

JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

Council Assessment Report

Panel Reference	2015HCC003
DA Number	47044/2015
Local Government Area	Central Coast Council
Proposed Development	Residential Flat Building (75 Units)
Street Address	LOT: 100 DP: 1066540, 70 John Whiteway Drive Gosford
Applicant	DEM Aust Pty Ltd
Owner	O Satıcı & V N Hoang & A Satıcı
Date of DA Lodgement	29/01/2015
Number of Submissions	Nine (9)
Recommendation	Approval - subject to conditions
Regional Development Criteria (Schedule 4A of the Act)	Development with a capital investment value over \$20m
List of all relevant s79C(1)(a) matters	1. Environmental Planning & Assessment Act 1979 - Section 79C 2. Local Government Act 1993 - Section 89 3. State Environmental Planning Policy (SEPP) No 19 - Urban Bushland 4. State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Flat Buildings. 5. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 6. Gosford Local Environmental Plan 2014 7. Gosford Development Control Plan 2013 a. Chapter 4.1 Gosford City Centre b. Chapter 6.1 Acid Sulphate Soils c. Chapter 6.3 Erosion Sedimentation Control d. Chapter 6.4 Geotechnical Requirements e. Chapter 6.6 Preservation of Trees or Vegetation f. Chapter 6.7 Water Cycle Management

	g. Chapter 7.1 Car Parking h. Chapter 7.2 Waste Management i. Chapter 7.3 Public Notification of Development Applications																																																																																																																					
List all documents submitted with this report for the Panel’s consideration	Architectural Plans by dem Architects <table><tr><th>Drawing</th><th>Description</th><th>Sheets</th><th>Issue</th><th>Date</th></tr><tr><td>ar-0001</td><td>Site Analysis</td><td>1</td><td>b02</td><td>29/1/2015</td></tr><tr><td>ar-0200</td><td>Site Plan</td><td>1</td><td>b05</td><td>22/9/2016</td></tr><tr><td>ar-1200</td><td>Basement Plan</td><td>1</td><td>b06</td><td>16/9/2016</td></tr><tr><td>ar-1201</td><td>Ground floor plan</td><td>1</td><td>b06</td><td>16/9/2016</td></tr><tr><td>ar-1202</td><td>Level 1 floor plan</td><td>1</td><td>b05</td><td>16/9/2016</td></tr><tr><td>ar-1203</td><td>Level 2 floor plan</td><td>1</td><td>b04</td><td>16/9/2016</td></tr><tr><td>ar-1204</td><td>Level 3 floor plan</td><td>1</td><td>b04</td><td>16/9/2016</td></tr><tr><td>ar-1205</td><td>Level 4 floor plan</td><td>1</td><td>b04</td><td>16/9/2016</td></tr><tr><td>ar-1206</td><td>Roof plan</td><td>1</td><td>b04</td><td>16/9/2016</td></tr><tr><td>ar-2100</td><td>Sections</td><td>1</td><td>b03</td><td>16/9/2016</td></tr><tr><td>ar-2101</td><td>Cut and fill sections</td><td>1</td><td>b02</td><td>29/1/2015</td></tr><tr><td>ar-2300</td><td>Carpark ramp detail sections</td><td>1</td><td>b02</td><td>29/1/2015</td></tr><tr><td>ar-2500</td><td>Elevations sheet 1</td><td>1</td><td>b02</td><td>29/1/2015</td></tr><tr><td>ar-2501</td><td>Elevations sheet 2</td><td>1</td><td>b02</td><td>29/1/2015</td></tr><tr><td>la-0301</td><td>Tree removal plan</td><td>1</td><td>A04</td><td>9/11/2106</td></tr><tr><td>la- 0501</td><td>Landscape plan</td><td>1</td><td>A04</td><td>9/11/2016</td></tr><tr><td>la- 2400</td><td>Landscape sections</td><td>1</td><td>A04</td><td>9/11/2016</td></tr><tr><td>arsk9101</td><td>Materials</td><td>1</td><td>C</td><td>22/1/2015</td></tr><tr><td>arsk9102</td><td>Materials</td><td>1</td><td>C</td><td>22/1/2015</td></tr><tr><td>arsk9103</td><td>Materials</td><td>1</td><td>C</td><td>22/1/2015</td></tr></table> Supporting Documentation <table><tr><th>Document</th><th>Title</th><th>Date</th></tr><tr><td>Ingham Planning P/I</td><td>Statement of Environmental Effects and Addendum Job No 14224</td><td>January 2015 & September 2016</td></tr><tr><td>dem</td><td>SEPP 65-Design Verification Statement Rev A</td><td>27/1/2015</td></tr><tr><td>dem</td><td>SEPP 65- Schedule of</td><td>23/1/2015</td></tr></table>	Drawing	Description	Sheets	Issue	Date	ar-0001	Site Analysis	1	b02	29/1/2015	ar-0200	Site Plan	1	b05	22/9/2016	ar-1200	Basement Plan	1	b06	16/9/2016	ar-1201	Ground floor plan	1	b06	16/9/2016	ar-1202	Level 1 floor plan	1	b05	16/9/2016	ar-1203	Level 2 floor plan	1	b04	16/9/2016	ar-1204	Level 3 floor plan	1	b04	16/9/2016	ar-1205	Level 4 floor plan	1	b04	16/9/2016	ar-1206	Roof plan	1	b04	16/9/2016	ar-2100	Sections	1	b03	16/9/2016	ar-2101	Cut and fill sections	1	b02	29/1/2015	ar-2300	Carpark ramp detail sections	1	b02	29/1/2015	ar-2500	Elevations sheet 1	1	b02	29/1/2015	ar-2501	Elevations sheet 2	1	b02	29/1/2015	la-0301	Tree removal plan	1	A04	9/11/2106	la- 0501	Landscape plan	1	A04	9/11/2016	la- 2400	Landscape sections	1	A04	9/11/2016	arsk9101	Materials	1	C	22/1/2015	arsk9102	Materials	1	C	22/1/2015	arsk9103	Materials	1	C	22/1/2015	Document	Title	Date	Ingham Planning P/I	Statement of Environmental Effects and Addendum Job No 14224	January 2015 & September 2016	dem	SEPP 65-Design Verification Statement Rev A	27/1/2015	dem	SEPP 65- Schedule of	23/1/2015
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		Compliance Rev B	
	dem	Visual Impact Assessment Report	January 2015
	Ingham planning P/L	Request to breach height control pursuant to Clause 4.6 of the LEP	November 2016
	Victor Lin and Associates P/L	Basix Certificate No 597786M_02	25/1/2015
	Ecological Australia	Bushfire Protection Assessment	20/1/2015
	Ecological Australia	Flora and Fauna Assessment	16/12/ 2014
	Michael Shaw Consulting Arborist	Arboricultural impact assessment	27/1/2015
	dem	Crime prevention through environmental design	Undated
	Accessible Building Solutions	Statement of Compliance Access for People with a disability.	28/1/2015
	dem	Waste management Plan	January 2015
	Transport & Traffic Planning Associates	Assessment of Traffic and Parking Implications. Rev C	January 2015
	C&M Consulting Engineers	Stormwater Management Plan	January 2015
	City Plan Services	Building Code of Australia Compliance Report	24/3/2015
	Pells Sullivan Meynink	Geotechnical Assessment Report PSM669-002L	10/3/2015
	dem architects	Shadow Diagrams 21 June	29/8/2016
	dem architects	Shadow Diagrams 21 March	29/8/2016
	dem architects	Shadow diagrams 21 September	29/8/2016
Attachment 1 - Proposed Conditions Attachment 2 - Development Plans Attachment 3 - Applicant's clause 4.6 submission Attachment 4 - June & September Shadow diagrams			
Report prepared by	R A Eyre		
Report date	15 March 2017		

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable comments to be considered as part of the assessment report.

Title: Development Application No. 47044/2015, Proposed Residential Flat Building (75 Units) on LOT: 100 DP: 1066540, 70 John Whiteway Drive Gosford

Department: Environment and Planning



Report Purpose:

To enable the determination of a development application.

Applicant	DEM Aust Pty Ltd
Owner	O Satici & V N Hoang & A Satici
Application Number	47044/2015
Description of Land	LOT: 100 DP: 1066540, 70 John Whiteway Drive GOSFORD
Proposed Development	Residential Flat Building (75 Units)
Zoning	R1 General Residential
Site Area	4776m ²
Existing Use	Vacant Land
Value of Works	\$24,600,400.00

Summary:

A development application has been received seeking approval for construction of a residential flat building at 70 John Whiteway Drive Gosford which comprises 75 apartments.

The application is recommended for approval subject to conditions.

Application Type	Development Application – Local
Application Lodged	29/01/2015
Delegation level Reason for delegation level	Joint Regional Planning Panel (JRPP) - Capital Investment Value greater than \$20 million
Advertised and Notified	Exhibition period closed on 08/03/2015
Submissions	Nine (9)
Disclosure of Political Donations & Gifts	No

Recommendation:

- A JRPP assume the concurrence of the Secretary of the Department of Planning and Environment for the use of Clause 4.6 to vary the development standard of clause 4.1 of the Gosford Local Environmental Plan 2014 (GLEP 2014) to permit the proposed development.
- B JRPP as consent authority grant consent to Development Application No 47044/2015 for Residential Flat Building (75 Units) on Lot: 100 DP: 1066540, 70 John Whiteway Drive

Gosford subject to the conditions attached.

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

Assessment:

This application has been assessed using the heads of consideration specified under Section 79C of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans.

Summary of Non-Compliance:

Policy	Details
GLEP 2014	Maximum height RL 77m AHD proposed height 81.16m AHD – variation supported
Gosford Development Control Plan 2013 (GDCP 2013)	Maximum height, variation supported building area - variation supported setbacks - variation supported

Background:

The site was formerly lot 2 DP 778384 which was subdivided into lots 100 and 101 DP 1066540 in April 2004. Lot 101 contains the 4 residential towers to the east known as The Sanctuary. Lot 100 is the land subject to the current application.

DA 19775/2003 granted consent for a two (2) lot subdivision of Lot 2 and erection of a 48 unit residential flat building on Lot 100 on 1 March 2004; shown in **Figure 1** below. Engineering plans for civil works were approved on 23 March 2004. This development has physically commenced and the consent has been physically commenced.



Figure 1 - Approved Plans DA 19775/2003 (physically commenced)

Site & Surrounds:

The site, known as LOT: 100 DP: 1066540 70 John Whiteway Drive, Gosford, is located on the eastern side of John Whiteway Drive. The northern side of the site has frontage to the unformed Georgiana Terrace road reserve. The Georgiana Terrace road reserve is an unconstructed public road containing a bushfire access trail to Rumbalara Reserve.

The site slopes from about RL 52m AHD on the eastern side to about RL 72m at the John Whiteway Drive frontage. On the western side of John Whiteway Drive, the crest of the site has an RL of about 82m. Land to the north of the site, being Rumbalara Reserve, rises to about RL 156m AHD. Land to the east which contains the four residential towers known as The Sanctuary has an RL of about 46m.

The site contains trees and vegetation and is vacant as shown in **Figure 2** below.



Figure 2 – Site Location Aerial (site shown edged in blue)

To the east and south are four residential towers known as "The Sanctuary" containing 217 units. The maximum height of the towers is RL 77m AHD. Directly to the north is a public road being part of Georgiana Terrace which contains the start of a fire trail which provides firefighting access to Rumbalara Reserve.

To the west of John Whiteway Drive is a vacant site (89 John Whiteway Drive) being a former quarry, which has consent for 178 units under DA 19601 approved on 13 February 2004. This consent has commenced and is still current. The approved buildings on 89 John Whiteway Drive have a height varying from RL 75m at the southern end to RL 82.4m at the northern end.

The subject site is identified as "bushfire prone land" on Council's bushfire maps. A Bushfire Assessment Report prepared by Ecological Australia dated 29/1/2015 was submitted with the application. The NSW Rural Fire Service (RFS) have no objection to the proposal subject to conditions.

The Proposal:

The proposal comprises:

- Clearing and excavation of the site;
- Construction of a new 4 and 5 storey residential flat building containing 75 apartments and 106 car spaces. The apartments are comprised of 13 x 1 bed, 52 x 2 bed and 10 x 3 bedroom dwellings;
- A communal swimming pool and deck area at ground floor level;

- Creation of a turning area and roadworks within the Georgiana Terrace road reserve in order to provide access to basement parking, waste collection, and access to the fire trail serving Rumbalara Reserve;
- Landscaping of the site.



Figure 3 – Illustration from North West



Figure 4 – Illustration from South West

The application seeks to provide an additional 27 units compared to that previously approved.

The following table illustrates the differences between the approved and proposed developments.

Component of development	Approved DA 19775/2013	Proposed DA 47044/2015	Difference
Number of units	48	75	+27
Number of storeys	4	5	+1
Height	RL 77m	RL 81.16m	+4.16m
Street setbacks	6m	5m	-1m
Side setback-eastern boundary	3m	3.5m	+0.5m
Rear setback-southern boundary	11m	6m	-5m
Car Parking	77 spaces	106 spaces	+29 spaces
Density/FSR	1.04:1	1.5:1	+0.46:1
Deep soil planting	32.5%	30%	-2.5%
Floor to Ceiling Height	2.4m	2.7m	+0.3m
Building separation relative to The Sanctuary	15.8m and greater	18.1m and greater	+2.3m

Applicable Planning Controls:

The following planning policies and control documents are relevant to the development and were considered as part of the assessment.

- Environmental Planning & Assessment Act 1979 - Section 79C
- Local Government Act 1993 - Section 89
- Protection of the Environment Operations Act 1997
- Roads Act 1997
- Rural Fires Act 1997
- Water Management Act 2000
- State Environmental Planning Policy (SEPP) No 19 – Bushland in Urban Areas
- State Environmental Planning Policy (SEPP) No 55 - Remediation of Land
- State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Gosford Local Environmental Plan 2014 (GLEP 2014)
- Gosford Development Control Plan 2013 (GDCP 2013)

Draft Environmental Planning Instruments:

There are no draft environmental planning instruments relevant to the site.

Permissibility:

The subject site is zoned R1 General Residential under GLEP 2014 (refer **Figure 5**). The proposed development is defined as a residential flat building which is permissible in the R1 General Residential zone with consent.

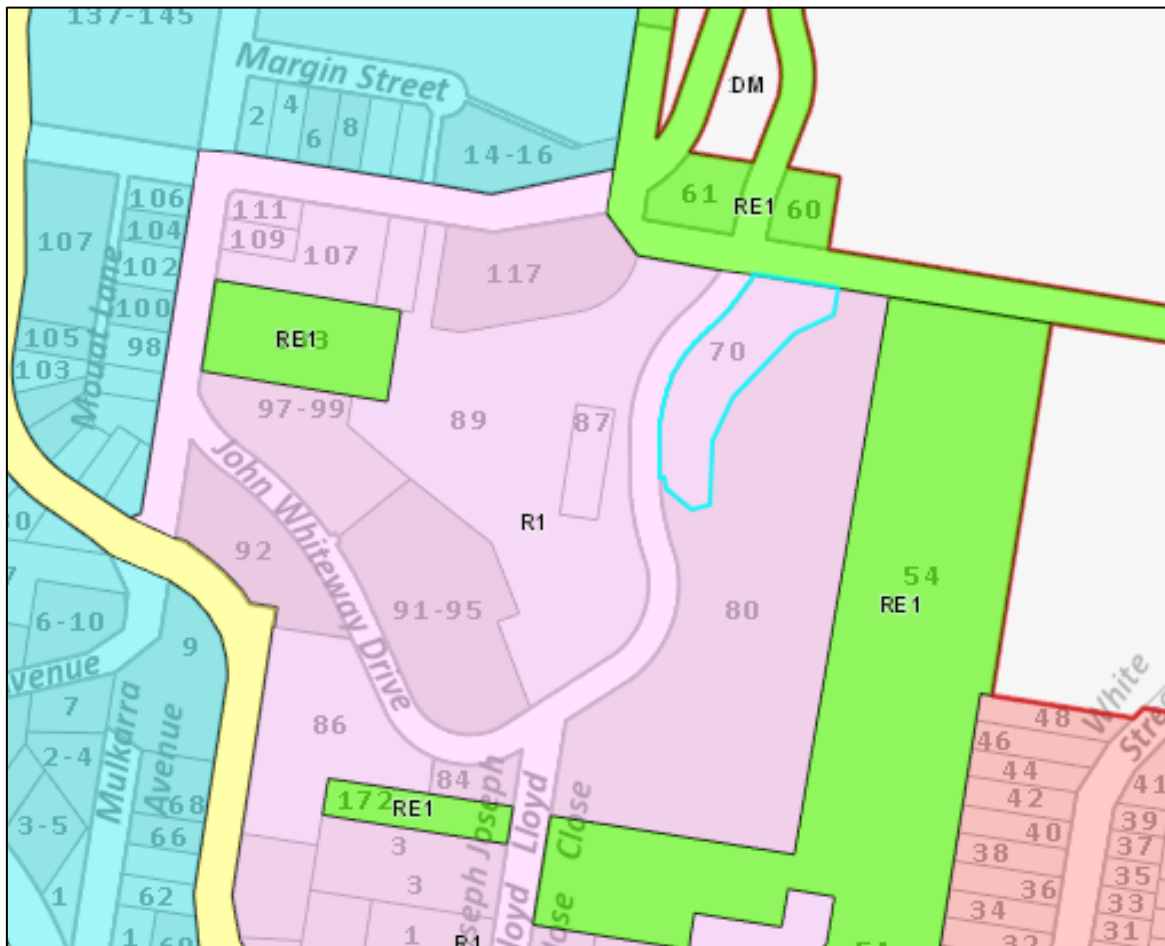


Figure 5: Zoning Map extract – site zoned R1 General Residential (site edged in blue)

Provisions of Relevant Instruments/Plans/Policies

State Environmental Planning Policies:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate. The proposal is considered to be consistent with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

The building incorporates the following features which improve the environmental performance of the building.

