows a maximum FSR for buildings on the subject site as being 4.75:1 along the Mann Street Frontage and 4:1 along the Baker Street frontage (see Figure 2). Given the location of the site within the Gosford City Centre however, it is afforded a 30% bonus pursuant to the provisions of Clause 8.9 which brings the maximum FSR up to 6.2:1 and 5.2:1 respectively. This Clause 4.6 request is therefore submitted in relation to Clause 8.9(3)(b).



**Figure 2:** FSR Map (Source: Gosford LEP Maps)

## 3.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL? GIVE DETAILS.

No, the maximum building height and FSR development standards are numerical controls.



### 3.6 UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

#### Height of Building

Clause 4.3 of the LEP provides:

*4.3(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

**Note.** Clauses 4.3A, 4.6, 5.6, 7.7 and 8.9 provide exceptions to the maximum height shown for the relevant land on the [Height of Buildings Map](#) in certain circumstances.

The subject site is shown on Councils Height of Building Map as having a maximum building height of 48m along the Mann Street Frontage and 24m along the Baker Street frontage.

Given the location of the site within the Gosford City Centre however, the provisions of Clause 8.9 – *Development Incentives* become applicable which add a further 30% to this height as follows:

*8.9(3) Development consent may be granted for the erection of a building on land to which this clause applies if the building:*

*(a) will not exceed the maximum height shown for the land on the [Height of Buildings Map](#) by more than 30%, and*

Taking the above into consideration, the proposal seeks to vary the maximum bonus height provisions provided for under Clause 8.9(3)(a).

#### FSR

Clause 4.4 of the LEP provides:

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*

**Note.** See Part 8 for exceptions to the maximum floor space ratio for buildings in Gosford City Centre.

The subject site is shown on Councils FSR Map as having a maximum FSR of 4.75:1 along the Mann Street Frontage and 4:1 along the Baker Street frontage.

Given the location of the site within the Gosford City Centre however, the provisions of Clause 8.9 – *Development Incentives* become applicable which add a further 30% to this FSR as follows:

*8.9(3) Development consent may be granted for the erection of a building on land to which this clause applies if the building:*

*(b) will not exceed the maximum floor space ratio shown for the land on the [Floor Space Ratio Map](#) by more than 30%.*

Taking the above into consideration, the proposal seeks to vary the maximum bonus height provisions provided for under Clause 8.9(3)(b).

### 3.7 WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?

The objective behind Clause 8.9 is as follows:

- (1) The objective of this clause is to provide incentives for development on land in Gosford City Centre.*

It is also pertinent to investigate the objectives behind the Clause 4.3 and Clause 4.4 which state:

#### 4.3 Height of buildings

*(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.*

#### 4.4 Floor space ratio

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

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,*
- (g) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,*
- (h) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.*

Finally, it is relevant to assess the proposed variation against the objectives of Part 8 of the LEP which include:

- (a) to promote the economic and social revitalisation of Gosford City Centre,*
- (b) to strengthen the regional position of Gosford City Centre as a multi-functional and innovative centre for commerce, education, health care,*

*culture and the arts, while creating a highly liveable urban space with design excellence in all elements of its built and natural environments,*  
*(c) to protect and enhance the vitality, identity and diversity of Gosford City Centre,*  
*(d) to promote employment, residential, recreational and tourism opportunities in Gosford City Centre,*  
*(e) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Gosford City Centre achieves sustainable social, economic and environmental outcomes,*  
*(f) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Gosford City Centre for the benefit of present and future generations,*  
*(g) to help create a mixed use place, with activity during the day and throughout the evening, so that Gosford City Centre is safe, attractive and efficient for, and inclusive of, its local population and visitors alike,*  
*(h) to enhance the Gosford waterfront,*  
*(i) to provide direct, convenient and safe pedestrian links between Gosford City Centre and the Gosford waterfront.*

How the proposed development addresses all of the above is discussed in further detail below.

### 3.8 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

#### Height of Building

The numeric value of the maximum building height provided for under Clause 8.9(3)(a) is 62.4m along the Mann Street Frontage and 31.2m along the Baker Street frontage. In this regard, building height is defined within the LEP as the “*vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*”.

Despite the above, Clause 5.6(2) provides the following:

*Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*

How this fits in with the proposed development is discussed within Section 3.9.

#### FSR

The numeric value of the maximum FSR provided for under Clause 8.9(3)(b) is 6.2:1 along the Mann Street Frontage and 5.2:1 along the Baker Street frontage. In this regard, FSR is defined within the LEP as the “*ratio of the gross floor area of all buildings within the site to the site area*”.

Furthermore, **gross floor area** is defined within the LEP as “*the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*

- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above”.*

It is noted that Clause 8.6(3) requires that any above ground parking be included within the calculation of the buildings gross floor area. It is important to note however, that this requirement is specific to this Clause only and not Clause 4.3 or Clause 8.93(b), as evidenced by the term “*for the purposes of this clause*”.

How this fits in with the proposed development is discussed within Section 3.9.

### **3.9 WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE DEVELOPMENT APPLICATION?**

#### Height of Building

For the sake of completeness, and in recognition of extent of cut previously carried out on the site as part of the construction of the original Brisbane Waters County Council building, the summary of heights below distinguishes between the LEP definition of building height which is measured from the “*existing ground level*”; and what is referred to within this submission as the “effective height” when viewed from the adjoining streets.

#### **Existing ground level (LEP definition)**

##### *Fin height*

As discussed above, the height of buildings is measured from the existing ground level rather than the finished ground level. Given that this is variable across the site (ranging from 10.89m AHD along a point in Mann Street down to 1.86m AHD along a point in Baker Street) it is considered applicable to illustrate the “worst case scenario” for the sake of conservatism, and thereby providing a maximum variation. It must be noted however whilst this methodology may be appropriate for a non-developed site, the subject site contains existing buildings which have been built into the ground by approximately eight metres along the Mann Street frontage.

This dictates that the existing ground level for the Mann Street tower is significantly lower than the finished ground level.

Regardless, using this methodology, the following table highlights the proposed maximum height of building request:

Tower	Existing Ground Level (AHD) <sup>1</sup>	Proposed Fin Height (AHD)	Proposed building height
Mann Street	2.86m	118.95m	116.09m
Baker Street	2.12m	105.15m	103.3m
Georgiana Tce	1.98m	88.6m	86.62m

#### *Top of Slab Height*

In addition to the above, it is important to also assess the building height without including the fin wall which has been added to provide an architectural element to the building in accordance with Clause 5.6. The following table highlights the proposed maximum height of building request in this regard:

Tower	Existing Ground Level (AHD)	Proposed Top of Slab Height (AHD)	Proposed building height
Mann Street	2.86m	112.75m	109.89m
Baker Street	2.12m	99.25m	97.13m
Georgiana Tce	1.98m	83.65m	81.67m

#### **Finished Ground Level (effective height when viewed from adjoining street)**

#### *Fin Height*

Despite the above, the building height as it will be perceived is considered to be a considerably more relevant measurement as this will be the portion of building as seen once constructed. Using this methodology, the following table highlights the proposed maximum height of building as perceived:

Tower	Finished Ground Level (AHD)	Proposed Fin Height (AHD)	Proposed building height
Mann Street	10.05m	118.95m	108.9m
Baker Street	2.45m	105.15m	102.7m
Georgiana Tce	2.45m	88.6m	86.15m

#### *Top of Slab Height*

Finally, the following table highlights the proposed maximum height of building without the fin wall in accordance with Clause 5.6:

Tower	Finished Ground Level (AHD)	Proposed Top of Slab Height (AHD)	Proposed building height
Mann Street	10.05m	112.75m	102.7m
Baker Street	2.45m	99.25m	96.8m
Georgiana Tce	2.45m	83.65m	81.2m

#### FSR

<sup>1</sup> Levels sought from survey plan 7070 Issue A prepared by Stephen Thorne and Associates Pty Ltd dated 08/12/2014