The proposal is considered to be consistent with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy No 19 - Urban Bushland

The site adjoins Rumbalara Reserve, albeit separated from the reserve by a paper road being Georgiana Terrace. This is a public road and a fire trail exists within the road reserve for access to Rumbalara Reserve. The aim of the SEPP is to prevent nutrients/weeds etc entering

the reserve from the development site to preserve native vegetation. The proposal will result in road and drainage construction over the frontage of Georgiana Terrace. Council's Environmental Officer considers the proposal will not have a significant impact upon the nearby reserve or its vegetation.

State Environmental Planning Policy No 71 – Coastal Protection

The provisions of State Environmental Planning Policy (SEPP) No 71 - Coastal Protection require Council consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. However, pursuant to Clause 2A of GLEP 2014, SEPP 71 does not apply to the Gosford City Centre (which the site forms part of) and therefore does not apply to the assessment of the proposed development.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

The proposal is subject to the requirements of SEPP 65. The application is supported by a Design Verification Statement prepared by DEM (Aust) Pty Ltd, NSW Reg. Architect No. 6582 which verify that the design quality principles set out in State Environmental Planning Policy No 65 – Apartment Design Guide (ADG) are achieved.

Council has assessed the proposal against the design quality principles which apply under SEPP 65 and conclude that the proposal meets the principles to a satisfactory degree.

Council's Architect has provided assessment advice in relation to the SEPP 65 Design Quality Principles which is provided in detail elsewhere in this report. Several concerns were raised and are provided below:

CONTEXT

The site is currently empty but adjoins four multi-level towers of approximately 35 metres high directly to the east. The application is considered consistent with the context because its height of approximately 20 metres sits approximately level with the adjoining buildings that are located further down the slope.

The building has a continuous length of approximately 120 metres however this is disguised by curving the building around the corner and by the recessed entries. The use of some areas of significant landscaping on the street setback contribute further to disguising the bulk of the building and improving its contextual fit.

SCALE

The application has non-compliance with height controls of approximately 3 metres however as this is consistent with the overall height of the adjoining towers it is considered acceptable in this instance.

There is some non-compliance (33%) on part of the eastern boundary however total building separation distances comply with the Residential Flat Design Code (RFDC). As the adjoining towers were constructed recently they are unlikely to be redeveloped in the foreseeable future so this non-compliance is considered acceptable.

The building has a continuous length of approximately 120 metres however this is disguised by curving the building around the corner and by the recessed entries. The use of some areas of significant landscaping on the street setback contribute further to disguising the bulk of the building and improving its contextual fit.

In other respects the scale is generally acceptable. The building is articulated and uses variation in materials and small scale details to disguise visual bulk.

BUILT FORM

The built form is considered satisfactory. The use of varying setbacks, articulation and variation in materials disguises the scale of the building, adds visual interest and contributes to the streetscape.

DENSITY

Complies.

RESOURCE, ENERGY AND WATER EFFICIENCY

BASIX certificate provided indicating compliance with minimum standards. The use of solar hot water and photovoltaic cells should also be considered.

LANDSCAPE

Amended landscaping is acceptable. There is adequate soil volume on the street front planters to support some significant trees planting and additional significant trees are proposed on the eastern setback to replace the existing trees.

AMENITY

The communal open space at the rear of the property has poor solar access and faces blank, 3 metre high carpark walls. It is acknowledged that there is another communal space on the 6th level.

SAFETY AND SECURITY

There are balconies and windows overlooking the street and access ways to provide surveillance of pedestrian areas.

SOCIAL DIMENSIONS

The application provides 1, 2 and 3 bedroom and accessible units for a variety of occupants.

AESTHETICS

Acceptable

With regard to the Design Quality Principles contained within Schedule 1 of SEPP 65, the following additional consideration is provided.

Principle 1: Context and neighbourhood character

Development within the locality is currently of a similar scale. The development is considered to step up the slope appropriately.

Principle 2: Scale

Into the future, neighbouring properties will be developed via existing or new consents, achieving a similar built form. It is noted that the proposed is compliant with the Floor Space Ratio (FSR) available for the site and is considered acceptable in terms of perceived bulk.

Principle 3: Density

It is noted that a portion of the buildings exceeds the height limit and that the proposal is under the available FSR. The site is generally compliant with setbacks, provides a landscaped frontage to the street.

In view of the above, the density of the proposal is considered to be appropriate.

Principle 4: Sustainability

The proposal complies with BASIX provisions and incorporates roofed shading elements which improve the environmental performance of the building.

The development is also within walking distance of shops, services and public transport which promotes reduced reliance on vehicles. The proposal meets passive solar access requirements and provides a water tank for re-use of roof water in landscaped areas.

Principle 5: Landscape

The proposal provides a deep soil area equivalent to 30% of the site area which is well over the 7% required by the ADG. The landscaping proposed is considered appropriate having regard to the landscape plan provided.

Principle 6: Amenity

The proposal generally provides for building setbacks/separation as required by the ADG. With the exception of the eastern side boundary which seeks a variation. It is also noted that there is a vertical separation due to topography along this boundary. It is noted however that while the setback is less than what is required the building separation is at least 18.1m and is considered adequate.

Whilst the ADG recommends parking levels are located within the building footprint, in this instance, no objection is made to the parking podium for the following reasons:

- The topography of the site
- It is considered the development has been appropriately setback back to maintain the amenity of surrounding properties.

Principle 7: Safety

The development locates balconies and windows toward the street as open space areas to achieve passive surveillance. The pedestrian entryways are clear and public and private space is divided appropriately using landscaping and fencing elements. Conditions relating to Crime Prevention Through Environmental Design are also proposed.

Principle 8: Housing diversity and social interaction

The development is located within a regional city. The addition of apartments through developments such as these, increase housing choice within the locality in line with State and local Strategic plans. The development provides a further mix of unit sizes to meet a range of market demands and community needs.

The proposal provides space internal and external which can be utilised by residents and facilitate social interaction.

Principle 9: Aesthetics

The aesthetics of the proposal has been considered by the Architect and are considered acceptable. The design is modulated, with a mix of front setbacks and includes, roofing and entry elements, colour backed glazing, and a design that wraps the curve of the street.

In addition, a detailed assessment of the ADG design criteria is set out in the following table:

Design Criteria	Required	Proposed	Compliance
3D-1 Communal Open Space	Minimum communal open space area 25% of the site	Approx 25% of site area will be provided as communal area. However, a fully open landscaped pool terrace is provided at grade with an outlook over existing the cliff and adjacent Rumbalara Reserve.	Yes
	50% direct sunlight to principal usable part for min 2 hrs between 9am and 3pm mid-winter	More than 70% of apartments receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter.	Yes
3E-1 Deep Soil Zone	Minimum 7% of the site, with minimum dimension 6m for a site greater than 1,500m ²	A minimum of 25% of the site will be dedicated to open space for the development which will comprise a relatively natural soil profile. Approx. 30% of site area will be provided for deep soil planting.	Yes
	On some sites, it may be possible to provide a greater area for deep soil zones. Sites between greater than 1500m ² 15% should be achieved, if possible.	Approx. 30% of site area will be provided for deep soil planting.	Yes
3F-1 Visual Privacy	Separation from boundaries (habitable rooms and balconies): 6m (up to 12m in height) 9m (up to 25m in height) 12m (over 25m in height)	The proposed development provides 14.5 to 26m separation between the proposed apartment building and the nearest apartment development on adjoining property. Living areas/private open space addresses the street and/or communal open space and with the use of screening and landscaping, privacy is obtained for future residents.	Yes
3J-1 Bicycle and Car Parking	Minimum parking provided in accordance with the GDCP 2013: • 1 space per 1 bedroom unit (13 units) = 13 spaces	106 spaces provided	Yes

Design Criteria	Required	Proposed	Compliance
	1.2 spaces per 2 bedroom unit (52 units) = 62.4 spaces 1.5 spaces per 3 bedroom unit (10 units) = 15 spaces 0.2 spaces per unit - visitor parking = 15 spaces - Total = 106 spaces		
4A-1 Solar and Daylight Access	Living rooms and private open space of at least 70% of apartments receive a minimum of 3hr sun between 9am and 3pm mid-winter	More than 70% of apartments receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter.	Yes
	Min 60% of apartments cross ventilated	Single aspect units are limited where possible. High level windows are provided to some of the units to allow natural lights and cross ventilation to the units. In excess of the required 60% of the apartments enjoy cross ventilation. The common corridors on each floor are to be fitted with operable windows/opening therefore further promoting cross ventilation in common areas.	Yes
4C-1 Ceiling Heights	Minimum 2.7m	The proposed minimum floor-to-floor height is 3.05m	Yes
4D-1 Apartment Size	1 bedroom: 50m ² 2 bedroom: 75m ² (5m ² per additional bathroom) 3 bedroom – 90m ² (5m ² per additional bathroom)	The minimum unit sizes as follow; - 1-bedroom min 50m ² - 2-bedroom min 79m ² - 3-bedroom min 108m ²	Yes
4D-2 Room depths	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	All habitable rooms have a window within the external wall.	Yes
	Habitable room depths and maximum 8m depth for open plan layouts.	All individual units achieve a building depth of less than 9m.	Yes
4D – 3 Layout	Bedroom and living room sizes – 9 & 10m ² bedrooms with min 3m width, 3.6m-4m width living rooms	Bedrooms achieve a minimum 3m width and 9 sqm. Living areas achieve a 4m-5m width and an area greater than 10 sqm.	Yes
4E-1 Balconies	1 bedroom: 8m ² , min 2m depth 2 bedroom: 10m ² , min 2m depth	Balconies will have minimum depth of 2.0m but in most cases each apartment has a balcony depth in excess of 2.5m which complies	Yes

Design Criteria	Required	Proposed	Compliance
	3 bedroom: 12m ² , min 2.4m depth	with minimum requirements under GDCP	
4F-1 Common Circulation	Podium/ground level private open space minimum 15m ² , minimum depth 3m	Private open space at ground level, meets the minimum 3m and 15sqm and greater.	Yes
	Maximum of 8 apartments off a circulation core (although design guidance allows up to 12 apartments)	Number of apartments off each circulation corridor ranges from 3 to 8.	Yes
4G-1 Storage	1 bedroom: 6m ³ 2 bedroom: 8m ³ 3 bedroom: 10m ³ Note: Minimum 50% within unit	The proposed development provided the following storage per apartment, which is over and above the minimum requirements and to comply with GDCP 2013: □ 1-bedroom 7.5m ³ □ 2-bedroom 10m ³ □ 3-bedroom 12.5m ³	Yes

Gosford Local Environmental Plan 2014

Compliance Table

Development Standard	Required	Proposed	Compliance with Controls	Variation	Compliance with Objectives
Clause 4.3 Height of buildings	RL 77m AHD	RL 81.16m AHD	No - see comments below	4.16m or 5.4%	Yes
Clause 4.4 Floor Space Ratio	Maximum 1.5:1	1.5:1	Yes	Nil	Yes

Zone R1 General Residential

The objectives for the R1 General Residential are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To promote best practice in the design of multi dwelling housing and other similar types of development.*
- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.*

The proposed development meets the objectives of the zone in that the development will increase the housing mix of the locality and provides 75 additional residential units which provide for housing needs.

The development is of a form which is consistent with the regional city locality and provides for additional population within walking distance of the shops, services and public transport. The building design and siting has had regard to the topography of the land and adjoining development, and is consistent with the desired character of the area. The proposal does not adversely affect residential amenity.

4.3 Height of buildings

The maximum height permitted under the GLEP 2014 and GDCP 2013 in the buildable area is RL 77m AHD. The proposed height is up to RL 81.16m AHD. This is a variation of 4.16m or 5.4% to the development standard as illustrated in the section below; **Figure 6**.

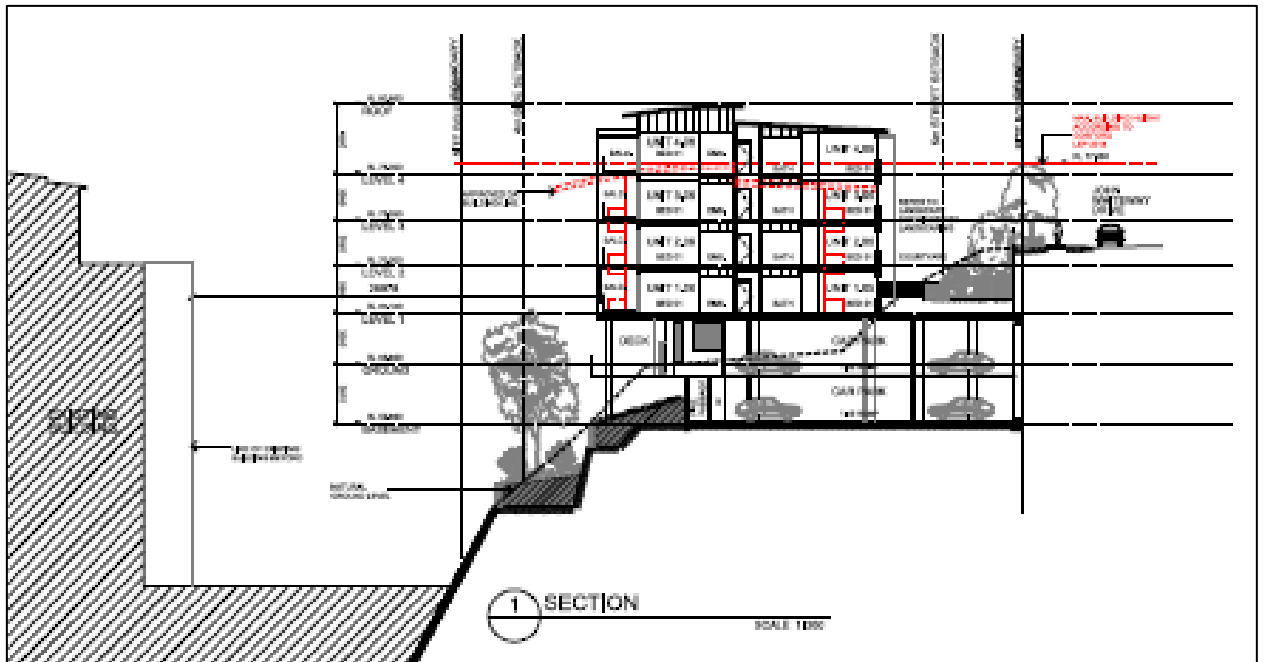


Figure 6: Section through proposed development showing height non compliance

4.6 Exceptions to Development Standards

The Clause 4.6 request submitted by the applicant has addressed in detail how strict compliance with the development standards is unreasonable or unnecessary (having regard to the decision in *Wehbe v Pittwater Council* [2007] NSW 827) and how there are sufficient environmental planning grounds to justify the contravention. **(Refer Attachment 3)**

Clause 4.6 exception to development standards requires consideration of the following:

1. *Has the applicant submitted a written request that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard?*

Comment

Clause 4.6(1) stipulates the following objectives:

-
- (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."*

Clause 4.6 (2) – Exceptions to Development Standards allows development consent to be granted even though the development would contravene a development standard imposed by GLEP 2014, or any other environmental planning instrument.