As the FSR controls over the site are variable and as FSR is calculated using site area, it is difficult to distinguish between the three towers. For this reason, it is considered appropriate then to adopt the site area for the Georgiana Terrace and Baker Street towers as being within the area designated "x" under the FSR maps and the site area for the Mann Street tower as being within the area designated "y" under the FSR maps. Using this methodology and the definition of gross floor area (GFA), the following table highlights the proposed maximum FSR request excluding above ground parking:

Tower	Site Area	GFA	FSR
Mann Street	3,033.74m <sup>2</sup>	27,641.5m <sup>2</sup>	9.11:1
Baker Street	5,530.26m <sup>2</sup>	38,071m <sup>2</sup>	6.88:1
Georgiana Tce			
Total	8546m <sup>2</sup>	65,712.50m <sup>2</sup>	Avg FSR 7.71

### 3.10 WHAT IS THE PERCENTAGE VARIATION (BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT)?

#### Height of Building

#### Existing Ground Level (LEP definition)

#### *Fin Height*

The following table highlights the variation sought from Council and JRPP with regards to Clause 8.9(3)(a) using fin building height and the existing ground level:

Tower	Proposed building height	Max Height under Cl 8.9(3)(a)	Variation
Mann Street	116.09m	62.4m	53.69m (86%)
Baker Street	103.3m	31.2m	72.1m (231%)
Georgiana Tce	86.62m	31.2m	55.42m (178%)

#### *Top of Slab Height*

The following table highlights the proposed maximum height of building without the fin wall in accordance with Clause 5.6:

Tower	Proposed building height	Max Height under Cl 8.9(3)(a)	Variation
Mann Street	109.89m	62.4m	47.49m (76.1%)
Baker Street	97.13m	31.2m	65.93 (211%)
Georgiana Tce	81.67m	31.2m	50.47m (162%)

## Finished Ground Level (effective height when viewed from adjoining street)

### *Fin Height*

As discussed above however, it is considered more relevant to address the perceived height once constructed and so the following table has also been provided which highlights the variation with regards to Clause 8.9(3)(a) using the fin height and the finished ground level:

Tower	Proposed building height	Max Height under Cl 8.9(3)(a)	Variation
Mann Street	108.9m	62.4m	46.5m (74.5%)
Baker Street	102.7m	31.2m	71.5m (229%)
Georgiana Tce	86.15m	31.2m	54.95m (176%)

### *Top of Slab Height*

Finally, following table highlights the proposed maximum height of building request in this regard excluding the fin wall pursuant to Clause 5.6 using the finished ground level:

Tower	Proposed building height	Max Height under Cl 8.9(3)(a)	Variation
Mann Street	102.7m	62.4m	40.3m (64.6%)
Baker Street	96.8m	31.2m	65.6m (210%)
Georgiana Tce	81.2m	31.2m	50m (160%)

Again, it is reiterated that the finished ground level is the more pertinent measurement in terms of building height given the existing nature of the site, which has resulted in an existing building ground level which is approximately eight metres below the Mann Street frontage.

### FSR

The following table highlights the variation sought from Council and JRPP with regards to Clause 8.9(3)(b):

Tower	Proposed FSR	Max FSR under Cl 8.9(3)(b)	Variation
Mann Street	9.11:1	6.2:1	47%
Baker Street	6.88:1	5.2:1	32%
Georgiana Tce			
Average across the site	7.7:1	5.57:1	38.2%



## 4.0 Assessment of the Proposed Variation

### 4.1 CLAUSE 4.6

Clause 4.6 of Gosford LEP 2014 states the following:

*(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.*

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6 requires that a written request from the applicant must be made to Council that seeks to justify the contravention of the development standard by adequately 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.*



Furthermore, Council must be satisfied that 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 B4 Mixed Use Zone.

Finally, the concurrence of the Director-General must be obtained. It is assumed that Council enjoys delegated authority of the DG in this regard.

In deciding whether to grant concurrence, Council must consider whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Director-General before granting concurrence. In this regard, no "other matters" have been highlighted which require consideration under subclause (5)(c).

The following assessment has been undertaken in accordance the requirements of Clause 4.6. In this regard it is noted that Clause 4.6 is essentially the equivalent of SEPP 1 where matters to be considered were detailed in the Department of Planning's (now Department of Planning and Environment) Circular No. B1 which states: -

*"If the development is not only consistent with the underlying purpose of the Standard, but also with the broader Planning Objectives of the locality, strict compliance with the Standard would be unnecessary and unreasonable".*

In *Winten Property v North Sydney* (2001) NSWLEC 46 Justice Lloyd sets out the following five part test for considering SEPP No. 1 Objections:

- *Is the planning control in question a development standard;*
- *What is the underlying object or purpose of the standard;*
- *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979;*
- *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;*
- *Is a development which complies with the development standard unreasonable or unnecessary; and*
- *Is the objection well founded.*

In accordance with the Guideline, this assessment also addresses the relevant test established by the NSW Land and Environment Court in the decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- Is compliance with the development standard unreasonable or unnecessary because the objective of the development standard are achieved notwithstanding non-compliance with the standard.

#### 4.2 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

In the circumstances of this case, strict numerical compliance is unreasonable or unnecessary because the proposal and the varied building height and FSR are consistent with the objective Clause 8.9 as demonstrated below:

Clause 8.9
Objective/Comment
<i>(1) The objective of this clause is to provide incentives for development on land in Gosford City Centre.</i>
In allowing for the proposal to be built to the additional height and FSR proposed, the incentive for development will be maintained. As is discussed elsewhere within this document, the need for additional yield on the site has come about as a result of the considerable investment involved in providing the public links through the site. The provision of these links was a primary driver in the design of the proposal, and resulted in the “pushing down” of the car parking, with the additional costs associated with this type of construction. Those links form an integral component of the plans for the City Centre – Waterfront link, which in itself is viewed as a crucial component in the revitalisation of the Gosford City Centre.
With the proposal set to act as an anchor for the revitalisation of the City Centre, and providing the required “critical mass” of population (workers and residents), the proposal itself will also act to as an incentive / stimulus for future investment and development within the City Centre.
In light of the above, it is considered that the proposed variations in no way hinder the attainment of this objective, as it acts to further encourage investment and development within the City Centre. Accordingly, the application of the numeric controls specified within this clause are unwarranted in this case, given that the objectives of the clause will still be attained.

As discussed above, it is also relevant to assess the building height variation against the objectives of Clause 4.3. Again, it is considered that in the circumstances of this case, strict numerical compliance is unreasonable or unnecessary because the proposal and the varied building height is still consistent with these objectives as demonstrated below:

## Clause 4.3

### Objective/Comment

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

This is considered more of an introductory statement within the objectives rather than one which describes a particular aim to be achieved through the application of the development standard. This objective is best considered in conjunction with the others rather than on its own.

Having made this point however, it is worth considering the question of whether simply ascribing a maximum height for buildings on such a macro level as a planning map is an appropriate control mechanism. Consideration of the question of building heights is one which is more appropriately considered on a micro level, when considering the design of an individual building. The question of maximum building heights should also be reconsidered within the context of the more modern built forms currently being pursued on many sites within the City Centre.

It is understood that one of the aims of the height controls in Gosford has traditionally been to preserve the vegetated ridge line which provides a back drop to the City when viewed from certain key points.

This control was initially put in place in an era when the built form which was typical of the day was significantly less refined than that which is proposed not only as part of this application, but for others within the City Centre. Designs at that time were typically more box shaped – with the result being that were they to be constructed too high, they would potentially block out large portions of the views to the ridge line. The current proposal however, incorporates a more slender tower element, which is set well back from the outer edges of the podium. Such a design allows for an increase in height beyond the current levels, without removing views to the ridgeline.

It is further pointed out that the Visual Impact Assessment carried out by RLA concludes that the proposed towers do not appear likely to cause significant negative impacts on the character or scenic quality of views. The VIA also points out that the additional height proposed beyond what is allowable under the current controls does not cause a significant increase in view loss from within the public domain.

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

This objective is also considered as more of an introductory statement, however appears to be based on an underlying assumption that only buildings of a specific height are capable of offering a high quality urban form.

It is noted from a review of the Height of Building Maps that heights between 8.5m and 72m are catered for within the LEP. Based on this, it is assumed that a building of up to 72m in height is deemed as being capable of offering high quality building form. When the 30% bonus is applied to that figure, it takes the height of a building which is capable of offering high quality building form up to 93.6m.

In the case of the subject proposal, the heights being pursued using the finished ground level fin height (which is considered the relevant level in terms of urban form) are 108.9m, 102.7m and 86.15m. This represents one tower which is below the maximum, and the other two exceeding this maximum by only a small amount.

Beyond this discussion of simple numerical considerations, it is questioned how it could be that high quality urban form could ever simply be a function of the height of a building? Surely many other considerations would take precedence over height when considering the quality of the urban form? Considerations such as architectural merit, building material quality, public / private space interactions and transitions, and the design of the building relative to the surrounding context would be the primary considerations.

As outlined in the discussion on Design Guidelines within the "Statement of Strategic Intent", a more nuanced consideration is required. This involves consideration of the scale of the building to the precinct, to the site, and the scale of the building itself. Such considerations are able to facilitate appropriately located and scaled taller buildings while still achieving all of the overall objectives outlined within the LEP. It is noted that the VIA also found that the proposal is appropriate within the current and future context, mindful of the recent approvals for buildings beyond the current height controls.

Given that this specific objective is aimed at encouraging high quality urban form, and the preceding discussion which points out that there are many more considerations which have a more significant impact on this objective, it is considered that the development standard in question is not appropriate in this case.

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

In considering this objective, it is relevant to note that the location and orientation of the site is such that it is on the southern side of the nearest residential building. The sites immediately to the east, south and west contain uses consistent with the B4 zone, being Gosford City Council Chambers; offices and the former Gosford Public School site (vacant); and the Central Coast Leagues Club respectively. Accordingly, no residential buildings will be unduly affected by overshadowing.

The solar access analysis carried out and submitted with the proposal demonstrates that at 9:00am on June 21<sup>st</sup>, there will be a shadow cast over the nearby Ray Maher Field, opposite the Central Coast Leagues Club. The same analysis also shows that by midday on the 21<sup>st</sup> of June, there is no overshadowing, and no overshadowing throughout the remainder of the year, with the months of September and December also being shown.

In evaluating solar access to the various adjoining footpaths, the current proposal does not represent a significant increase beyond the current situation arising from the existing buildings on site – and beyond what would be caused by a fully height compliant building.

The proposed tower form was selected as it allows a more slender built form which minimises overshadowing and view loss through its very nature. The elliptical shape of the towers was chosen for a number of reasons, with the primary one being that such a form further minimises both overshadowing and view loss, as the sun light, and the views, effectively wrap around the building. It is through this design initiative that the building is able to achieve the proposed height, with only a very minor increase in overshadowing effects beyond that which would be associated with a fully compliant building.

As discussed earlier, the maximum heights prescribed within the LEP have traditionally assumed a vastly different built form than that which is proposed. The podium / tower type construction allows for increased heights while still achieving the stated objectives.

Based on the consideration of this objective, it is proposed that compliance with the development standard is unnecessary, as the proposed height does not hinder the objective being realised.

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

A close review of the Height of Buildings map reveals that the maximum heights prescribed within the Gosford City Centre do not reflect the standard format of “more height at the centre, with lower heights radiating out”. Instead, a typical east – west cross section of the map shows the prescribed heights appearing to be much more random, with heights of 72m – 36m – 24m – 48m – 30m. Based on these observations, it is not clear that the current height maps are based on providing for transitions in built form.

It is accepted that the primary intent of the two height limitations within the subject site is aimed at ensuring that the Mann St frontage is the taller of the two. It is understood that this requirement has been driven in part by the desire to ensure that the building heights are representative of the existing ground levels. This objective is achieved with the proposal, which has even gone further, by making the Georgiana Terrace tower the lowest of the three, thus providing a further element of scale and proportion within the site itself. The required “transition in built form” within the context of this site therefore, is aimed more at ensuring a height transition within the site – which has been achieved.

Council has also advised that the lower height (and FSR) on the Baker Street side is required to provide a view corridor down Baker Street as Baker Street provides a link from the waterfront to the city centre and Kibble Park. In this regard, and as discussed previously, the development opens up a significant portion of ground level pedestrian space to facilitate this linkage. Furthermore, the proposed heights of the towers along Baker Street in no way impact upon views down this corridor given that the towers are setback from the street, and set back from the edge of the podium. This has been discussed in full detail within the Visual Impact Assessment accompanying the development application documentation.

On a more broad scale, the subject site is located such that it has the potential to be part of the “gateway” group of buildings at the southern end of the City Centre as discussed in the “Statement of Strategic Intent”. Accordingly, the proposed increase in height can be viewed as being consistent with that potential.

As with all other considerations of the question of height, it is again highlighted that the current controls are based largely on an assumed development type and form which is not consistent with what is currently proposed. The podium / tower design proposed here allows for increased heights while avoiding many of the issues associated with increased height for more traditional built forms in the Gosford City Centre. As outlined in Council’s “Statement of Strategic Intent”, by setting the tower element back from the edges of the podium, the base element (podium) is reinforced as the defining element for the public realm.

This therefore allows for greater height for the tower, while the podium – at a much lower height – is viewed as the more dominant element from the street level.

It is also noted that the “Statement of Strategic Intent” suggests locating taller towers along Mann St, with surrounding streets decreasing in height – thus suggesting a rethink on the part of Council as to the concept of “appropriate transitions”.

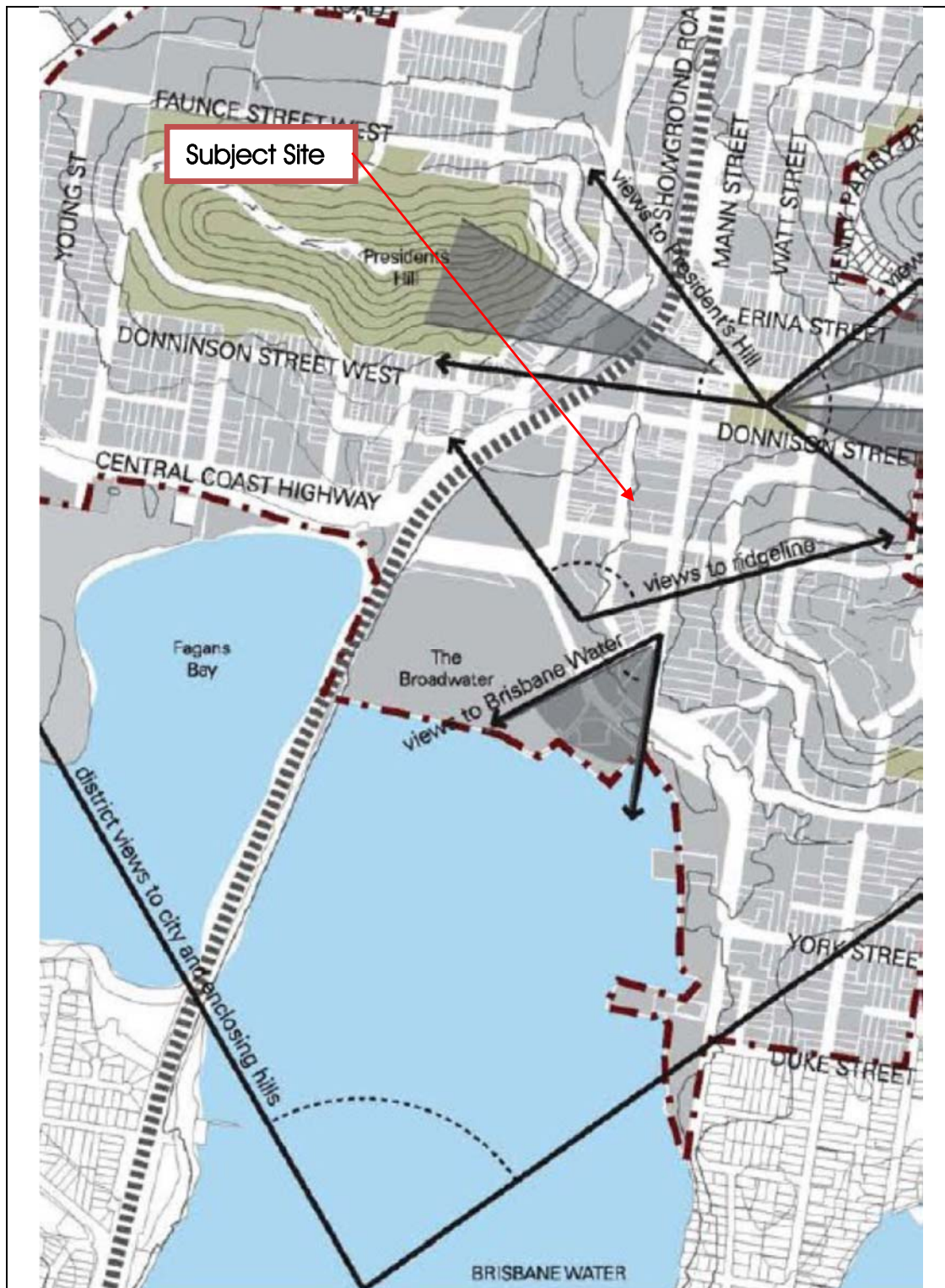
In light of the points raised regarding the current inconsistencies surrounding the height of buildings map; the desired height transitions within the site being provided for; the specific nature of the tower elements of the building; the fact that the development will not impact on any view corridors down Baker Street; and the overall consistency of the proposal with the Council “Statement of Strategic Intent”, it is considered that the application of the development standard is not warranted in this instance.