Clauses 4.6(3) and 4.6(4), sets out the tests for establishing if the variation is 'well founded', requires the consent authority to be satisfied:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that there are sufficient environmental planning grounds to justify contravening the development standard;
- 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;
- whether contravention of the development standard raises any matter of significance for State or regional environmental planning;
- the public benefit of maintaining the development standard;
- any other matters.

In addition, approaches to justify a contravention to a development standard are demonstrated in case law taken from decisions of the Land and Environment Court and the NSW Court of Appeal in: *Whebe v Pittwater Council* [2007] NSWLEC 827; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; *Moskovitch v Waverley Council* [2016] NSWLEC 1015 and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and have been considered in the assessment.

The applicant's written request has adequately justified that compliance with the development standard is unreasonable and unnecessary in this instance and there are sufficient environmental planning grounds to justify varying the development standard. The written request outlines:

- The proposed height of this application is up to RL 81.16 m AHD. As the land slopes up from the east to the west, a transition in height up the slope is appropriate in this location.
- The additional shadow impact as a result of the variation to height is not significant. The proposal will appear as a 4 storey building when viewed from John Whiteway Drive.
- The height of the towers to the east is RL 77m.
- Council has previously approved a variation to the height limit for development on the western side of John Whiteway Drive. The height limit is RL 80m and the height of the approved development to the west is up to RL 82.4m AHD.
- Therefore there are sufficient environmental planning grounds to justify contravening the development standard.

-
2. *Is the proposed development 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?*

Comment

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates, that merely showing that the development achieves the objectives of the development standard and the zone objectives will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6, (and 4.6(3)(a) in particular).

In addition, the consent authority must also be satisfied that there are other "sufficient environmental planning grounds to justify contravening the development standard". The requirement in cl 4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, may well require identification of grounds particular to the circumstances of the proposed development. The Commissioner held that it was not sufficient to point to generic planning benefits such as the provision of additional housing stock, rather something more specific to that particular site and development was required. It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the decision but expressly noted that the Commissioner's decision on that point was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis.

Two recent decisions of the Land and Environment Court have emphatically demonstrated that DAs for larger and/or taller developments can and should be approved where they can be justified on their merits. Both DAs were approved by using clause 4.6 of the relevant LEP to vary the applicable height and FSR controls, to achieve outcomes that the Court accepted were sensible, well-justified, and ultimately **better than** a compliant (smaller) scheme on those particular sites.

In Moskovich v Waverley Council [2016], some important principles that arise from the decision are:

- The requirement that the consent authority be personally satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be 'compatible' with them or 'capable of existing together in harmony'.
- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe "test" 1). Other methods are available, for example that the relevant objectives of the standard would not be achieved or would be thwarted by a complying development (Wehbe "test" 3).

-
- It is always best, when pursuing a clause 4.6 variation request, to demonstrate how the proposal achieves a better outcome than a complying scheme.

In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, the Chief Judge observed in his judgement at [39] that clause 4.6(4) of the Standard Instrument does not require the consent authority to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed those matters. This lessens the force of the Court's earlier judgement in *Four2Five* that a variation request must demonstrate consistency with the objectives of the standard in addition to consistency with the objectives of the standard and zone. The decision means that the consent authority must be satisfied that the applicant's written 4.6 variation request has adequately addressed everything necessary in clause 4.6(3), rather than the consent authority being "satisfied directly" as to each of those matters.

The objectives of the height standard are;

(a) to establish maximum height limits for buildings,

The maximum height limit for buildings has been identified for this property. The proposed height limit is RL 77m. The variation of 4.16m is considered minor and not significant.

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

The proposed building provides high quality urban form with varying setback to the street, good articulation, and varying external materials. The design incorporates various design elements which activate the design as viewed from the public domain.

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

The proposal complies with SEPP 65 and is adequately separated from the adjoining towers of The Sanctuary. Shadow diagrams for midwinter and the equinox have been submitted which illustrate the overshadowing generated by the proposal.

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

The proposal provides a transition in height up the slope between The Sanctuary and the approved building/crest on the western side of John Whiteway Drive. The development maintains views to Rumbalara Reserve.

(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,

The subject site has not been identified as being located within a protected view corridor.

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

The proposal does not create excessive overshadowing of public open space. The site is located to the south of Rumbalara Reserve and the building height is below the reserve ridgeline.

It is also relevant to assess the proposed height variation against the objectives of Part 8.1 of the GLEP 2014 as follows: -

- a) to promote the economic and social revitalisation of Gosford City Centre-*

The proposed development does not hinder the attainment of the objective to promote the economic and social revitalisation of Gosford City Centre. The proposed scale of the development continues to contribute to the economic revitalisation of Gosford. The height of the building is closely connected to achieving an economically viable development.

The provision of additional dwellings proximate to the city centre contributes positively to the vibrancy and commercial vitality of the 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-*

It is considered an appropriate unit mix has been provided to cater for a variety of residents. Further, the additional population adds to the activity and vitality of the centre. The design addresses the public domain and contributes positively to the design of the centre.

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

This site and the surrounding area in general, has aged considerably and as not taken advantage of the areas ideal location in terms of the train station and city core. The proposed development will activate a vacant site and will have a flow on effect through increased activity to the area in general. The proposal is considered consistent with the objective to revitalise the city centre.

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

The construction of a development of this scale will have employment benefits and these will continue through the ongoing management and maintenance of the building. The additional population will increase demand for local goods and services and will support local business.

- 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 of the development will contribute to employment generation in the city centre, providing employment generating uses and residential accommodation within walking distance to Gosford Train Station. In addition to this, all units have been designed generally in accordance with SEPP 65, 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". This is directly supported by state and local policies related to density near centres and encourages use of public transport.

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 subject site is not located within an environmentally sensitive area, and is downslope of the Rumbalara Reserve meaning that runoff and related impacts will be directed away from the reserve. Access to the bushfire trail is to be retained.

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 currently vacant. The development of the site is considered positive in terms of improving the streetscape, bring a sense of pride additional activity and safety to the area and this in turn will encourage walkability, activation and patronage of business within the city core and open spaces along the waterfront. The increased local population will also support local business and services.

h) to enhance the Gosford waterfront-

The additional height of the proposed development will not have any adverse overshadowing effects on Gosford waterfront. Additionally, it will not substantially impact on any views gained from or to this point given the orientation of the site.

i) to provide direct, convenient and safe pedestrian links between Gosford City Centre and the Gosford waterfront-

The development of the site and similar developments occurring within the area will create a more attractive and active street and one which encourages pedestrian activity within the locality.

The Clause 4.6 request submitted by the applicant also provides assessment of the proposal against the relevant development standard and zone objectives, and Council is satisfied that the applicant has demonstrated consistency with these objectives such that the proposal is in the public interest.

3. *Has the concurrence of the Secretary has been obtained?*

Comment

Planning Circular PS 08-033 issued 9 May 2008 states that the concurrence of the Director-General may be assumed when considering exceptions to development standards under clause 4.6.

This assessment has been carried out having regard to the relevant principles identified in the following case law:

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*

The Clause 4.6 request submitted by the applicant appropriately addresses the relevant principles and exhibits consistency with the relevant objectives under GLEP 2014.

This assessment concludes that the Clause 4.6 variation provided and pursuant to Clause 8.9(3)(a) is well founded and is worthy of support.

5.5 Development within the coastal zone

The provisions of Clause 5.5 GLEP 2014 require Council to consider matters in relation to the Coastal Zone. The Coastal Zone is an area defined on maps issued by the NSW Department of Planning & Environment and the subject property falls within this zone.

The development will not impact on foreshore access, coastal processes or hazards and will not impact on scenic quality, water quality or coastal waterbodies.

The proposed development is of a scale and design considered compatible with its location in the city centre.

The relevant matters have been considered in the assessment of this application and are considered consistent with the stated aims and objectives.

5.10 Heritage Conservation

The site is not located adjacent to, or in the vicinity of a heritage item.

7.1 Acid Sulfate Soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in Clause 7.1 of GLEP 2014 have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposed works are not considered to impact on Acid Sulfate Soils.

7.2 Flood planning

The site is not identified as being subject to flood impacts.

8.5 Design Excellence

The provisions of Clause 8.5 require Council to consider that the development exhibits design excellence. Consideration of the proposal against the matters attributed to design excellence pursuant to Clause 8.5(3) is provided below:

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

The proposal achieves a high standard of architectural design by use of varying external materials and colours, as well as varying street setback and articulation. The proposed design achieves a built form and scale appropriate to the R 1 General Residential zone objectives and those of the City Centre as detailed within this Assessment Report

- (b) *whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*

The proposal results in the loss of trees on the site, but does not result in the removal of trees on the adjoining Rumbalara Reserve. The visual impact from the street is mitigated by the development being sited partly below road level. The design and various setbacks adds to the articulation and will contribute positively to the streetscape.

- (c) *whether the proposed development detrimentally impacts on view corridors,*

The proposed site it is not located in any identified view corridor pursuant to GDCP 2013 and is not considered likely to unreasonably impact on views.

- (d) *whether the proposed development detrimentally overshadows Kibble Park, William Street Plaza, Burns Park and the waterfront open space adjoining The Broadwater,*

The proposal is not located near and does not overshadow any of these parks.

- (e) *any relevant requirements of applicable development control plans,*

The variations to the GDCP 2013 are addressed separately in this report and are supported.

- (f) *how the proposed development addresses the following matters:*

- (i) *the suitability of the land for development,*

The building has been designed with regard to the site constraints of slope, access, and bushfire risk and is suitable for the site.

- (ii) *existing and proposed uses and use mix,*

The proposal provides a mix of dwelling sizes. Other uses are not proposed or relevant for this location.

- (iii) *heritage issues and streetscape constraints,*

There are no heritage items in the vicinity of this site. The varying street setback along John Whiteway Drive reduces the bulk and scale appearance from the street and additional landscape opportunities.

(iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,

No towers are proposed. The development is 4- 5 residential storeys in height and in excess of the minimum building separation required from the nearby towers of The Sanctuary. It is also noted that there is a vertical separation due to topography along this boundary.

(v) bulk, massing and modulation of buildings,

The proposal is less than the maximum FSR permitted, and designed as 3 separate blocks with separate entries. The building has a variety of stepped elements to modulate and break up the façade.

(vi) street frontage heights,

This relates to the retail streets of Gosford and is not applicable to this development.

(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,

The proposal complies with BASIX. The external materials and finishes are satisfactory and a wind report is not considered necessary.

(viii) the achievement of the principles of ecologically sustainable development, with particular emphasis on water saving and recycling,

A BASIX certificate has been submitted for the development.

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

The proposal provides access to the basement car parking area from the unconstructed section of Georgiana Terrace. This provides access to the car parking spaces as well as waste storage areas. The construction of part of Georgiana Terrace to provide access to the site will also have public/community benefit by the upgrading of the fire trail to Rumbalara Reserve in this location.

(x) the impact on, and any proposed improvements to, the public domain.

The fire trail over Georgiana Terrace is also used as a walking trail by people walking through Rumbalara Reserve. This is an improvement to the public domain and of community benefit.

These matters have been considered in detail throughout this Assessment Report.

Gosford Development Control Plan 2013:

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

The land is located in the Mixed Use (City Edge) character area, and the proposed use complies with the intended character by providing higher density housing and mixed use development within a walkable distance of the commercial core. Elements of the building's design however are inconsistent with the future character and streetscape for the area, as expressed through DCP controls, and as detailed in the assessment report.

The following table provides an assessment against the main relevant requirements of the DCP.

Development Control	Required	Proposed	Compliance
4.1.2.2 Building to street alignment and street setback	Min. 5m to max. 6m	5m to 12m	Generally complies, with a setback greater than 6m in the centre of the site. The proposal complies with the objective of the street setback to John Whiteway Drive. The varying setback to the street reduces the impact on the streetscape along John Whiteway Drive and is supported.
4.1.2.3 Street Frontage Heights	Not applicable		
4.1.2.4 Building Depth & Bulk	Maximum floor plate above 18m - 750m ² . Maximum building depth (excluding balconies) – 18m	Building less than 18m height	Yes
4.1.2.5 Side Setback (up to 12m height)	Non-habitable - 3m min. Habitable - 6m min.	3.5m to 9m	No, refer to assessment below
4.1.2.5 Side Setback (above 12m height)	Non-habitable – 4.5m min. Habitable - 9m min.	3.5m – 9m (5 th storey)	No, refer to assessment below
4.1.2.5 Rear Setback (up to 12m height)	Non-habitable - 6m min. Habitable - 6m min.	6m to 9m	Yes
4.1.2.5 Rear Setback (above 12m height)	Non-habitable - 6m min. Habitable - 9m min.	9m	Yes
4.1.2.6 Floor to ceiling height	Min 2.7m	2.7m	Yes
4.1.2.7 Site Cover	50% max (residential use)	37%	Yes
4.1.2.7 Deep Soil Zones	15% min. Min. Dimension 6m	30% Deep soil width varies from 4m to 16m, and is mostly greater than 6m in dimension.	Yes

4.1.2.8 Landscape Design	Landscape Plan required	Landscape Plan provided	Yes
4.1.2.10 View Corridors	Protect significant view corridors (Figure 2.14)	The site is not located in a "no encroachment" view corridor and will not impact on any significant view corridor.	Yes
4.1.3 pedestrian Amenity	No links through site required. (Figure 3.1)	No link provided	Yes
4.1.3.3 Active Street Frontage and Address	Site not located in active street frontage area. Street Address Required Direct front door access for ground floor units	Street address provided. Three entry points/lobbies have been provided off John Whiteway Drive. A 1.2m fence will be provided along street boundary to define public and private space. Direct front door access is not provided for the ground level unit, however this is reasonable given the change in level from the street, and the front unit provides a suitable elevation and presentation to the street.	Yes Considered acceptable
4.1.3.5 CPTED Principles	Address Safer by Design	CPTED Assessment and recommended strategies have been submitted and conditions are proposed.	Yes
4.1.3.7 Vehicle footpath crossings	Max. 5.4m wide	10.8m wide driveway proposed.	No- separate driveways provided off new section of Georgiana Terrace for access to different parking levels and waste collection. Considered suitable in this location as site is only development gaining access from this portion of the street.
4.1.3.9 Building Exteriors	Provide appropriate setbacks, include horizontal and vertical emphasis in faced treatment, provide balconies and articulation to street, high quality durable external materials, minimise length of blank walls, and highly reflective material, integrate roof top plant rooms and lift overruns into building design.	The front elevation meets the requirements and provides a good architectural standard and articulation. Different materials are proposed including split-face block wall, rendered blocks and translucent glass balustrades. There are no extensive lift overruns or roof top plant rooms, and the roof has been curved to reduce the height and roof ridge.	Yes
4.1.4.2 Pedestrian Access and Mobility	Building Entry Points - Clearly visible from street	Entries are visible from the street.	Yes
	Design for disabled persons	Access report provided and proposal is able to comply with BCA requirements	Yes
	Barrier free access to not less than 20% of dwellings		

	At least 1 main pedestrian entrance with convenient barrier frees access to ground floor	One main entry is provided with 2 other entries at each end of the building. 15% of units are adaptable units.	
	Continuous access paths of travel from all public roads		
	Access paths of durable materials (slip resistant materials, tactile surfaces and contrasting colours)	Not shown, but able to be conditioned	Yes
4.1.4.3 Vehicle Footpath Crossings and Vehicular Driveways and Manoeuvring	Located 6m min. from the perpendicular of any intersection	>6m	Yes
	Minimum driveway setback 1.5m from side boundary	>1.5m	Yes
	Enter and leave in forward direction	Enter and leave in forward direction achieved	Yes
	Compliance with Council's standard Vehicle Entrance Design & subject to Roads Act approval	Reviewed by Council engineers and relevant conditions applied	Yes
	Compliance with AS2890.1	Complies	Yes
	Use semi-pervious materials for driveways open car spaces	No external driveways or parking spaces are proposed.	N/A
4.4 On-Site Parking	1 space/1-bed (13 unit) = 13 1.2 space/ 2-bed (52 units) = 62.4 1.5 space/ 3-bed (10 units) = 15 Visitor parking (0.2 per unit) =15 Total = 106 spaces	106 spaces provided in accordance with the GDCP.	Yes
	Disability accessible car parking not less than 2 spaces or 4% = 4 spaces	2 spaces plus 5 adaptable spaces have been proposed.	Yes
	Motorcycle parking – 1 space per 15 units = 5 spaces	5 spaces provided	Yes
	Bicycle Parking Residents – 1 space per 3 dwellings = 25 spaces Bicycle Parking Visitors - 1visitor space per 12 dwellings = 7 spaces Total = 32 spaces	32 spaces provided	Yes
	Provided car parking wholly underground unless unique site conditions prevent achievement.	The carparking is provided wholly underground	Yes
	Parking above ground min floor to ceiling height 2.8m	N/A	N/A
	Compliance with AS2890.1	Able to comply	Yes
	Uncovered parking areas are prohibited	The carparking is provided wholly underground	Yes
	Bicycle parking secure and	Undercover area provided,	Yes

	accessible with weather protection	can be secured	
	Mail boxes in one location, integrated into a wall, similar building materials and secure and of sufficient size	Mail boxes are to be provided in each core lobby area.	Yes
4.1.4.5 Site Facilities	Locate ancillary structures (e.g. satellite dish and air conditioning units) away from street. Integrated into roof design. One master antenna per residential apartment buildings.	One master antenna is provided for the building.	Yes
	Size, location and handling procedures for all waste to Satisfaction of Council's Waste & Emergency Staff	Bulk bins are to be stored and picked up from within basement car park. Meets waste service requirements.	Yes
	Waste storage not to impact on neighbours in terms of noise, and be screened from the public and neighbouring properties		
	Waste storage area well lit, easily accessible and on level grade, free of obstructions		
	Waste storage area behind main building setback and facade		
4.1.4.5 Fire & Emergency Vehicles	Compliance with Fire Brigades Code of Practice – Building Construction – NSWFB Vehicle Requirements	Access is available from John Whiteway Drive and Georgiana Terrace	Considered acceptable and fire safety would be considered at a CC stage.
4.1.5.2 Energy Efficiency and Conservation	Compliance with BASIX	BASIX certificate supplied.	Yes
4.1.5.3 Water Conservation	Efficient best practice management of water resources	OSD is provided and will be used for internal and external uses. The proposal does not provide a 3 rd pipe system however Council has not been requiring this for City Centre developments.	Yes
4.1.5.4 Reflectivity	Not result in glare, not exceed 20%	Complies	Yes
4.1.5.5 Wind Mitigation	Wind Effects Report for buildings over 14m	Not provided.	No, however is considered acceptable as building is relatively low and would not require a wind assessment
4.1.5.6 Waste and Recycling	Length of storage area 0.65 x no of bins	Proposed waste storage has been assessed by Council's waste management	Yes
	Width of storage area 2.5m		

	min.	assessment officer	
	SEPP 65 & RFDC		
4.1.6.2 Housing Choice & Mix	1 bed units 10% min to max 25% 2 Bed not more than 75%	1 bed - 17% 2 bed - 69% 3 bed - 14%	Yes
	15% of dwellings (for sites with slope less 20%) capable of adaption for disabled or elderly residents = 3.4 accessible dwellings	15% of dwellings are adaptable	Yes
	Where possible provide adaptable dwelling on the ground level	Not possible given slope, however lift access to adaptable units has been provided	Considered acceptable
	Application to be accompanied by an Access Consultant report	Report provided	Yes
	Car parking to adaptable dwelling to comply with AS	Able to comply	Yes
4.1.6.3 Storage	7.5m ³ for 1 bed units 10m ³ for 2 bed units 12.5m ³ for 3 bed units Min 50% of required storage areas within dwelling	Storage to be provided for each apartment. The following storage is proposed: ☐ 1-bedroom 7.5m ³ ☐ 2-bedroom 10m ³ ☐ 3-bedroom 12.5m ³	Yes
4.1.7.4 John Whiteway Drive Precinct	Maximum height RL 77m AHD	Height RL 81.16m AHD	No- see comments below
	Buildable area.	Intrudes outside buildable area. Supported by geotechnical report as required	No- see comments below
	Built Form	60% of units enjoy cross ventilation and 70% enjoy 3 hours of natural sunlight in mid- winter.	Yes

Side setbacks

The proposed side setback to the eastern boundary is 3.5m and greater to habitable rooms. This is a variation of 2.5m (41%) up to 12m height and 5.5m (61%) for the 5th storey. While this is a significant numerical variation, the separation between the living areas of the proposed development and the adjoining towers in The Sanctuary development is at least 18.1m for tower 4 and up to 25.7m for tower 3.

It is noted that the Sanctuary development is not likely to be redeveloped in the short or mid term. While the side setback is less than the GDCP requires, the building separation is adequate and as such the variation is supported.

Height

This matter is also addressed under GLEP 2014 above. It should be noted that the height will appear as 3 to 4 storeys above John Whiteway Drive due to the slope of the land away from the road.

Under clause 4.1.7.4 of the GDCP 2013, the objectives of the height limit are;

- *To protect the western section of the ridgeline from visual encroachment by development when viewed from specified public viewing locations.*
- *To provide the northern section of the ridgeline and non-ridgeline influenced properties with development controls referenced to appropriate visual impact analysis and relevant site specific constraints.*
- *To ensure that the amenity of the area is protected for existing and future residents of the locality.*
- *To ensure that the land will be developed in a form and manner that the community will accept as a good example of high density residential development.*

With regard to the above, the proposed height is between that of the existing buildings of The Sanctuary to the east, and the approved building to the west. As such it is of a similar height to the neighbouring development.

It is considered that the visual impact of the development is acceptable, that the amenity of the public domain is appropriately provided for and the ridgeline is not impacted.

The visual impact from viewing locations such as the Gosford waterfront and surrounding streets is not considered significant. The proposal protects the amenity of the area for existing and future residents and the development is a good example of high density residential development on a site with a number of physical constraints. As such despite the numerical variation, the development is considered to be in accordance with the objectives and is supported.

Buildable Area

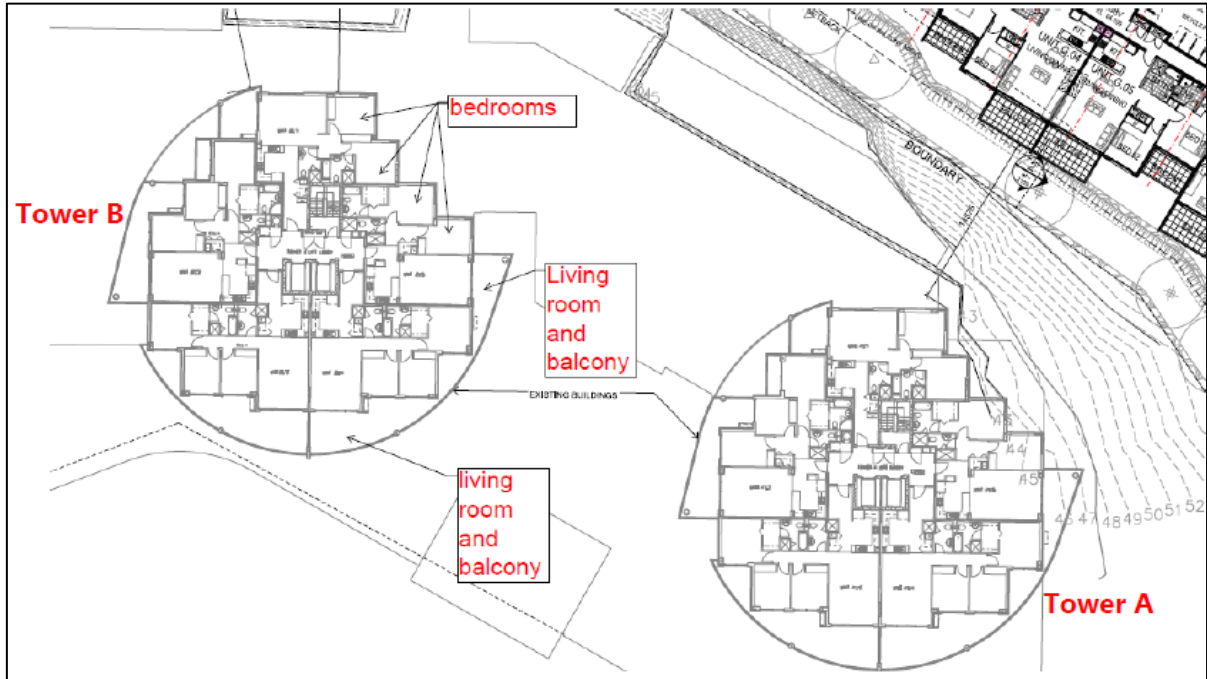
The GDCP 2013 identifies a buildable area in which development is to be located, unless a geotechnical report supports the proposal. The proposal extends partly to the south of the buildable area. Development on this area was approved under Consent 19775/2003. The current proposal is essentially within the same building footprint. A geotechnical report has been relied on which identifies the southern part of the site as medium risk assessment and makes recommendations for building over the site. Appropriate conditions have been required in this regard.

Other Matters for Consideration:

Shadow Impact

The applicant has submitted an analysis of the additional shadow impact on the adjoining towers in The Sanctuary which states;

This document has been prepared at the request of Council and considers the difference in impact from the proposal and a complying building envelope on the adjoining apartment development known as Rumbalara Towers. The main orientation of the apartments in these buildings are to the north-east. On the eastern side are large balconies and living areas. The rooms to the rear are bedrooms.



The following table provides a comparison of the proposal with a building which complies with the permitted height control.

It is noted that the nett additional shadow impacts on Tower B which range in duration from 10 - 30 mins. Tower A which receives greater level of sunlight due to its siting and orientation has nett additional shadow impacts which range from 20 - 60 mins. The majority of existing units (157 or 93.5%) in the adjoining tower block development are not affected at all by the proposed additional floor and receive more than 2 hours solar access.

Comparison of Additional Overshadowing Impacts Created by the proposed Top Floor vs. a Height Compliant Building Envelope

The Table Below summarises the additional overshadowing impacts to affected units in the existing Rumbalara Tower created by the proposed top floor of the proposed development when compared to a building envelope which is fully compliant with Council's Height controls for the site.

Floor Level Reference	Number of Adjoining units impacted	Sunlight Period to affected Units – Fully Height Compliant Envelope		Sunlight Period to affected Units - Proposed DA Envelope		Nett additional overshadowing period from height compliant scheme to proposed DA scheme	
Levels		Tower A	Tower B	Tower A	Tower B	Tower A	Tower B
Ground	1	9:00-12:30	11:15-12:30	9:00-12:30	11:15-12:10	0 Min	20 Min
Level 1	1	9:00-12:30	11:15-13.00	9:00-12:30	11:15-12:30	0 Min	30 Min
Level 2	1	9:00-12:30	11:00-13.40	9:00-12:30	11:00-13:10	0 Min	30 Min
Level 3	1	9:00-12:30	10:30-14:00	9:00-12:30	10:30-13:50	0 Min	10 Min
Level 4	1	9:00-12:30	10:00-14:20	9:00-12:30	10:00-14:10	0 Min	10 Min
Level 5	2	9:00-12:50	9:50-14:40	9:00-12:30	9:50-14:10	20 Min	30 Min
Level 6	2	9:00-13:40	9:30-15:00	9:00-13:00	9:30-14:30	40 Min	30 Min
Level 7	2	9:00-14:30	9:10-15:30	9:00-13:30	9:10-15:00	60 Min	30 Min
Total Adjoining units impacted	11 (or 6.5% of the total adjoining development)						

Conclusion

The level of affectation is minimal. The most affected apartments will still receive over 4 hours of solar access. Part of the impact on the lesser affected apartments in Building B is caused by overshadowing from Tower Building A and by a fully height compliant building envelope. The overall level of impact is not unreasonable.

Council assessment

The Sanctuary development – towers A and B are south east and down slope of the proposed development. The shadow diagrams submitted (**Attachment 4**) show that the additional height above the height limit has the following impact;

- In March/September, the shadow impacts the adjoining towers 3 & 4 from about 2pm onwards on the lower units.
- In June, the shadow impact starts from about 12 noon on the higher units.

In the March/September months, the units in the adjoining The Sanctuary will receive at least 3-4 hours sunlight in the morning. Significant solar access will also be retained in the winter time.

The Planning Principle related to solar access (Parsonage), establishes that the expectation to retain solar access reduces proportionate to the increasing density. As such, proposal retains access to a reasonable level of sunlight for a substantial portion of the year and the impacts are reasonable given the density of development and building separation achieved.

The most affected apartments will still receive over 4 hours of solar access which is in excess of the requirements. Therefore the additional shadow caused by the variation in height is acceptable.

Visual Impact

The site is located in a highly visible location from some surrounding areas. The removal of vegetation on the site will make the development visible from John Whiteway Drive and the adjoining development known as The Sanctuary. The visual impact will be mitigated by building design, external materials and finishes, and landscaping.

The visual impact is not significantly different or greater than that of the approved 48 unit development. The following photomontages were provided by the applicant in the visual assessment;



Figure 5.3.1 View from John Whiteway Drive

The proposed building incorporates colours and finishes that complement the existing residential towers and it is articulated to reduce its overall scale. Planting provides a visual buffer and enhances the streetscape.



Figure 5.3.2 View from Bay View Avenue

Colours and finishes of the proposed building assist in integration of the building and its setting.



Figure 5.3.3 View from the intersection of Frederick Street and the Central Coast Highway

The proposed building is largely screened by existing vegetation and incorporates colours and finishes that complement the existing residential towers and surrounding bushland.

The visual impact assessment report concluded:

The proposal is to be located south-east of Gosford's CBD and in close proximity to Rumbalara Reserve.

While the hillside on which the site is located is predominantly bushland, the high-rise towers of The Sanctuary at Rumbalara, that adjoin the site, exist as visually prominent elements that contrast with the surrounding landscape.

The proposed building would be highly visible from John Whiteway Drive and from the adjoining apartment buildings. From the road, views would be temporary and from the public realm and the additional floor would not significantly alter the overall visual impact of the currently approved building.

The proposed building would also complement the visual character of its setting through built form and landscape design mitigation measures.

Views from The Sanctuary at Rumbalara development will be negatively impacted by the proposed building due to its location and scale and as a result of the removal of existing vegetation. The proposed residential floor will have marginal additional impact on the overall view. While the distance between the existing and proposed buildings exceeds building separation requirements, the proposal would incorporate building design measures to mitigate the negative visual impact. These measures would include use of colours and finishes that complement the existing towers and reflect the surrounding bushland; modulation and articulation of the new building to reduce its overall scale; and provision of an undulating, shallow curved roof with low reflectivity.

The proposal would also be visible from residential areas to the south and east of the site. Key viewpoints would be from Frederick Street, for a distance of up to approximately 850m, and from White Street and Bay View Street, for a distance of up to approximately 600m from the site. Visual impacts from both the public and private realms in these locations would be limited by the distance of the site from the viewing points and from screening provided by vegetation and The Sanctuary at Rumbalara towers. Integration of the proposed building with its surrounds would also limit negative visual impacts.

This Study concludes that the additional residential floor will not significantly increase the overall visual impacts of the building beyond those of the 4 storey apartment building currently approved for the site.

It is agreed the visual impact is not significantly different or greater than that of the approved 48 unit development. The density and scale are considered substantially consistent with the planning controls, and is suitable within the regional city locality. The conclusion is supported.

Planning Agreements:

The proposed development is not subject to a planning agreement / draft planning agreement.

Development Contribution Plan:

The land zoned R1 General Residential is subject to the Gosford City Centre S94A Contribution Plan.

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

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

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

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

"A Council permit a reduction in the Section 94A Development Contributions Plan – Gosford City Centre (CIP) contribution from 4% to 2% for all development applications lodged from 1 September 2014 until the 1 January 2015. Upon the expiration of this period the contributions are to revert to the 4% as contained within the adopted plan.

B Council request the Chief Executive Officer to track the amount of infrastructure contributions foregone in this incentive and incorporate a means in the Long Term Financial strategy to reimburse the contribution plan over the term of the plan to ensure delivery of the plans objectives and report back to Council."

Council subsequently resolved at its meeting on 28/10/2014 to extend the 2% CIP contribution until 1 February 2015.

A **2% contribution applies** to this development application which was lodged after 31 August 2014 and before 1 February 2015.

The 2% contribution required is \$492,008.00 prior to the issue of the Construction Certificate. In accordance with Part B of Council's Resolution, the reimbursement of the CP required by Council is \$492,008.00.