*(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,*

Figure 2.14 within the Gosford City Centre DCP nominates significant views which are to be protected (see Figure 3). From a review of the view analysis submitted with this application, it is clear that the proposal does not represent a significant loss of view within the relevant corridor, being the ridgeline view from within Ray Maher Field.

Once again, the preceding point regarding the nature of the tower element is a valid point for consideration, as although the building is within the catchment for the nominated view, the slender nature of, and the separation between the towers allows for these views to be largely retained. This is in comparison to a more traditional form of building being built to a compliant height within the site, which would have a significant impact on views.





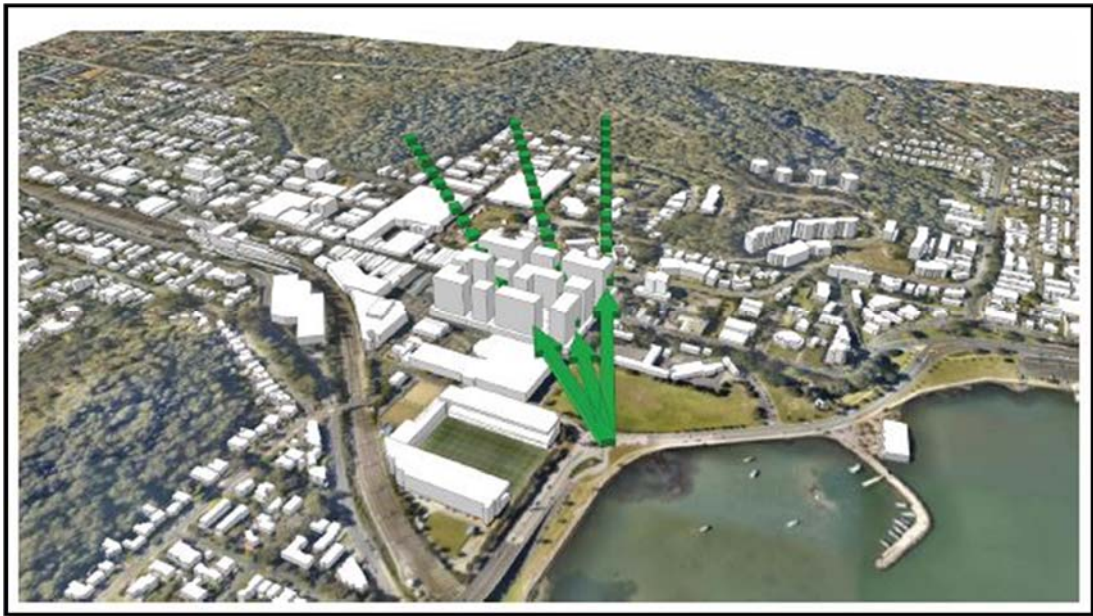
**Figure 3:** DCP Figure 2.14 Significant Views

The specific nature of the proposed built form is once again relevant, not only in terms of the ability for this type of building to achieve greater heights while still retaining views, but also in terms of its consistency with the Gosford Council "Statement of Strategic Intent".

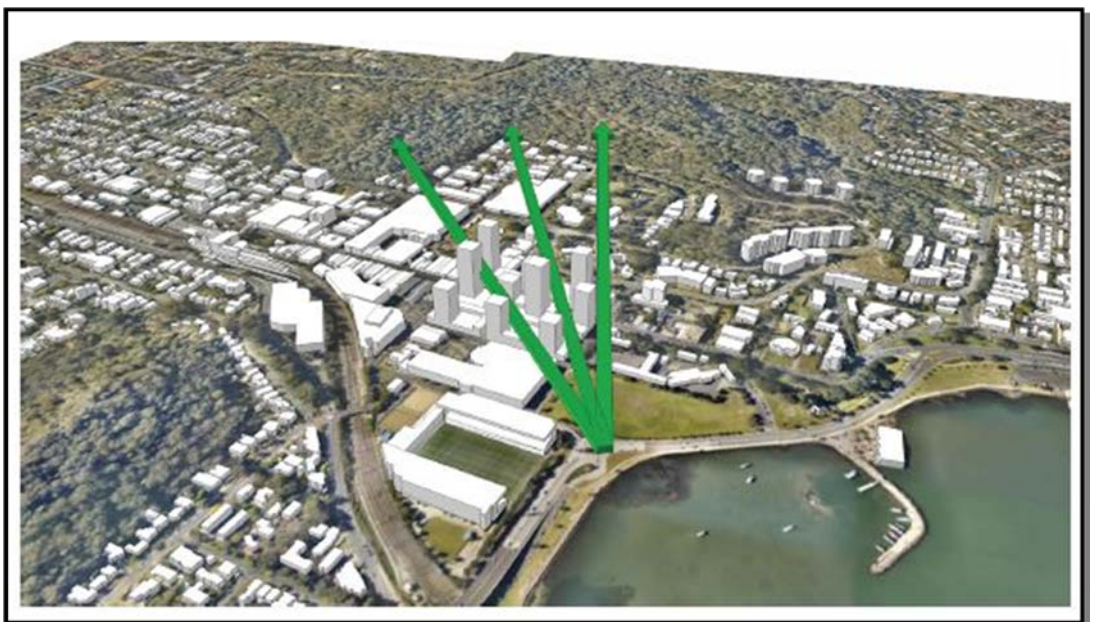
As demonstrated in the below extracts from that document, Council has had analyses carried out which testify to the comments above.

The two (2) images compare the extent of impact on views from within Ray Maher Field (the nominated view corridor), across the subject site, and toward the ridge line.

The first image presents a development scenario within the site and adjoining sites, with 20 storey towers, 6:1 FSR, and no limit to the tower floor plate. The resultant impact on the nominated view is depicted as being severe.



The second image shows a 30 storey tower, 6:1 FSR, and a 20m x 20m tower floor plate. Despite having an additional 10 storeys, the limited floor plate to the tower makes a considerable difference, with the resultant view loss actually being less than that encountered with a lower, but less slender building form as depicted in the first image.



A photo of the subject views is provided below.





A full Visual Impact Assessment including view catchment analysis of the above view corridor and numerous others has been undertaken by Richard Lamb & Associates. This investigation focuses on the potential impact on both public domain and private domain views from the additional height of the development.