(Refer Condition 2.9)

Referrals:

Internal Referral Body	Comments
Development Engineer	Supported, subject to conditions
Waste Management Assessment Officer	Supported, subject to conditions
Environment Officer	It is noted that the subject site has been the subject of a previous development application and previous ground disturbance. The majority of vegetation onsite comprises regrowth and weed species. No key habitat features, such as large hollows or water bodies, riparian habitat were present on the subject site. The proposal will not isolate or fragment any connecting areas of habitat. The proposed development would not significantly impact on any endangered ecological communities, species or populations protected under the <i>Threatened Species Conservation Act</i> or the <i>Environment Protection Biodiversity Act</i>. As such a species impact statement is not required for the proposed development nor is referral to the Department of Environment for assessment. SEPP 19 – Bushland in Urban Areas The site adjoins lands zoned for public recreation and as such the provisions of SEPP 19 apply. The vegetation on the adjoining site is mapped as E51c Coastal Headland Low Forest and E22ai Narrabeen Coastal Blackbutt Forest. The proposal will not have a significant impact upon the adjoining reserve and its vegetation. Consequently the proposal is considered to comply with the aims, objectives and Clause 9 of this Policy. Conclusion The objectives of the relevant policies, zoning objectives and potential

	environmental impacts associated with the proposal have been considered. Council's Environmental Assessment Officer has no objection to the proposal subject to the attached conditions being included within any consent granted.
Building Surveyor	A Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions dated 28 January 2015 has been submitted with the application and concurrence is given to the findings in the report. This document should be included as supporting documentation in any consent. (Refer Condition 1.1)
Tree Assessment Officer	The subject application has been considered and noted that most trees within the site are to be removed. The site has been disturbed in the past with much of the area covered with young native regrowth. Of the 57 trees surveyed by the Project Arborist, 7 were found to be unaffected by the development of the site. Most of the younger regrowth was not included in the tree survey. Some larger Eucalypts to be removed are growing from steep batters. Larger trees mostly consist of <i>Eucalyptus pilularis</i> (<i>Blackbutt</i>). The Arboricultural Impact Assessment provides reasonable tree protection methods for those trees nominated for retention. The Landscape Plan proposes ample replanting around the building with a range of native tree species.
Architect	The architectural comments were addressed earlier within the report. In brief the comments were: • The application is considered consistent with the context because its height of approximately 20 metres sits approximately level with the adjoining buildings that are located further down the slope. • The length of the building is disguised by curving the building around the corner and by the recessed entries. • The application has non-compliance with height controls of approximately 3 metres however as this is consistent with the overall height of the adjoining towers it is considered acceptable in this instance. • There is a non-compliance with the eastern boundary setback however total building separation distances comply with the RFDC. As the adjoining towers were constructed recently they are unlikely to be redeveloped in the foreseeable future so this non-compliance is considered acceptable.

External Referral Body	Comments
NSW Rural Fire Service	Supported, subject to conditions. The construction of Georgiana Terrace will form an Inner Protection Area which is a public road and maintained by Council.
NSW Police Service	No objections

Political Donations:

No political donations were declared.

Public Submissions:

Nine (9) public submissions were received in relation to the application. Those issues associated with key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submissions are detailed below.

1. *Lack of parking. There is already a problem with parking of cars / trucks / caravans / motorhomes in John Whiteway Drive. Council should require 30% more parking than the DCP requires.*

The proposal provides parking on site in accordance with the GDGP 2013 which is also noted to be a greater level of provision than the RMS standards. The site is within walking distance of both bus and train stations in addition to the range of retail, commercial and services available with the Gosford City Centre. Adequate parking is provided within the development. Parking of vehicles is permitted in the street subject to any parking restrictions.

2. *The proposal will affect the amenity of residents in the adjoining towers. It will affect the peace and quiet of adjoining residents and devalue adjoining units.*

The proposed building is adequately separated from the existing adjoining towers as required under SEPP 65. The locality has also been identified as being appropriate for higher density residential development.

The existing adjoining development consists of 4 towers which contain a greater number of units than proposed in this application. It is not anticipated that additional units will result in unacceptable amenity impacts in the locality from noise.

It is noted that land valuations are not a matter for consideration under S79C of the EP&A Act 1979.

3. *The proposal will affect Rumbalara Reserve and impact birds, trees and other wildlife.*

The proposal has been reviewed by Council's Environment officer who has determined that the development would not significantly impact on any endangered ecological communities, species or populations protected under the *Threatened Species Conservation Act* or the *Environment Protection Biodiversity Act*.

The proposal is separated from Rumbalara Reserve by a public road which is to be constructed to provide access to the basement car parking as well as constructing and upgrading part of the fire trail into Rumbalara Reserve. This is a community benefit, and will provide additional bushfire protection to the existing units as well as the proposed development. The proposal does not result in any tree removal or clearing within Rumbalara Reserve.

4. *The current tall trees screen the view from John Whiteway Drive of the 4 towers. Removal of the trees will destroy native vegetation and impact privacy to the towers.*

The proposal has been reviewed by Council's Environment officer who has determined that the development would not significantly impact on any endangered ecological communities, species or populations protected under the *Threatened Species Conservation Act* or the *Environment Protection Biodiversity Act*.

It is noted also that the site is zoned for residential development and was originally part of the site containing the 4 towers. There is a current activated consent for the site for 48 units on the site which would result in the same removal of existing vegetation.

The development will screen views from John Whiteway Drive to the 4 towers.

5. *The proposal will sit above the Sanctuary units and reduce the visual appeal of the towers. It will be imposing in this location. The proposed building is too high and too close to the street and will be out of character with the area.*

In height measured from ground level, the proposed development is less tall than the Sanctuary units. The proposed variation in height is minor and will provide a transition in height up the slope. The proposed roof level of the development will be about 4m or one storey above the existing towers of The Sanctuary. The proposed height is not considered to be out of character with existing and future development in the area.

6. *The land is steep and unstable.*

A geotechnical report has been submitted which identifies the risk as low to medium, and makes recommendations for development and construction.

7. *The proposal exceeds the maximum height which is subject to controls for special areas. The height limit was to protect the western ridgeline when viewed from areas such as the Gosford waterfront. The additional height will also affect the privacy of adjoining units.*

The proposed height will be below the ridge line and not highly visible from the Gosford waterfront. The separation between the existing and proposed building exceeds 18m and is noted to be greater than that required under SEPP 65 for privacy.

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8. *The building length will create a corridor effect along the road frontage and create a wind tunnel effect.*

The building length is varied and unlikely to create a wind tunnel particularly given the setbacks and topography. A wind effects report is not required for this proposal.

9. *The waste and furniture moving activities must be fully contained within the site.*

The construction of the unformed section of Georgiana Terrace will provide access for waste and other heavy vehicles onto the site.

10. *Objection to the naming of the road to be constructed as Georgiana Terrace.*

This is the current street name. Any change is subject to a separate process and approval by the NSW Geographical Names Board. This may be warranted for identification purposes and to avoid any confusion by visitors/emergency services.

11. *The proposal results in overshadowing of the adjoining Sanctuary units.*

Updated shadowing diagrams have been provided for both the winter solstice and the equinox. The most affected apartments will still receive over 4 hours of solar access mid winter which is in excess of the requirements. Therefore the additional shadow caused by the variation in height is acceptable.

12. *The building exceeds the height limit of RL 77m by 4.2m. The additional height and proximity to the adjoining building 4 tower will reduce the privacy and amenity of existing residents. The building should be restricted to 4 storeys. The 5th floor is unnecessary. There is no need to increase the units approved on the site from 48 units to 75 units.*

The proposal increases the current approval by 27 units. It is noted that the proposal complies with the FSR set for the site. The additional level and height allows for greater site setbacks. It is considered that the additional height does not significantly impact adjoining development and complies with the objectives of the zone and standard. When viewed from John Whiteway Drive, the development will appear as a 4 to 5 storey building.

13. *The proposed building has been moved further away from the road frontage and closer to the existing residential tower. This is a poor planning outcome.*

The proposed building is setback at least 5m from John Whiteway Drive and 3.5m or greater from the eastern boundary. The existing and proposed buildings are separated at least 18.1m between living areas. It is also noted that there is a vertical separation due to topography. Moving the proposed building closer to John Whiteway Drive will not achieve a better outcome and would dominate the streetscape.

14. *The proposal does not comply with the objectives of the R1 zone, particularly due to poor design and practice, height exceedance, excessive setback to John Whiteway Drive, and impact on adjoining residents.*

The proposal is considered to comply with the objectives of the R1 General Residential zone and the objectives of the height development standard. The design is appropriate for the constraints of the site in this location.

15. The proposed height contravenes almost every objective of clause 4.3 of the LEP.

The variation of 4.16m is considered minor and not significant.

The proposal has been evaluated against the objectives of Clause 4.3 of GLEP 2014 on pages 21 and 22 of this report. In summary, the proposed building provides high quality urban form with a varying street setback, good articulation, and varying external materials. The proposal complies predominantly with SEPP 65 and the impacts of the development are considered reasonable for the locality. The proposal provides a transition in height up the slope between The Sanctuary and the approved building/crest on the western side of John Whiteway Drive. The development maintains views to Rumbalara Reserve.

The proposal complies with the objectives of the height development standard. It does not unreasonably impact adjoining development and complies with the objectives of Chapter 4.1 of DCP 2013.

16. The shadow diagrams are misleading and incorrect.

The applicant has submitted extensive new shadow diagrams Updated shadowing diagrams have been provided for both the winter solstice and the equinox. The most affected apartments will still receive over 4 hours of solar access mid winter which is in excess of the requirements. Therefore the additional shadow caused by the variation in height is acceptable.

17. The proposed curved roof at the northern end will cause unwanted sun reflection onto the adjoining residents.

The roof colour is dark grey and unlikely to cause adverse reflection.

18. The Quality Design principles are not met in regards to context, scale, and built form.

The proposal has been evaluated against the Design Quality Principles contained within Schedule 1 of SEPP 65 on pages 13-15 of this report. It is considered the design criteria have been met appropriately.

19. The build-ability of the site is limited and heavily constrained. The visual impact on the neighbours is understated.

The site is steep and a geotechnical report has been submitted. The units in the adjoining The Sanctuary are mainly orientated to the south to secure views towards Brisbane Water and as such are orientated away from the proposed development. It is acknowledged that there will be a change in outlook compared to the currently vacant block however, it is noted that the site is zoned to allow for residential development and that within the Gosford city location, this type of development is encouraged.

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20. *The fifth level and balconies on the eastern side should not be approved due to the impact on the adjoining development. The building should be setback 10m from the eastern boundary, and building mass moved to the west and south.*

The proposed building is separated at least 18m and greater from the existing towers. This meets the requirements of SEPP 65. It is also noted that there is a vertical separation due to topography along the boundary between The Sanctuary and the proposed development. Moving the building 10m to the west is not feasible and would result in the structure being sited within the John Whiteway Drive setback.

21. *The proposal should be required to provide a green divide on the eastern side to ensure continuation of landscaping between the existing and proposed buildings.*

The landscape plan provides for tree planting along the eastern boundary which provides a green strip between the developments and improves visual separation of the two developments.

22. *All units in block 3 should have privacy screens fixed on windows to prevent looking into bedrooms of the adjoining building 4 of the Sanctuary.*

The buildings and living areas are separated by at least 18m and greater which preserves privacy/amenity between units. The landscape plan provides for tree planting along the eastern boundary which provides a green strip between the developments and improves visual separation of the two developments. Privacy screens are not justified.

Conclusion:

The proposal complies with the planning controls of the GLEP 2014 except with regard to maximum height. Additionally the development seeks a GDCP variation in relation to building area, and side setbacks to habitable rooms.

The applicant has lodged a submission under clause 4.6 to the development standard of clause 4.3 Maximum building height. The submission is considered well founded and supported. The variation to height does not have a significant additional impact on adjoining development, and provides a transition in height between existing and approved development in John Whiteway Drive.

The variations to building setbacks, while numerically significant, are adequately mitigated by the separation between existing and proposed development being 18.1m and greater in addition to the vertical separation. This complies with SEPP 65 requirements for building separation.

The proposed building intrudes to a minor extent outside the buildable area identified in the GDCP 2013. The intrusion is consistent with the previous approval and supported by a geotechnical report.

The proposed building is well articulated, has varying external materials and finishes, and provides a varying streetscape along John Whiteway Drive. The proposal is considered to comply with the objectives of GLEP 2014 and GDCP 2013.

The proposal will not have significant additional shadow or privacy impacts on the adjoining units. The building will be visible from the adjoining development and from some distant viewing points, but not such that it will dominate the view.

The issues raised in public submissions have been considered. These matters are addressed by conditions of consent or do not warrant refusal of the application.

The construction of part of Georgiana Terrace to provide access to the basement car parking levels at the northern end of the site will also have a public benefit of constructing part of the bushfire access trail to Rumbalara reserve and additional bushfire protection to the towers of The Sanctuary.

This application has been assessed under the heads of consideration of section 79C of the *Environmental Planning and Assessment Act 1979* and all relevant instruments and policies. The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed development. Subject to the imposition of appropriate conditions, the proposed development is not expected to have any adverse social or economic impact. It is considered that the proposed development will complement the locality and meet the desired future character of the area.

Accordingly, the application is recommended for approval pursuant to Section 80 of the *Environmental Planning and Assessment Act 1979*.

Plans for Stamping:

Amended Plans ECM Doc No. 23571012

Supporting Documents for Binding with consent:

Statement of Environmental Effects	ECM Doc No. 20203648
SEPP 65 Design Verification Statement	ECM Doc No. 20203633
Visual Impact Assessment Report	ECM Doc No. 20203635
Clause 4.6 Submission	ECM Doc No. 23601705
Basix Certificate	ECM Doc No. 20203637
Flora and Fauna Assessment	ECM Doc No. 20203640
Aboricultural Impact Assessment	ECM Doc No. 20203641
Crime Prevention Through Environmental Design	ECM Doc No. 20203642
Statement of Compliance Access for People with a disability	ECM Doc No. 20203643
Waste Management Plan	ECM Doc No. 20203644
Assessment of Traffic and Parking Implications	ECM Doc No. 20203645
Stormwater Management Plan	ECM Doc No. 20203646
BCA Compliance Report	ECM Doc No. 20515779
Geotechnical Assessment Report	ECM Doc No. 20515781
Shadow Diagrams	ECM Doc No. 23570967, 23570968, 23571011

ATTACHMENT 1 - Proposed Conditions of Consent

1. PARAMETERS OF THIS CONSENT

1.1. Approved Plans and Supporting Documents

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

Architectural Plans by dem Architects.

Drawing	Description	Sheets	Issue	Date
ar-0001	Site Analysis	1	b02	29/1/2015
ar-0200	Site Plan	1	b05	22/9/2016
ar-1200	Basement Plan	1	b06	16/9/2016
ar-1201	Ground floor plan	1	b06	16/9/2016
ar-1202	Level 1 floor plan	1	b05	16/9/2016
ar-1203	Level 2 floor plan	1	b04	16/9/2016
ar-1204	Level 3 floor plan	1	b04	16/9/2016
ar-1205	Level 4 floor plan	1	b04	16/9/2016
ar-1206	Roof plan	1	b04	16/9/2016
ar-2100	Sections	1	b03	16/9/2016
ar-2101	Cut and fill sections	1	b02	29/1/2015
ar-2300	Carpark ramp detail sections	1	b02	29/1/2015
ar-2500	Elevations sheet 1	1	b02	29/1/2015
ar-2501	Elevations sheet 2	1	b02	29/1/2015
la-0301	Tree removal plan	1	A04	9/11/2106
la- 0501	Landscape plan	1	A04	9/11/2016
la- 2400	Landscape sections	1	A04	9/11/2016
arsk9101	Materials	1	C	22/1/2015
arsk9102	Materials	1	C	22/1/2015
arsk9103	Materials	1	C	22/1/2015

Supporting Documentation

Document	Title	Date
Ingham Planning P/l	Statement of Environmental Effects and Addendum Job No 14224	January 2015 & September 2016
dem	SEPP 65-Design Verification Statement Rev A	27/1/2015
dem	SEPP 65- Schedule of Compliance Rev B	23/1/2015
dem	Visual Impact Assessment Report	January 2015
Ingham planning P/L	Request to breach height control pursuant to Clause 4.6 of the LEP	November 2016

Victor Lin and Associates P/L	Basix Certificate No 597786M_02	25/1/2015
Ecological Australia	Bushfire Protection Assessment	20/1/2015
Ecological Australia	Flora and Fauna Assessment	16/12/ 2014
Michael Shaw Consultin Arborist	Arboricultural impact assessment	27/1/2015
dem	Crime prevention through environmental design	Undated
Accessible Building Solutions	Statement of Compliance Access for People with a disability.	28/1/2015
dem	Waste management Plan	January 2015
Transport & Traffic Planning Associates	Assessment of Traffic and Parking Implications. Rev C	January 2015
C&M Consulting Engineers	Stormwater Management Plan	January 2015
City Plan Services	Building Code of Australia Compliance Report	24/3/2015
Pells Sullivan Meynink	Geotechnical Assessment Report PSM669-002L	10/3/2015
dem architects	Shadow Diagrams 21 June	29/8/2016
dem architects	Shadow Diagrams 21 March	29/8/2016
dem architects	Shadow diagrams 21 September	29/8/2016

1.2. Carry out all building works in accordance with the Building Code of Australia.

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

All conditions under this section must be met prior to the issue of any Construction Certificate

2.1. No activity is to be carried out on site until any Construction Certificate has been issued, other than:

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

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- 2.2. Submit to Council, the accredited certifier and relevant adjoining property owners a dilapidation report, prepared by a practising structural engineer, detailing the structural characteristics of all buildings located on adjoining properties and any Council asset in the vicinity of the development. The report must indicate the structure's ability to withstand the proposed excavation, and any measures required to ensure that no damage to these structures will occur during the course of works.