The Visual Impact Assessment advises that where public domain views are blocked significantly they are from specific points along Henry Parry Drive or particular locations within Waterfront Park and can be captured by moving further along the road/moving to a different public location. Furthermore, these same views would be impacted by a building of compliant height given that the additional height only adds to blocking sky views.

Views gained from locations further away such as from Rumbalara Reserve or Kariong Lookout, are captured within a far broader context whereby the city centre is framed by the surrounding vegetated amphitheatre. In this respect, the additional height not only has negligible impact given its broad context but rather it adds to the visual interest of the city skyline thereby contributing to the views available.

In terms of the private domain, the proposed development will partially block views towards the waterfront from Broadway Apartments (127-129 Georgiana Tce) and future views from the recently approved Union Street Hotel towers (DA 46256/2014). The ability to gain such views at present however, given the site's location within a city centre setting, is testimony to the lagging progress of Gosford City rather than a deliberate view protection measure by Council. Given the desired character of the city centre being one of growth through increased height and FSR bonuses, it is expected that sites which are currently under developed would naturally take advantage of Council's positive attitude and develop in accordance with these incentives.

In this regard, Richard Lamb & Associates has concluded that the views lost from these private residential areas will not be further compounded by the additional height proposed given that only sky views will be blocked rather than water or horizon views.

Taking the above into consideration, Richard Lamb & Associates concludes that the portion of the building which exceeds the LEP controls in no way contributes to additional impact on important scenic or iconic views from either a public or private domain.

As to the question of building heights being complimentary to the natural topography of the area, this submission has consistently made the point that this is the case. The taller of the three towers has been sited on Mann Street – which is the highest portion of the site. The Baker Street and Georgiana Terrace towers are respectively lower, providing for an element of scale within the site itself, as the heights decrease toward Georgiana Terrace.

The above responses all point to the fact that the application of the development standard is in this case not warranted, as the objective is being met.

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

As outlined in the discussion on objective (c) above, the proposal does not result in substantial additional overshadowing to Ray Maher Field. As also outlined in the discussion on objective (e), the proposed building form acts to allow for increased building heights, while minimising the impacts on the view to the ridgeline from Ray Maher Field.

It is also relevant to assess the FSR variation against the objectives of Clause 4.4. Again, it is considered that in the circumstances of this case, strict numerical compliance is unreasonable or unnecessary because the proposal and the varied FSR is still consistent with these objectives as demonstrated below:

#### Clause 4.4

##### Objective/Comment

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

This is considered more of an introductory statement within the objectives rather than one which describes a particular aim to be achieved through the application of the development standard. This objective is best considered in conjunction with the others rather than on its own. It is worth noting however that the degree of variation being sought for the FSR is well below that being sought in relation to height.

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

The basic assumption which underlines this objective is that the height of the subject building will also be subject to the height controls within the LEP, which as has been stated previously, results in a more squat, compact building form than that which is currently proposed. The subject building has been designed in a manner which allows it to exceed the FSR limitations, while still presenting as a slender, vertical element, rather than a squat, compact built form which is typical of the type of designs which would have been in mind when this clause was drafted.

The subject building is more representative of a newer form of design within the City Centre.

The proposed building has been designed specifically to limit the perceived bulk, and with a podium level aimed at presenting a more human scale building when viewed from the street.

It is also pertinent to note that the height and FSR proposed is more in line with the Gosford Council "Statement of Strategic Intent", and LEP CI 8.9 *Development Incentives* – which is solely aimed at achieving higher buildings - thus complying with the objective in terms of "desired future character".

Given that this objective is framed around a building form which is not representative of the proposed building, it is considered that the application of the FSR limitation is not warranted in this case.

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

As discussed above, this objective is based on an assumed built form and height which is not representative of the current proposal. It should also be noted that the height and FSR variations proposed by subject proposal have come about due to the deliberate action of the proponent in providing an unprecedented level of public access through the site. This increased public domain – which entails a significant portion of the podium level – has driven the need to push the car parking to basement levels, the cost of which is one of the drivers for the increased yield.

This increased level of public access through the site – providing a link from the City Centre to the Waterfront – is only made possible by the proposed tower elements, which makes that area available. Considerable effort has gone into the design of this access through the site so as to ensure that it forms an intuitive link, which people will naturally be drawn to as they walk from the Waterfront to the City Centre and vice versa.

The primary existing area of public domain near the proposal is the Ray Maher Field, opposite the Central Coast Leagues Club. The shadow analysis undertaken for the proposal shows that at 9:00am of June 21<sup>st</sup>, there will be overshadowing to part of this park. This shadow however does not fall on the park by 12:00 midday. The same analysis also shows that for the remainder of the year – particularly during September and December, there is no shadowing of the park.

As illustrated in the "Statement of Strategic Intent" recently adopted by Council, overshadowing effects associated with tower elements are typically less than that which is associated with a more compact built form.

Given that the subject proposal actually adds to the quantum of public realm within the City Centre, and has minimal impact on the nearby public space, it is considered that the application of the FSR limitation is not warranted in this case.

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

As evidenced by the "Statement of Strategic Intent" and numerous other plans for the Gosford City Centre in recent years, it is abundantly clear that the City Centre is set to undergo a substantial transformation. Accordingly, this specific objective is not considered overly relevant to this proposal. Despite this, the Visual Impact Assessment undertaken by Richard Lamb & Associates provides that the proposed built form and corresponding building height is "not out of place in the existing and emerging streetscape or within the desired future character of the Gosford CBD." To the contrary, the proposed building and recently approved Union Street towers will provide a new landmark to the emerging visual character of the city centre.

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

As outlined previously, this objective is predicated on a built form which is not consistent with the built form proposed. In the case of the subject building, the increased height and the associated increased FSR has not prevented a significant portion of the site being opened up for public access. Additionally, the podium / tower design has facilitated a building with a strong human scale when viewed from street level, with the towers set back from the podium.

The size of the actual site is also a relevant point in this consideration. This proposal encompasses four existing lots, with a combined area of over 0.8 of a hectare. A land parcel of this size warrants separate consideration on the matter of FSR, particularly when the built form proposed allows for such a substantial portion of the site to be opened up for public access, and substantial separation between the three tower elements.

Given the points raised above, it is considered that application of the FSR limit is not warranted in this case.

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

As outlined previously, this objective is predicated on a built form which is not consistent with the built form proposed. By designing the building as a podium and towers, significant levels of articulation and modulation of design are achieved. The podium levels incorporate significant articulation and activity, being more "fine grained" as articulated as a preference within the "Statement of Strategic Intent". The towers above are setback and will not be visible at the street level where facade design is important.

In terms of design excellence, the towers incorporate an ovoid form, as well as being skewed from each other and setback from the street frontages in order to provide wide spatial separation thereby enabling the development to provide generous through-site view corridors. At a street level, pedestrian entry points are wide, open and easies distinguishable allowing both physical and visual permeability through the site. These design factors have only been possible through the additional height proposed which has resulted in a reduction to the potential building bulk.

Given the points raised above, it is considered that application of the FSR limit is not warranted in this case.

<i>(g) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,</i>
N/A, as the site is not zoned R1 General Residential.
<i>(h) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.</i>
N/A, as the site is not zoned R1 General Residential.

Given the bonus building height and FSR provisions available to the site under Clause 8.9, it is also relevant to assess the objectives of Part 8.

Part 8
Objective/Comment
<i>(a) to promote the economic and social revitalisation of Gosford City Centre,</i>
<p>The proposed development does not hinder the attainment of the objective to promote the economic and social revitalisation of Gosford City Centre. In fact, this objective this has been a leading driver in the design, including the height and FSR. As mentioned throughout this request, the development has had to achieve economies of scale in order to justify and compensate for the vast areas of ground level public open space and removal of at grade parking.</p> <p>The Gosford City Centre Statement of Strategic Intent refers to the Department of Planning and Environments "Urban Feasibility Model". This model is used to develop a detailed assessment of development capacity and viability/feasibility under the new LEP's. The model has been run for the Gosford City Centre, and has found that the baseline LEP controls provide potential for 16,474 additional units in the City Centre – of which only 19% are feasible to develop. When the bonus incentives under the LEP are included, the number of additional units increases to 20,266, of which only 26% are economically viable.</p> <p>These figures demonstrate that under the current controls, there is a high chance for many potential developments to not eventuate in the current economic climate. The danger is that owners will simply continue to land bank, or at best, attempt to sell sites with consent. The scenarios described here are not consistent with the promotion of the "economic and social revitalisation of Gosford City centre".</p> <p>A further detailed analysis of social and economic impacts is discussed within the Social Impact Assessment undertaken by James Marshall &amp; Co, where the important issue of the proposal being capable of supporting a "critical mass" of people (residents and workers) is explored, with the associated spending and investment in the City Centre which will be a flow on from this.</p> <p>Taking the above into consideration, there is nothing about the proposed development, particularly its built form and associated height and FSR which hinders the attainment of this objective; rather it further satisfies it over a compliant building.</p>



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

The proposed development provides a comprehensive mix of uses which take advantage of the sites' prime location along Mann Street and its proximity to the waterfront. Beyond this mix, the other crucial element to achieving all of these objectives is people. Without a critical mass of people living within the City Centre, the danger is that at best, a centre is created which is busy during the day, but dead at night. The proposal ensures that each of these objectives are able to be more readily achieved, by contributing to the overall demand for each of the services outlined.

The design of the development, is an exemplary example of modern architecture which cultivates public domain relationships; provides an iconic and memorable tower development and allows for a solid connection between the City Centre built form and the natural open spaces of the waterfront and surrounds. Adopting a built form more representative of historic buildings in Gosford and one which is confined to the height and FSR controls within the LEP would struggle to achieve the same results and would fall significantly short of providing a development which would strengthen the regional position of Gosford City Centre.

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

This site and Gosford in general, have languished for many years becoming somewhat of an eyesore. The City Centre has struggled with the development of Erina Fair, and past controls and development decisions have deterred investors from trying to make it in Gosford. The release of the Gosford City Centre Statement of Strategic Intent is testimony to this acknowledgement and the desire of the Council to reverse this situation and make the city centre a real destination. Additionally, the adoption of CI 8.9 *Development Bonuses* within the LEP speaks to the desire on the part of the Council for a higher built form.

With this in mind, it is considered that this objective in the context of this development is more about enhancement of the city, and facilitating a new era of investment and activity; and in this regard, the proposal not only completely turns the site around in terms of vitality, identity and diversity but it also contributes to its surrounds – particularly Mann Street and the waterfront.

The iconic form of the development which is largely attributed to its height will be recognisable from areas far beyond the City Centre and this is deliberate so as to enhance Gosford's identity. The vast mix of uses which will attract all demographics throughout the year and through the day and night enhances the sites diversity. Finally, the developments large central and linking open spaces tie all these factors together giving it vitality through pedestrian activity and an active night life.

Every part of the development, from its height and FSR, to its chosen mix of uses, has been deliberate. It is the intention of the proponent to create a draw card to Gosford and create an iconic pinnacle development which will not only revitalise this site but it will have a flow on effect through increased activity to the area in general.

With this in mind, developing beyond the building envelope controls is vital in order to achieve this objective and given the uniqueness of the site, its surrounds and the development itself, is considered to warrant exception.

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

In allowing for the proposal to be built to the additional height and FSR proposed, the project will be economically viable and as such realistically likely to go ahead. The construction of a development of this scale will have significant employment benefits and these will continue through the ongoing management and maintenance of the building as well as employment generated through the numerous commercial, retail and recreational spaces. Enforcing the LEP height and FSR controls will significantly reduce unit and floor space yield and therefore the attractiveness to proceed to the next step (construction).

An integral aspect of the proposed development is its recreational and public domain features such as the cinema, cafe and restaurant tenancies and above all the central ground level open space which link the whole site both internally and externally. Without these uses and this space, the design would not “pull” people through it and to spaces beyond – particularly the waterfront. Furthermore, the scale of this development is likely to provide a tipping point for Gosford in its momentum and future development, and attractiveness to permanent residents, businesses and tourists.

In light of the above, it is considered that the proposed building height and FSR variations in no way hinder the attainment of this objective, as it acts to promote Gosford and thereby further encourage investment and development within the City Centre.

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

The intensity and associated height and FSR of the development will contribute to employment generation in the city centre, providing employment generating uses close to residential accommodation and within walking distance to Gosford Train Station.

In addition to this, the residential aspect of the development has been designed in accordance with State Environmental Planning Policy 65 – *Design Quality of Residential Flat Buildings*, the objectives of which include “providing sustainable housing in social and environmental terms”, and to “minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions”.

Increasing the height of the towers allows for slimmer floor plates and therefore greater building separation and better internal natural lighting and ventilation. Developing within the building height and FSR controls would result in poorer internal amenity and would remove the connection of the buildings to the outdoors through the central open space.

The design of the site encourages pedestrian activity by guiding people through the site to the waterfront. This reduces car dependency, fosters exercise which improves livability and overall population health.

By allowing the proposed built form to access flexibility in terms of height and FSR will allow for a development which more concisely achieves sustainable social, economic and environmental outcomes.

***(f) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Gosford City Centre for the benefit of present and future generations,***

The site currently supports the former Brisbane Waters County Council Building, the former Police Citizens Youth Club, and "Froggy's", a former skating rink; all buildings which have been deserted for many years, and have become derelict. With this in mind, the site generally does not possess areas of environmental sensitivity with the exception of the locally heritage listed former Brisbane Waters County Council building, the significant aspects of which are considered to be the Mann Street façade (including the clock tower) and the internal staircase from the ground floor,

Taking the above into consideration, the design of the development has incorporated these important aspects to ensure they are preserved for future generations; this approach also being consistent with the previous approval as discussed within the SoEE.

The proposed height and FSR of the development will have no significant additional impact on the former Council building than would a compliant development; however, it does allow the site to enhance the connections to the waterfront and surrounding natural spaces beyond.

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

The site is located close to the centre of the city and within the B4 zone and as such is tasked with the responsibility of providing an active and inclusive development, one which will attract all demographics at all times of the year and day. This has been comprehensively accommodated within the proposal particularly its ground floor pedestrian level uses which include a distinct retail corner in the south-west; an active hotel presence in the north-west; and a mixed retail, commercial, cinema, cafe and restaurant precinct along Mann Street; all which face the large public open space areas in the centre.

Beyond the ground floor, the development provides hotel accommodation, commercial space and residential units. The overall result being that the site will attract permanent residents who will use the area at all times of the day throughout the year, employees who will use the site predominantly during the day and visitors/tourists who will enjoy the evening activities offered.

What brings all of these different uses together is the vast central open space and also the fact that at grade parking has been removed. This opens the area for maximum activity and amenity and could only be achieved through the developments design and resulting building height and FSR. With this in mind, the proposed building envelope variations are integral to the attainment of this objective.

***(h) to enhance the Gosford waterfront,***

As discussed previously, the additional building height and FSR is required to rationalise the significant public open space which is provided to allow for an exemplary pedestrian linkage through the site from the City Centre to the waterfront.



This aspect of the development is integral to the overall design and functionality of the site and local precinct.

Prior to the lodgement of this development, Council had identified linkages from the City Centre to the waterfront as being provided down Baker Street. The proposed arrangement however is far superior in terms of pedestrian amenity through its ability to separate human activity from the traffic environment.

The site will not only provide pedestrian passage but will also incorporate fluid indoor/outdoor spaces through the presences of cafes, a cinema and a tavern. These features will pull visitors to not only the site but the region in general and this will naturally overflow to the waterfront and future development and activities in this area. The development will provide a vital link between these two currently separate areas and will make Gosford feel as one.