In the event that access to an adjoining property(s) for the purpose of undertaking the dilapidation report is denied, the applicant must demonstrate in writing that all steps were taken to obtain access to the adjoining property(s).

- 2.3. Submit an application to Council under Section 138 of the *Roads Act, 1993*, for the approval of required works to be carried out within the road reserve.

Submit to Council Engineering plans for the required works within a public road that have been designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control. The Engineering plans must be included with the Roads Act application for approval by Council.

Design the required works as follows:

- a. Full width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum width to accommodate the largest vehicle to enter/exit the site across the full frontage of the site in Georgiana Tce generally in accordance with drwg 01328_801 dated 27/01/15 Rev 07 21/09/16 by C & M Consulting Engineers (dn 23326319). The pavement shall be minimum 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- b. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in John Whiteway Dr and Georgiana Tce.
- c. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the full frontage of the site in John Whiteway Dr and Georgiana Tce.
- d. Heavy-duty vehicle crossing from John Whiteway Dr to connect to the fire trail (north side of Georgiana Tce) in Rumbalara reserve that has a minimum width of 4m and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom. Provision of guard rail in accordance with RMS and relevant Australian Standards.
- e. Required tie-in works to connect the proposed road works in Georgiana Terrace with the fire trails. Security gates are to be provided and/or relocated to suitable locations near the Georgiana Terrace road pavement and fire trail interface to prohibit vehicles parking on the fire trails.

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- f. All redundant vehicular crossings are to be removed and the footway formation reinstated with turf and a 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location.
 - g. The piping of stormwater from within the site to Council's drainage system.
 - h. Roadside furniture and safety devices as required e.g. fencing, signage, guide posts, chevrons, directional arrows, and/or guard rail in accordance with RMS and relevant Australian Standards.
 - i. Retaining walls. Retaining walls must be designed by a practising Civil / Structural engineer and must not conflict with services.
 - j. Erosion and sedimentation control plan.

The Roads Act application must be approved by Council.

A fee for the approval of engineering plans under the *Roads Act 1993* applies. The amount of this fee can be obtained by contacting Council's Customer Services on (02) 4325 8222.

- 2.4. Submit a dilapidation report to Council with the Roads Act application and / or Construction Certificate application. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.5. Pay a security deposit of \$100,000.00 into Council's trust fund. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.6. Apply for and obtain from Council (Water Authority) a Section 307 Certificate of Compliance under the *Water Management Act 2000*. Conditions and contributions may apply to the Section 307 Certificate.

The 'Application for 307 Certificate under Section 305 *Water Management Act 2000*' form can be found on Council's website www.gosford.nsw.gov.au. Early application is recommended.

- 2.7. Submit design details of the following engineering works within private property:
 - a. Driveways / ramps and car parking areas must be designed according to the requirements of AS2890: *Parking Facilities* for the geometric designs, and industry Standards for pavement designs.
 - b. A stormwater detention system must be designed in accordance with the Gosford DCP 2013 Chapter 6.7 - Water Cycle Management and Council's Civil Works Specification. The stormwater detention system must limit post development flows

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- from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1% AEP storm event. A runoff routing method must be used. An on-site stormwater detention report including an operation and maintenance plan must accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
- c. Nutrient/pollution control measures must be designed in accordance with Gosford DCP 2013 Chapter 6.7 - Water Cycle Management. A nutrient / pollution control report including an operation and maintenance plan must accompany the design.
 - d. On-site stormwater retention measures must be designed in accordance with Council's DCP Chapter 6.7 - *Water Cycle Management*. A report detailing the method of stormwater harvesting, sizing of retention tanks for re-use on the site and an operation and maintenance plan must accompany the design.
 - e. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to Council's drainage system.

These design details and any associated reports must be included in the construction certificate.

- 2.8. A vertical ceiling height of 4.0m must be provided in areas serviced by waste trucks.
- 2.9. Pay to Council a contribution amount of **\$492,008.00** that may require adjustment at time of payment, in accordance with the Section 94A Development Contribution Plan - Gosford City Centre.

The total amount to be paid must be indexed each quarter in accordance with the Consumer Price Index (All Groups index) for Sydney issued by the Australian Statistician as outlined in the contribution plan.

Contact council's Contributions Planner on Tel 4325 8222 for an up-to-date contribution payment amount.

Any Construction Certificate must not be issued until the developer has provided the accredited certifier with a copy of a receipt issued by Council that verifies that the Section 94 contributions have been paid. A copy of this receipt must accompany the documents submitted by the certifying authority to Council under Clause 104 of the *Environmental Planning and Assessment Regulation 2000*.

A copy of the Contributions Plan may be inspected at the office of Central Coast Council, 49 Mann Street or on Council's website:

www.gosford.nsw.gov.au/building-and-development/planning-guidelines-and-forms/contributions-plan

3. PRIOR TO COMMENCEMENT OF ANY WORKS

All conditions under this section must be met prior to the commencement of any works

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- 3.1. Appoint a Principal Certifying Authority after the construction certificate for the building work has been issued.
- a. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
 - b. Submit to Council a *Notice of Commencement of Building Works* or *Notice of Commencement of Subdivision Works* form giving at least two (2) days notice of the intention to commence building or subdivision work. The forms can be found on Council's website www.gosford.nsw.gov.au
- 3.2. Keep a copy of the stamped approved plans on site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 3.3. Do not commence site works until the sediment control measures have been installed in accordance with the approved plans / Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation and Control*.
- 3.4. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
- a. The name, address and telephone number of the principal certifying authority for the work; and
 - b. The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c. That unauthorised entry to the work site is prohibited.

Remove the sign when the work has been completed.

- 3.5. Prevent public access to the construction site as required by Clause 298 of the *Work Health and Safety Regulation 2011* when building work is not in progress or the site is unoccupied. Site fencing specifications are outlined under Australian Standard AS1725.1-2010 - *Chain-link fabric fencing - Security fencing and gates*. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

A separate application made under the Roads Act 1993 will need to be lodged with Council If a hoarding or construction site fence must be erected on the road reserve or a public place.

- 3.6. Install a hoarding or construction site fence between the work site and any public place to prevent any materials from or in connection with the work falling onto the public place.

The use of barbed wire and/or electric fencing is not to form part of the hoarding or construction site fence.

A separate application made under the *Roads Act 1993* will need to be lodged with Council If the hoarding or construction site fence must be erected on the road reserve or a public place.

- 3.7. The Structural Engineer's details are to be certified that they have been prepared in accordance with the details and recommendations of the Geotechnical Engineers Report No. PSM669-002L dated 10 March 2015 prepared by Pells Sullivan Meynink Engineering Consultants.
- 3.8. Submit to Council details for the disposal of any spoil gained from the site and / or details of the source of fill, heavy construction materials and proposed haulage routes to and from the site. Details are to be accompanied by a dilapidation report for the road carriageway and kerbs from the intersection of John Whiteway Dr and Donnison St to the intersection of John Whiteway Dr and Henry Parry Dr. Approval of these details must be obtained from Council. Updated details must be provided during construction if details change.
- 3.9. The applicant must ensure that all parties/trades working on the site are fully aware of their responsibilities with respect to tree protection conditions.
- 3.10. Tree Protection is to be as per the recommendations within the Arboricultural Impact Assessment by M Shaw 27/1/15.
- 3.11. Prior to the commencement of any works, suitable arrangements shall be put in place in agreement with Gosford City Council for the establishment and ongoing implementation of an inner protection area over land to the north of the site within Georgiana Terrace as shown on Drawing No. 1328 801 Rev 7 prepared by DEM dated 21/9/2016. This areas shall be managed in accordance with section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- 3.12. Submit both a Plumbing and Drainage Inspection Application, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the Plumbing and Drainage Act 2011 (to be provided by licensed plumber). These documents can be found on council's website at: www.gosford.nsw.gov.au

Contact council prior to submitting these forms to confirm the relevant fees.

4. DURING WORKS

All conditions under this section must be met during works

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

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

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

- a. No work is permitted on Sundays and Public Holidays
 - b. No work is permitted on:
 - Saturdays when a public holiday is adjacent to that weekend.
 - Construction industry awarded rostered days off.
 - Construction industry shutdown long weekends.
- 4.2. Undertake and maintain Erosion and Siltation control measures in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls must comply with Gosford DCP 2013 Chapter 6.3 - *Erosion and Sedimentation Control*.
- 4.3. Keep a copy of the stamped approved plans on site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.4. Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 4.5. Do not carry out construction work or store building materials on the road reserve unless they are associated with a separate approval under the *Roads Act 1993*.
- 4.6. Action the following when an excavation extends below the level of the base of the footings of any building, structure or work on adjoining land:
- a. notify the owner of the adjoining land, and
 - b. protect and support the building, structure or work from possible damage from the excavation, and
 - c. underpin the building, structure or work where necessary, to prevent any such damage.

These actions must be undertaken by the person having the benefit of the development consent at their own expense.

- 4.7. Implement all recommendations of the geotechnical report(s) listed as supporting documentation in this development consent. Furthermore, the geotechnical engineer must provide written certification to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained within the geotechnical report(s).

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- 4.8. Construct the works within the road reserve that required approval under the Roads Act. The works must be constructed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control.
- 4.9. Do not place filling or debris within any watercourse or drain.
- 4.10. Trees to be removed shown on the approved Tree Removal Plan must be removed in a manner so as to prevent damage to those trees that are to be retained.
- 4.11. The internal road strength used by the waste trucks must be sufficiently strong enough to withstand a truck loading of 22.5 tonnes.
- 4.12. The road surface used by the waste trucks must be constructed of reinforced concrete.
- 4.13. No obstructions to the wheel out of the waste bins being permitted including grills, speed humps, barrier kerbs etc.
- 4.14. The waste truck servicing grade is to be 3% or less for the following areas:
- Within the enclosure
 - For bulk bin roll out pads
 - Within the 13m bulk bin and truck service area
- 4.15. Compliance with all commitments as detailed in the Waste Management Plan signed by T Satci dated January 2015, Amendment dated March 2015.
- 4.16. Waste storage areas to be constructed in accordance with Appendix D and Appendix G, Part 7.2 Waste Management of Gosford DCP 2013.
- 4.17. Refuse loading zone controls i.e. refuse loading area warning light/roller shutter etc to be as detailed within the Waste Management Plan and Dwg No. ar-1201, issue b06 dated 16 September 2016.
- 4.18. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
- 4.19. New construction complies with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
- 4.20. Submit a report prepared by a registered Surveyor to the Principal Certifying Authority at each floor level of construction of the building (prior to the pouring of concrete) indicating that the finished floor level is in accordance with the approved plans.
- 4.21. Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Office of Environment and Heritage shall be contacted immediately and any directions or requirements complied with.

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- 4.22. Incorporate the following Crime Prevention Through Environmental Design (CPTED) principles and strategies to minimize the opportunity for crime:
- a. Provide adequate lighting to common areas as required under *AS1158: Lighting for roads and public spaces*.
 - b. Paint the ceiling of the car park white.
 - c. Design of landscaping, adjacent to mailboxes and footpaths, must not provide concealment opportunities for criminal activity.
 - d. Design the development to avoid foot holes or natural ladders so as to minimise unlawful access to the premises.
 - e. Provide signage within the development to identify all facilities, entry/exit points and direct movement within the development.

5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

All conditions under this section must be met prior to the issue of any Occupation Certificate

- 5.1. Submit an application for the Occupation Certificate to the Principal Certifying Authority for approval.
- 5.2. Do not occupy the premises until the Occupation Certificate has been issued.
- 5.3. Submit a Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011*.
- 5.4. Provide certification from a geotechnical engineer to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained within the geotechnical report(s) listed as supporting documentation in this development consent.
- 5.5. Complete works within the road reserve that required approval under the Roads Act. The works must be completed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control, and documentary evidence for the acceptance of such works must be obtained from the Roads Authority.
- 5.6. Rectify any damage not shown in the dilapidation report submitted to Council before site works had commenced. Any damage will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense.
- 5.7. Complete the internal engineering works within private property in accordance with the plans and details approved with the construction certificate.

5.8. Amend the Deposited Plan (DP) to:

- Include an Instrument under the *Conveyancing Act 1919* for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants must be defined by bearings and distances shown on the plan.
 - a. Create a 'Restriction as to User' over all lots containing an on-site stormwater detention system and/or a nutrient/pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

And,

- Include an instrument under the *Conveyancing Act 1919* for the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).
 - a. To ensure on any lot containing on-site stormwater detention system and / or a nutrient / pollution facility that:
 - (i) The facility will remain in place and fully operational.
 - (ii) The facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner
 - (iii) Council's officers are permitted to enter the land to inspect and repair the facility at the owners cost.
 - (iv) Council is indemnified against all claims of compensation caused by the facility.

Submit, to the Principal Certifying Authority, copies of registered title documents showing the restrictive and positive covenants.

- 5.9. Amend the deposited plan (DP) to include a Section 88B instrument under the *Conveyancing Act 1919* to indemnify Council against claims for loss or damage to the pavement or other driving surface and against liabilities losses, damages and any other demands arising from any on-site collection service, at the applicant's cost.

6. ONGOING OPERATION

- 6.1. Insulate and / or isolate the motor, filter, pump and all sound producing equipment or fitting associated with or forming part of the pool filtering system so as not to create an offensive noise to the occupants of the adjoining premises as defined in the *Protection of the Environment Operations Act 1997*.
- 6.2. Maintain the on-site stormwater detention facility in accordance with the operation and maintenance plan.
- 6.3. Maintain the nutrient / pollution control facilities in accordance with the operation and maintenance plan.

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- 6.4. Waste storage to be as indicated on Dwg No. ar-1201, issue b06 dated 16 September 2016 by dem architecture.
 - 6.5. The residents, caretaker or Body Corporate must be responsible for placing the mobile waste containers at a suitable location at the kerbside. These arrangements should be made no earlier than the evening prior to the collection day and returned to the approved residential waste storage enclosures as soon as possible after service collection day.
 - 6.6. Transfer of bulk waste bins within the development to be undertaken by persons suitably trained and experienced in the use and operation of any mechanical bin transporter and/or lifter.
 - 6.7. Waste vehicle access and manoeuvring to be in accordance with AS2890.2, and the Traffic and Traffic Planning Associates Report Reference 14298, dated May 2015 (Rev D), and the addendum to the Traffic and Traffic Planning Associates Report Reference 14298, dated 29 September 2016 (SP3 and SP4).
 - 6.8. Manage and maintain the entire property as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
 - 6.9. Complete landscaping works.

7. ADVICE

- 7.1. Consult with public authorities who may have separate requirements in the following aspects:
 - a. *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b. *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c. *Ausgrid* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d. *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e. *Central Coast Council* in respect to the location of water, sewerage and drainage services.
- 7.2. Carry out all work under this Consent in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.

7.3. Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

- 7.4. Separate application is required should the applicant require a new or upsized water supply connection to Council's water supply system.
- 7.5. Install and maintain backflow prevention device(s) in accordance with Council's *WS4.0 Backflow Prevention Containment Policy*. This policy can be found on Council's website at: www.gosford.nsw.gov.au
- 7.6. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 7.7. Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with Council's fees and charges.