All of the above is only possible through the proposed developments incorporation of the three towers and its subsequent building height and FSR variations. Enforcing these dated building envelope limitations would remove the ability of the site to enhance its linkages, and the city's linkages, to the waterfront – a detrimental impact and one which would remove the ability of the development to achieve this objective.

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

The fundamental premise behind the proposed development is in the achievement of this objective. As cited time and time again, the central ground level public open spaces provide a tie between the City Centre and the waterfront. This connection can only be achieved by removing at grade parking and by opening up approximately 50% of the site. This however has increased construction costs, and removed potential floor area and unit yield and as such needs to be compensated for through a greater building heights and FSR.

Despite its height, the towers have been setback over a podium level and this allows the design to maintain a human scale as well as allowing better solar access throughout. Should a less slender and tall design be adopted, this human scale would be eroded as would the pedestrian amenity. This would remove the attractiveness of the area to walk through resulting in less activity and consequently less casual surveillance and safety.

Finally, and as discussed previously, the development incorporates a wide range of uses which will ensure the site is used not only during the day or summer months but at night and all year round. Greater use, particularly within the cafes and restaurants at a ground level, gives an area a sense of place and allows residents and visitors to have pride in their city – all contributing factors in reducing crime and provide a safe pedestrian environment.

Taking the above into consideration, the additional height and FSR of the development is fundamental in achieving this objective.

Taking the above into consideration, the proposed mixed use development is considered to more consistently achieve the objectives of Part 8 than would a building of compliant height and FSR.

Finally, Council must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the B4 *Mixed Use Zone*. This is demonstrated within the following table:

<b>B4 Mixed Use Zone</b>	
<b>Objective/Comment</b>	
<i>To provide a mixture of compatible land uses</i>	
<p>The proposed mixed use development, comprising a broad range of two, three and four bedroom dwellings; commercial and retail floor area; a hotel; entertainment facilities and vast public open space is ideally suited to this city centre location and the waterfront beyond. The development will have a beneficial flow on effect beyond the site itself through the activation and vibrancy of the city's existing services as well as the waterfront and other public areas.</p> <p>The range of uses proposed, in particular the central open space, is only possible through opening up the site, removing at grade parking and allowing for greater building flexibility through increased heights and FSR. Developing within the building envelope controls would result in the loss of one or more of these facets and provide a building less able to meet this objective.</p>	
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	
<p>The subject site is located within 500 metres of the Gosford Train Station and as such has good regional connections. It is also located opposite a regular bus service which connects the site to places such as Erina Fair and The University of Newcastle's Ourimbah Campus, as well as the surrounding local area.</p> <p>As repeated throughout this submission, the development incorporates significant public open spaces which connect the site to the city centre and the waterfront and thereby encourages walking and cycling.</p> <p>Finally, the proposed mix of uses within the subject development will allow for permanent residents and visitors to access a full range of services within the site without the need to rely of private car use. The proximity of the site to existing residents and businesses within the city centre will also encourage external residents to walk or use public transport.</p> <p>In consideration of the above, it is evident that the proposed height and FSR of the development facilitates the pedestrian amenity able to be offered whereas a compliant building would be unable to achieve the yields necessary to open up the centre and provide such advantages linkages.</p>	
<i>To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities, social, education and health services and higher density residential development.</i>	
<p>This has been discussed at length where it has been established that a compliant building would be less likely to achieve this objective than does the proposed development.</p>	

***To allow development in Point Frederick to take advantage of and retain view corridors while avoiding a continuous built edge along the waterfront.***

The proposed development and its associated building height and FSR will have no impact on the ability of residents in Point Frederick to access existing views towards Rumbalara Reserve or the waterfront. The iconic nature and height of the building however will provide visual interest along the sky line of Gosford making the city centre a view worth obtaining – a fact which would not be so should the building adopt a compliant and dated built form.

***To create opportunities to improve the public domain and pedestrian links of Gosford City Centre.***

This has been discussed at length where it has been established that a compliant building would be unable to achieve this objective as concisely as the proposed whilst still retaining its commercial viability.

***To enliven the Gosford waterfront by allowing a wide range of commercial, retail and residential activities immediately adjacent to it and increase opportunities for more interaction between public and private domains.***

Whilst the proposed site is not adjacent to the waterfront it has been demonstrated consistently throughout this submission that the site design proposed allows for excellent connections from the city centre. Its broad range of uses will also attract a wide variety of people all year round and throughout the day and night.

The proposal has been developed with the concept of intuitive pedestrian activity through the site being an imperative. Considerable emphasis has been placed on ensuring that the public will see the site as a logical part of the waterfront and City Centre link, with design components such as landscaping; width of pedestrian areas; lighting; and suitable uses for tenancies forming part of that consideration. As discussed at length, this is something which could not be achieved by remaining within the building height and FSR controls.

***To protect and enhance the scenic quality and character of Gosford City Centre.***

The above sections have generally covered this point. In summary, the site has languished for many years becoming an overgrown eyesore. The proposed development however will present a unique and focal design bringing a sense of pride and grandeur to Gosford. The curved tower designs will form an identifiable skyline and the vast public open space linkages will have an innumerable positive impact on the pedestrian friendliness and character of the city centre – again this is something which would not be realised by a development of complying height and FSR.

Taking the above into consideration, the proposed mixed use development is considered to more consistently achieve the objectives of the B4 Mixed Use Zone than would a building of compliant height and FSR.

#### **4.3 HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?**

The objects set down in Section 5(a)(i) and (ii) are as follows:

*"to encourage*

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land...*

Two of the primary concerns in the development of land are the economics of the proposal; and the regulatory controls applicable. The proposed yield is required in order to offset the costs associated with the incorporation of substantial areas of public access through the site. Accordingly, if the yield is not achieved, then the return on the investment will be insufficient, and the project will not commence – or at the very least, would need to be redesigned to remove the public access.

As discussed previously, when the Department of Planning and Environment's "Urban Feasibility Model" was run for the Gosford City Centre, it found that the baseline LEP controls provide potential for 16,474 additional units – of which only 19% were feasible to develop. When the bonus incentives under the LEP were included, the number of additional units increases to 20,266, of which only 26% were economically viable. The scenarios described here are not consistent with the promotion of the "social and economic welfare of the community".

Through the Statement of Strategic Intent, Gosford Council are taking action to ensure that this threat to the development of the City Centre is overcome by providing clear direction in terms of flexibility with regards to current building envelope controls.

Containing the proposed development to the height and FSR controls, will be inconsistent with the promotion of the *"proper management, development and conservation of natural and artificial resources...for the purpose of promoting the social and economic welfare of the community..."*; and the *"orderly and economic use of land"*.

The question therefore of whether strict compliance with the clauses under consideration would hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act is answered in the affirmative. Strict compliance with the maximum height and FSR controls would have the potential to impact on the viability of the project to the point where it would not occur, or would at the very least, need to be redesigned with the removal of the substantial public areas proposed.

#### **4.4 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

It is considered that sufficient planning grounds exist to support the proposed height and FSR variations. In terms of building height, this assertion is based on the arguments outlined above, which demonstrate that the aims of the standard will still be achieved; these being to avoid overshadowing to public open space areas; ensure adequate solar access to adjoining sites; and to ensure building heights are appropriate to the site and do not impact on significant views.

In terms of FSR, it is clear that the aims of the standard, being to control building bulk; minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain; maintain an appropriate visual relationship between existing areas; and to facilitate design excellence, are comprehensively achieved through the proposed built form.

Other matters to be noted in this context include:

- The proposal more concisely achieves with the objectives of the zone and the Gosford City Centre objectives of Part 8, than would a development of compliant building height and FSR.
- The proposal remains consistent with the objectives of the height and FSR standards (Clause 8.9, 4.3 and 4.4), despite its non-compliance.
- Non-compliance with the standards do not contribute to adverse environmental, social or economic impacts but rather fosters a superior design attributed predominantly to the large central public open space provided.
- The scale and form of the slim tower development is in line Council's Statement of Strategic Intent.
- The development promotes the Act's objective of the orderly and economic development by ensuring that the project is commercially viable and will actually proceed.
- The additional height and FSR facilitates the delivery of a standard of development consistent with Council's vision for the city centre.
- The proposed hotel, cinema, retail and commercial development will have a positive effect on the local economy and assist in supporting trade and tourism in Gosford.

#### 4.5 IS THE VARIATION WELL FOUNDED?

Yes, for reasons outlined in the preceding sections of this submission, the variation to the height and FSR limit is well founded as compliance with these standards is unreasonable or unnecessary as the development does not contravene the objects specified within 5(a)(i) and (ii) of the Act, the objectives of the B4 Mixed Use Zone, the objectives of the Gosford City Centre provisions within Part 8 and the objectives surrounding the building height and FSR standards themselves.

The variation to the building height and FSR facilitates the delivery of a superior design located at a prominent gateway location – a location which demands a development of the highest quality in terms of design, finishes, and amenity but above all the public domain. The variation to the building height enables the delivery of these imperative urban outcomes in a manner that does not result in adverse impacts.

The proponent's vision for the site is one in which the site will be a major catalyst for the revitalisation of the City Centre through the provision of a wide range of complimentary uses accessed via a public thoroughfare which will enable a link between the city centre and the waterfront.

This vision is consistent with Council's recently adopted "Statement of Strategic Intent". This document highlights the moving trend and benefits towards taller slender built forms which allow for buildings of a greater height and FSR, but which still satisfy the overall objectives of the zones and the various controls relating to issues such as solar access, overshadowing, and bulk and scale.

As is discussed throughout this request, the provision of the public access through the site is one of the primary drivers of design. In providing this access, it is necessary to push the parking below ground into basement levels – this in turn increases cost. In order to make this a realistic aim, a greater yield is required. The building design chosen has come about through the need to achieve the required yields whilst minimising the impacts of the development.

Taking the above into consideration, strict compliance with the building height and FSR standards would be unreasonable and unnecessary in the circumstances of the case as it would hinder the viability and delivery of the better outcomes for the development and for the public in general.

#### **4.6 IS THE DEVELOPMENT IN THE PUBLIC'S INTEREST?**

As stated previously, Clause 4.6(4)(a)(ii) requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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. An assessment against the zone objectives and the objectives of the development standards has been thoroughly explored above.

In summary, the proposal represents an opportunity to create an iconic gateway development which also provides invaluable links between the city and the waterfront. Currently, the subject site is a dilapidated wasteland with no street appeal; no pedestrian amenity or linkage opportunities. The proposal will serve to activate the southern end of the city, and will be a real driver in the revitalisation of the Gosford City Centre, providing a critical mass of people (residents and workers), who will drive further demand for goods and services, creating a City Centre economy the likes of which has not existed in Gosford for decades, if at all.



## 5.0 Clause 4.6 vs Planning Proposal

There is no legislation or environmental planning instrument which limits the extent to which a variation under Clause 4.6 to the building height standard can apply.

Clause 4.6 is similar to the provisions required under *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1) where the Court of Appeal considered the issue in *Legal and General Life v North Sydney Municipal Council* (1990) 69 LGRA 201. Here, North Sydney Council had approved a SEPP 1 objection and the decision was subject to third party legal challenge. The applicable floor space ratio control was 3.5:1, but - as a consequence of upholding the SEPP 1 objection - the approved floor space ratio was 15:1 (a variation to floor space of 329%). The applicable height control was five storeys whereas the approved height was 17 storeys (a variation of 240%).

Clause 4.6 of the LEP is similar in terms to SEPP 1 in that there are no explicit provisions that make necessary for a consent authority to decide whether the variation is minor. With this in mind, there is no implicit constraint on the degree to which a consent authority may depart from a numerical standard.

Four recent examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 include:

- On 30 October 2014, the Sydney East Joint Regional Planning Panel granted development consent for a 14 storey mixed use development on land at 6-16 Parramatta Road Homebush (Reference 2014SYE053- Strathfield - 2014/066). In this decision, the panel, with the apparent benefit of advice from senior counsel, approved a floor space ratio variation of 24%.
- On 14 January 2014, in *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003, the Land and Environment Court granted development consent to a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187%.
- On 14 May 2015, the Hunter & Central Coast Joint Regional Planning Panel granted development consent for a 180 unit shop top housing development on land at 138, 140, 142 Henry Parry Drive Gosford (Reference 2014HCC025DA- Gosford - 46274/2014). In this decision, the panel approved a building height variation of 33%.
- On 14 May 2015, the Hunter & Central Coast Joint Regional Planning Panel granted development consent for a 26 and 28 storey mixed use tower development on land at 110, 114, 116, 118A Mann Street and 108 Donnison Street Gosford (Reference 2014HCC023DA- Gosford - 46256/2014). In this decision, the panel approved a FSR variation of 85.9% and a building height variation of 46%.

Using the existing ground level and excluding the fin wall in accordance with Clause 5.6, the variation to the building height standard sought is 211%.

Whilst this exceeds the above previous decisions, it is not grossly out of context and as such would appear to be appropriately dealt with under Clause 4.6. The proposed FSR variation is only 47% and would also be appropriately dealt with under Clause 4.6.

Further to the above, a development proposal that is not consistent with either the objectives of the development standard, or the objectives of the zone, expressly cannot be approved through the reliance on Clause 4.6. If this were the case, the proposal would be inconsistent with the intention of the zone and would be more appropriately applied for following a planning proposal.

With regards to the subject development, it has been consistently provided that the proposal, including its respective height and FSR, achieves the objectives of the B4 zone as well as the Part 8 Gosford City Centre objectives and finally the building height and FSR control objectives, and for this reason it is able to be approved through the flexible provisions afforded by Clause 4.6.



## 6.0 Conclusion

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Gosford Council is committed to the revitalisation of the Gosford City Centre and the Waterfront. These areas have languished for many years with no development occurring; and even worse, have been sliding into decline. The subject site is a case in point. For many years, this site has remained abandoned and derelict, when it has the potential to become a vibrant part of the revitalisation of the City Centre and the waterfront.

In the context of the above, development standards are a means of implementing planning purposes for a development or area. They are available to Council's and Joint Regional Planning Panels to approve appropriate development which whilst not complying with a LEP numerical standard, nonetheless achieves the objectives of the zone.

The "Statement of Strategic Intent" is viewed as a significant and proactive step by Council to acknowledge flaws in their current LEP restrictions and to recognise when variations to these are appropriate. The proposed design has adopted the principles behind this document and this has resulted in a proposal which avoids excessive bulk by incorporating three towers. This has ensured a more graceful development has evolved, and one which complies with the SEPP 65 design requirements. The proposed height and FSR is in response to the specifics of the site, yet has no detrimental impact on adjoining properties, and still allows for the objectives of Council's controls to be met.

The proposal represents a unique opportunity to deliver a development which has the potential to deliver on all aspects of Council's intention for the revitalization of the City Centre. The proposed variations to the height and FSR controls are noted, however in light of the considerable benefits to the area which the proposal can bring, it is hoped that Council will be willing to support these variations.

This submission satisfies the provisions of 4.6 as it has been demonstrated that:

- Compliance with the building height and FSR development standards are both unnecessary and unreasonable in the circumstances of this case;
- There are sufficient environmental planning grounds to justify contravening the development standards; and,
- The proposed development, with the varied building height and FSR, will be in the public interest because:
  - it is consistent with the objectives of the particular standards – being clauses 8.9, 4.3 and 4.4;
  - it is consistent with B4 Mixed Use Zone objectives;
  - it is consistent with the Part 8 Gosford City Centre objectives; and
  - it is consistent with the objectives of Clause 4.6. In particular, it will support the provision of superior amenity and will achieve better outcomes that otherwise would not be achieved by a compliant building.

Taking the above into consideration, it is hoped that proposal will be viewed by Council and the Joint Regional Planning Panel as one which will be able to contribute in a positive way to the reactivation of the Gosford City Centre, in part through its proposed building height and FSR which has come about through the large public open spaces provided.