8. PENALTIES

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

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

- Issue Penalty Infringement Notices (On-the-spot fines);

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- Issue notices and orders;
 - Prosecute any person breaching this consent, and/or
 - Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

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

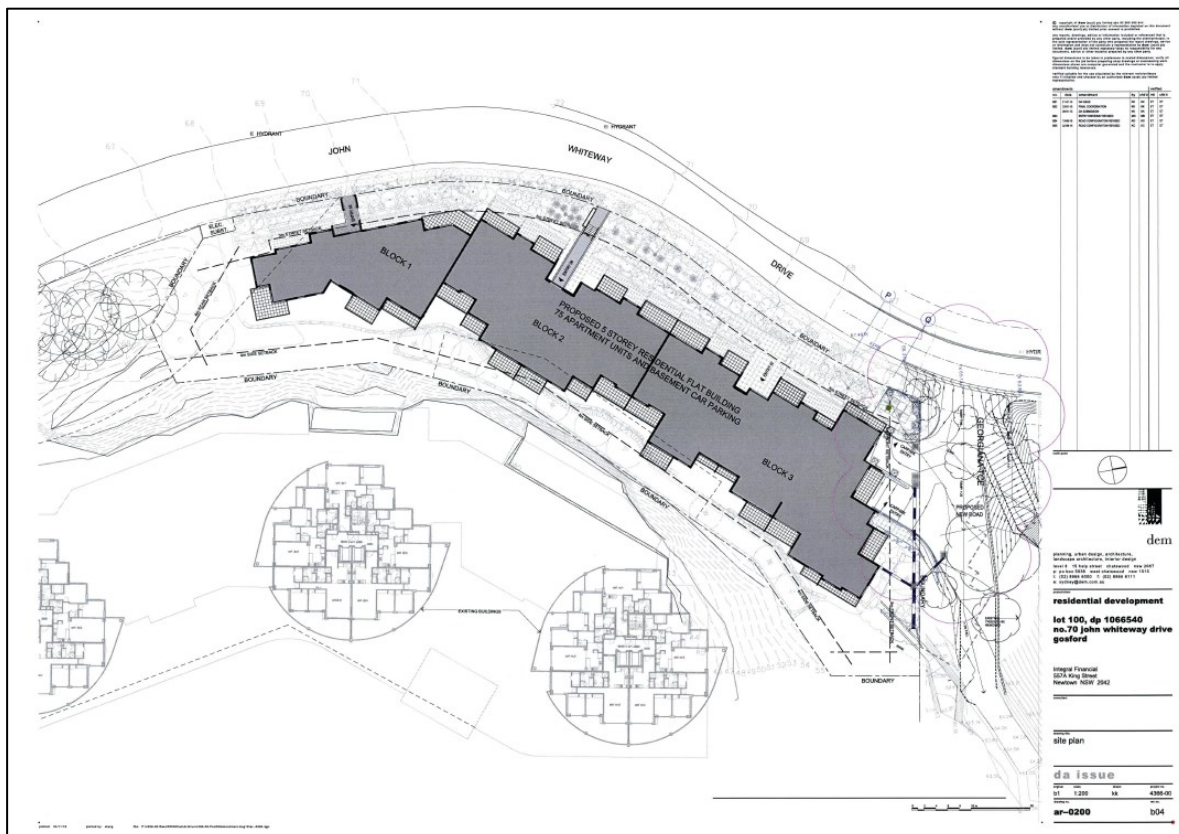
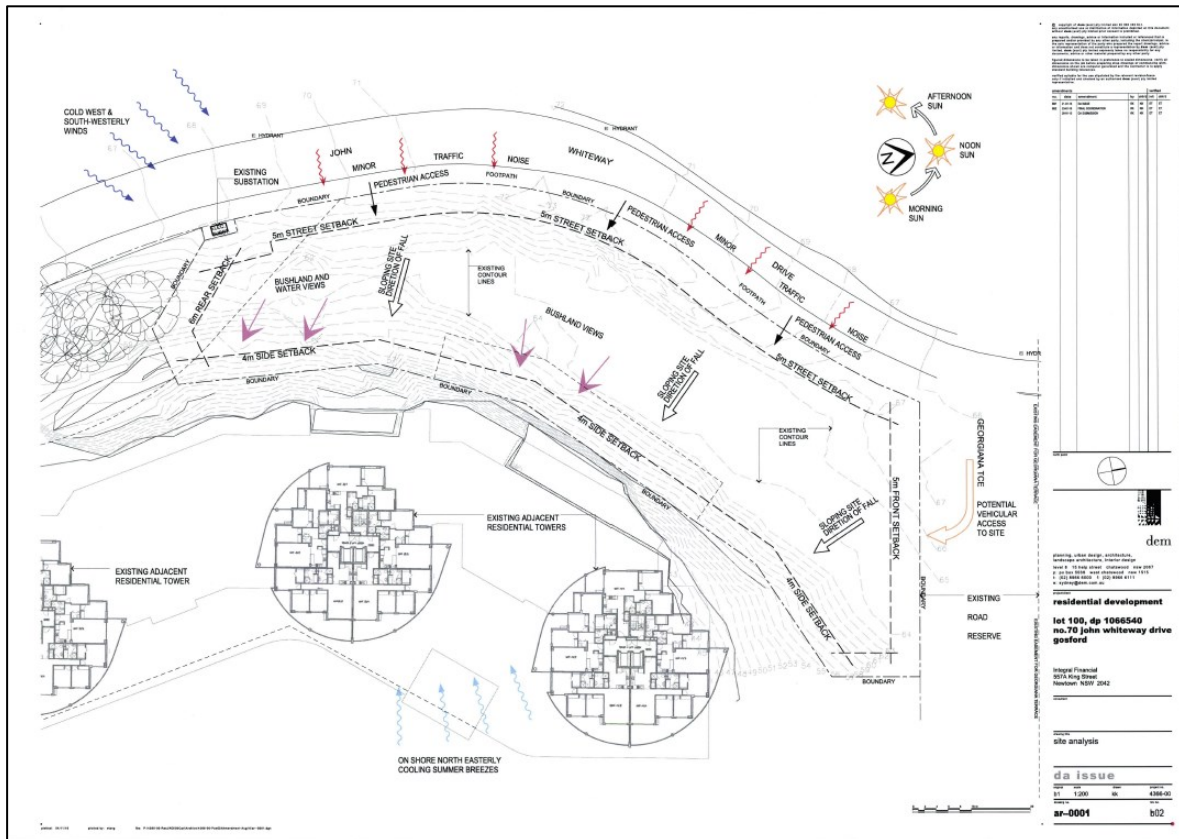
9. REVIEW OF DETERMINATION

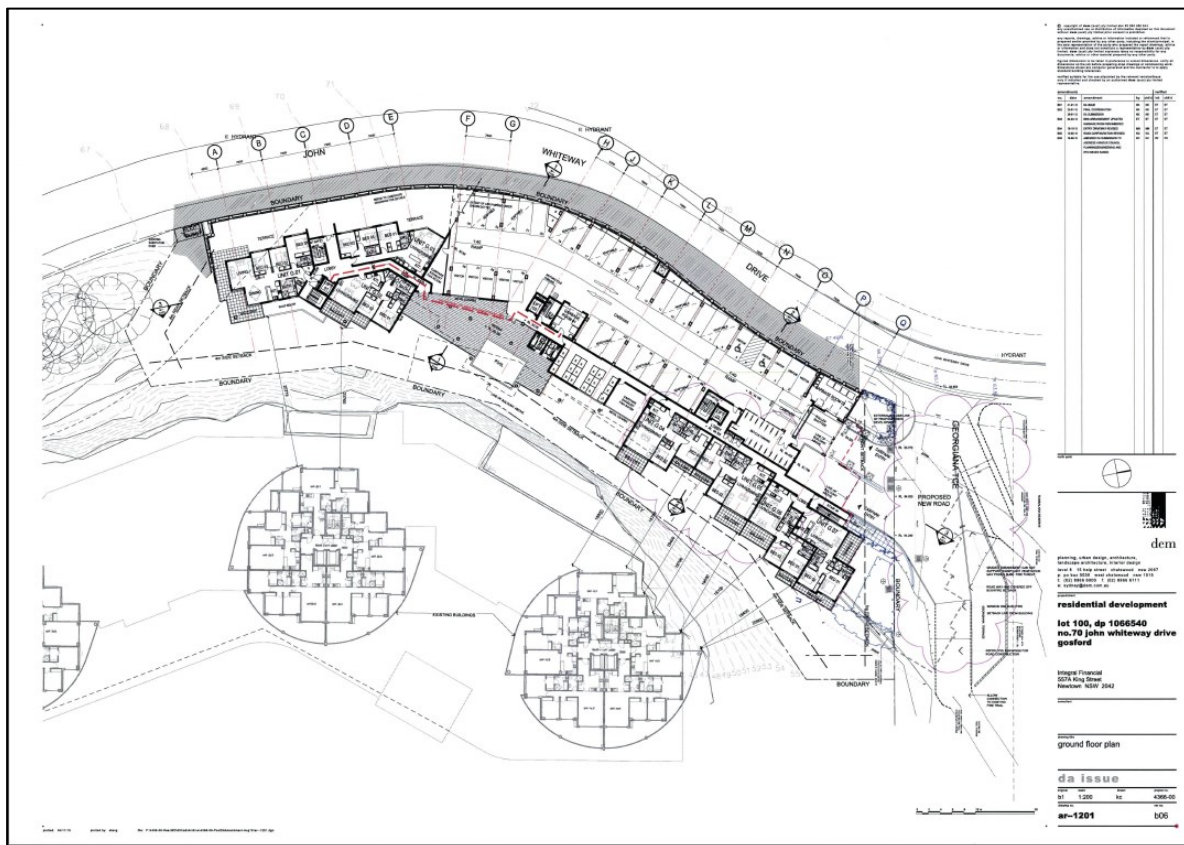
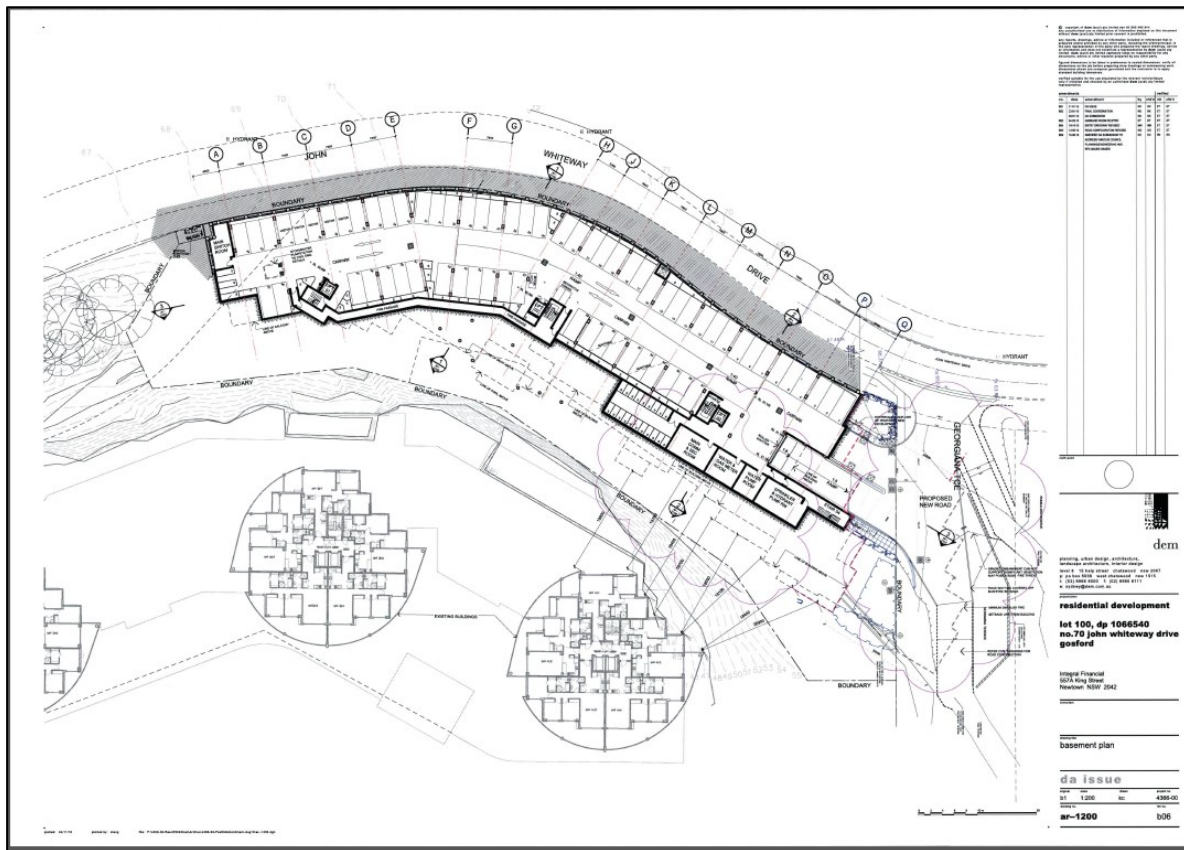
- 9.1. Subject to provisions of Section 82A of the Act the applicant may make an application seeking a review of this determination, providing it is made in time for Council to determine the review within six (6) months of this determination.

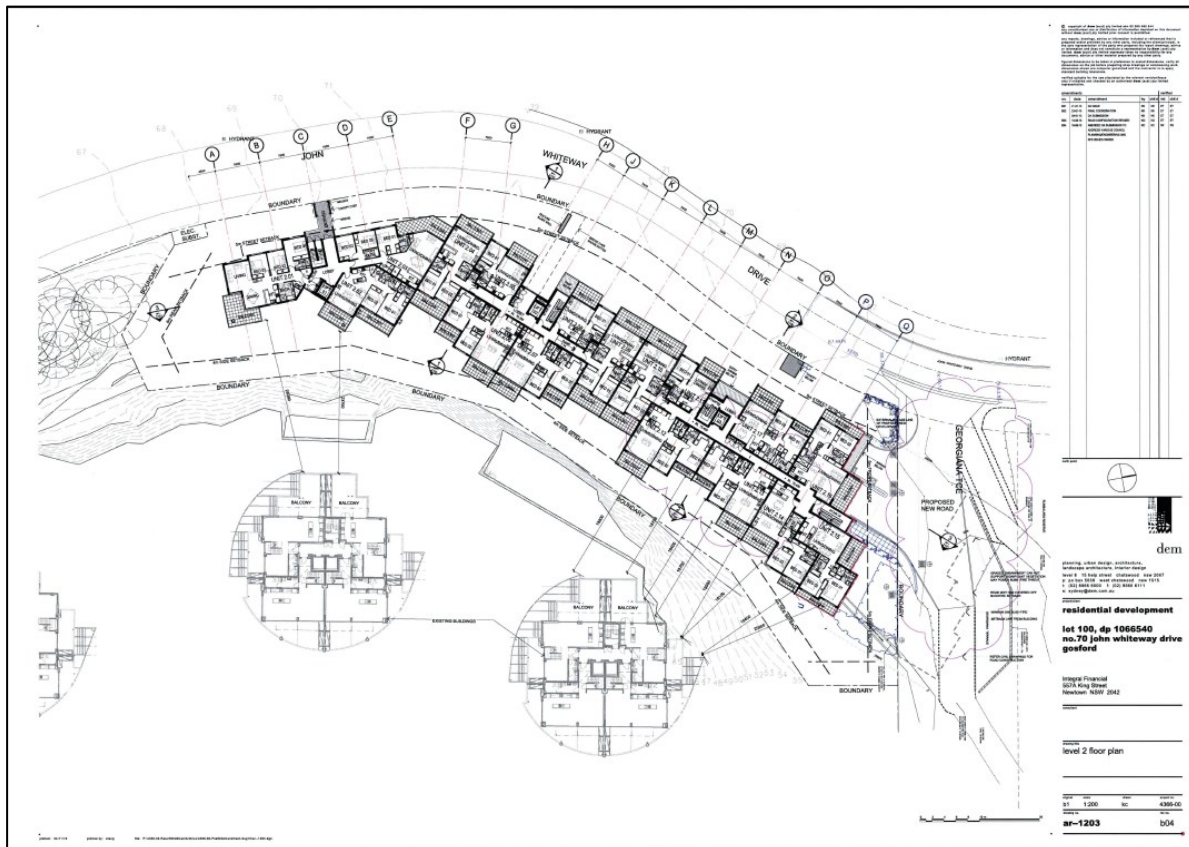
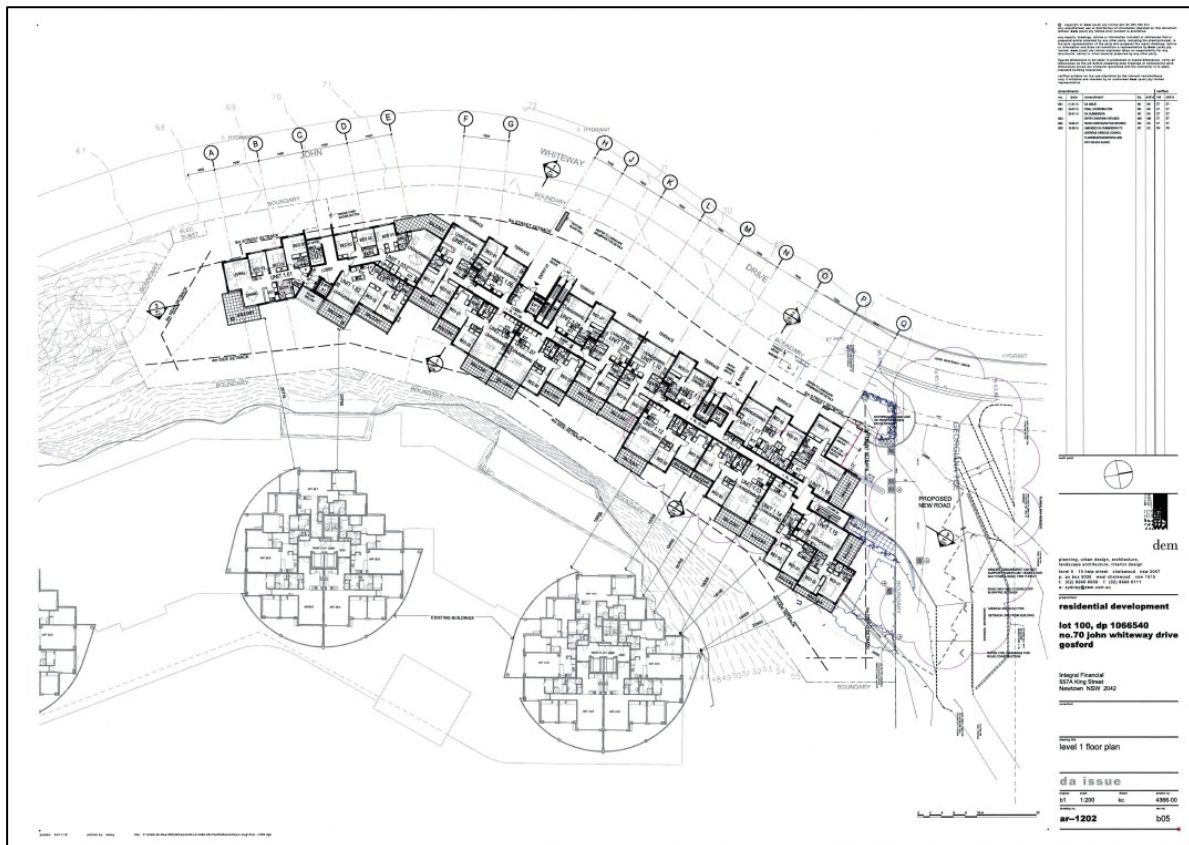
10. RIGHT OF APPEAL

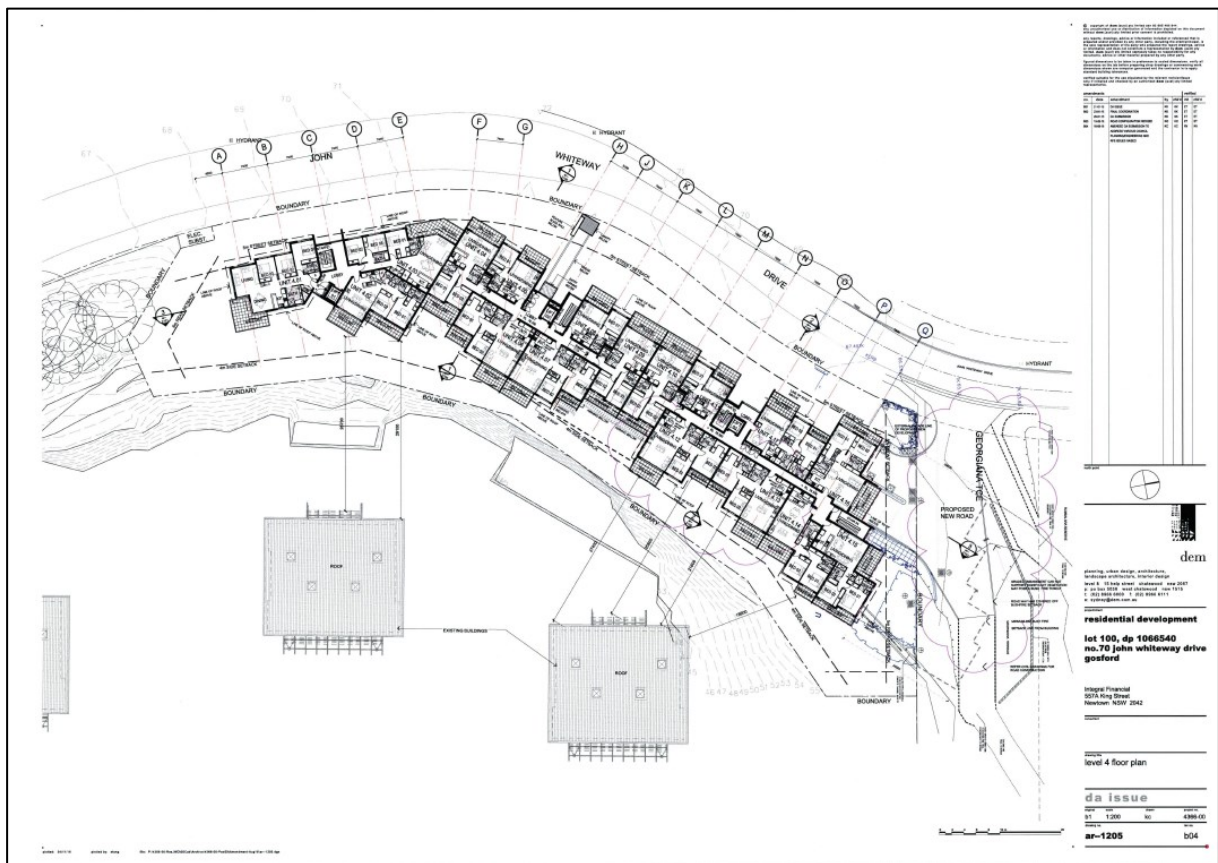
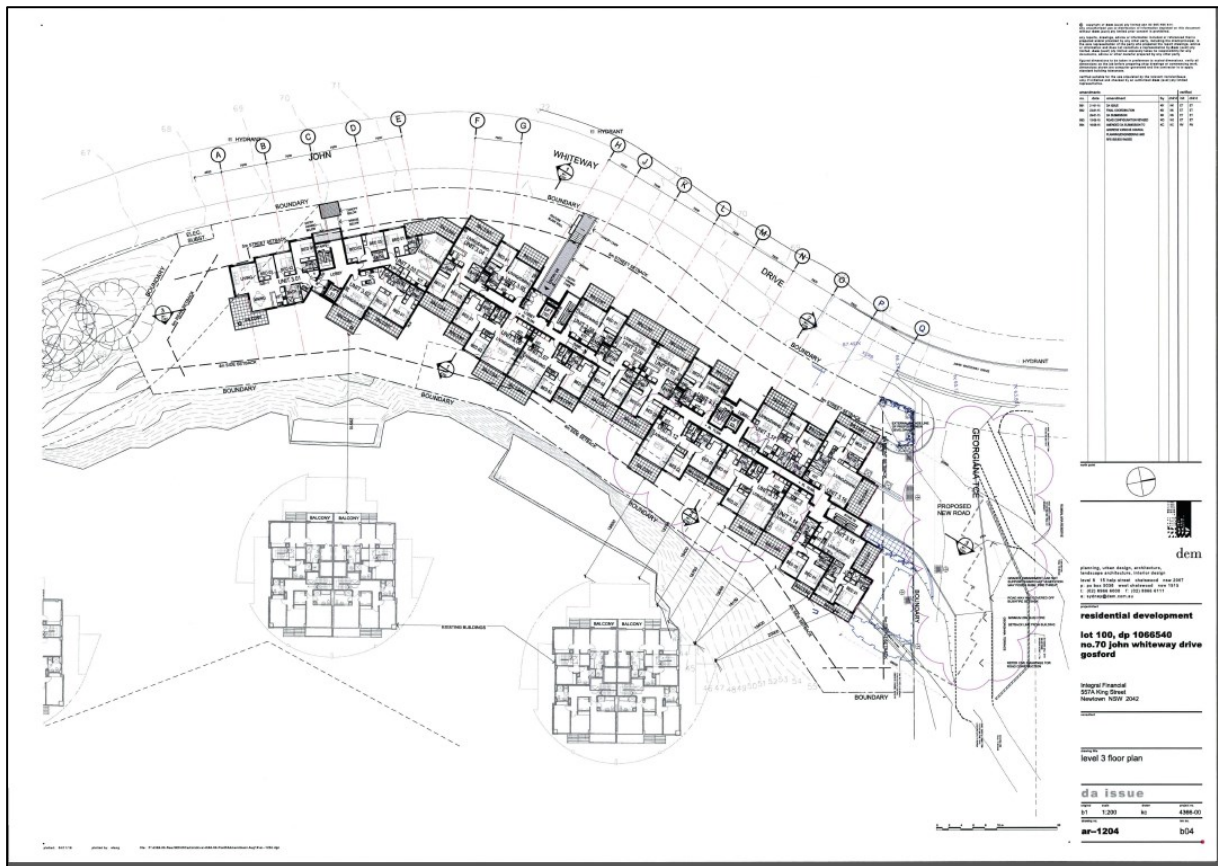
- 10.1. Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court within six (6) months, from the date of determination.
- 10.2. To ascertain the date upon which the determination becomes effective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

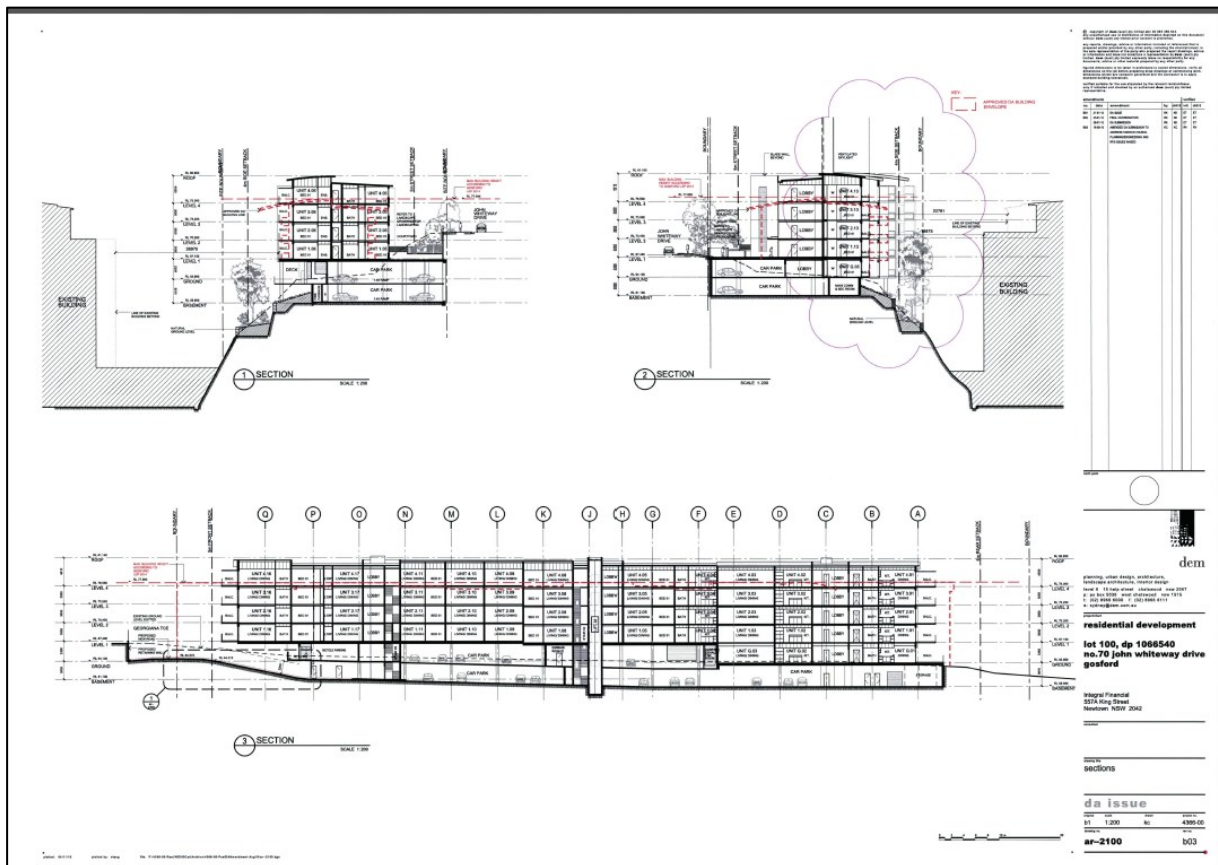
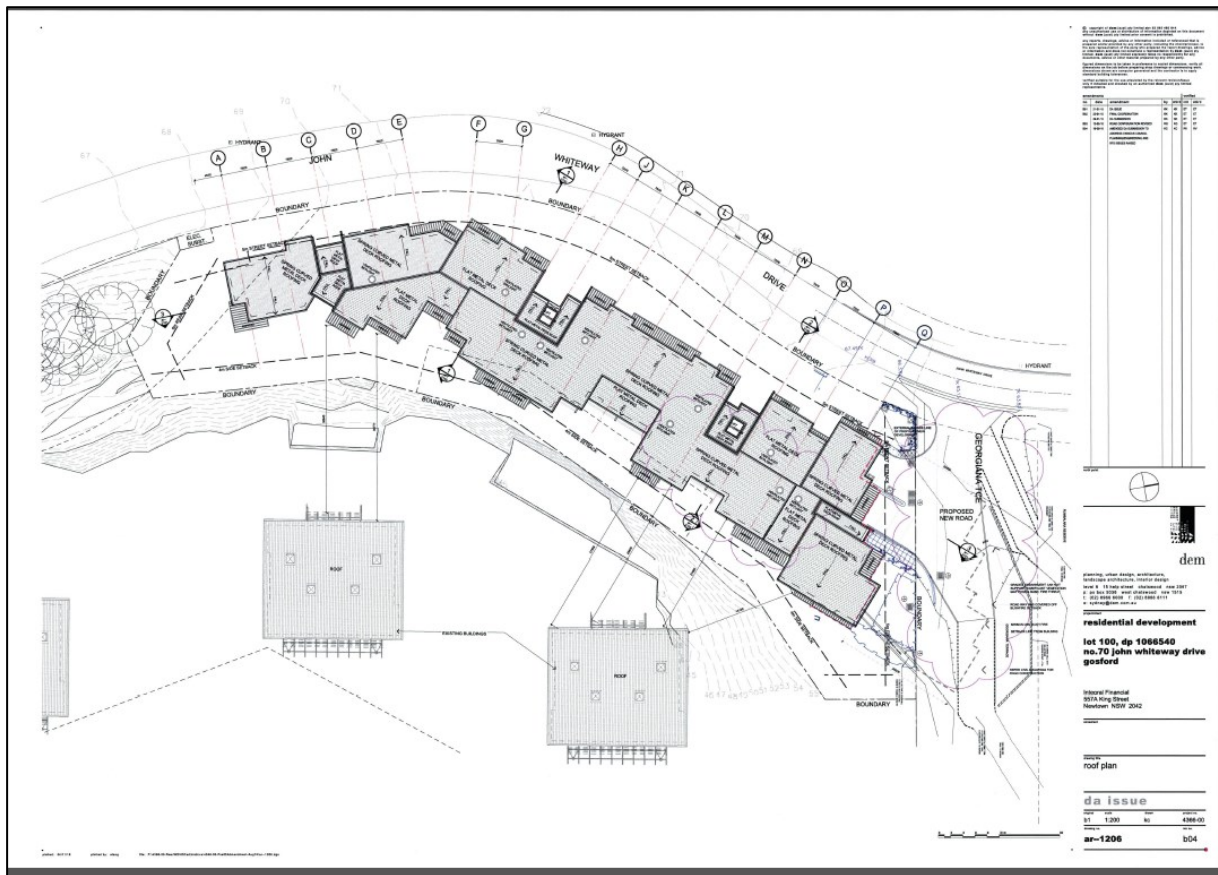
ATTACHMENT 2 – Development Plans

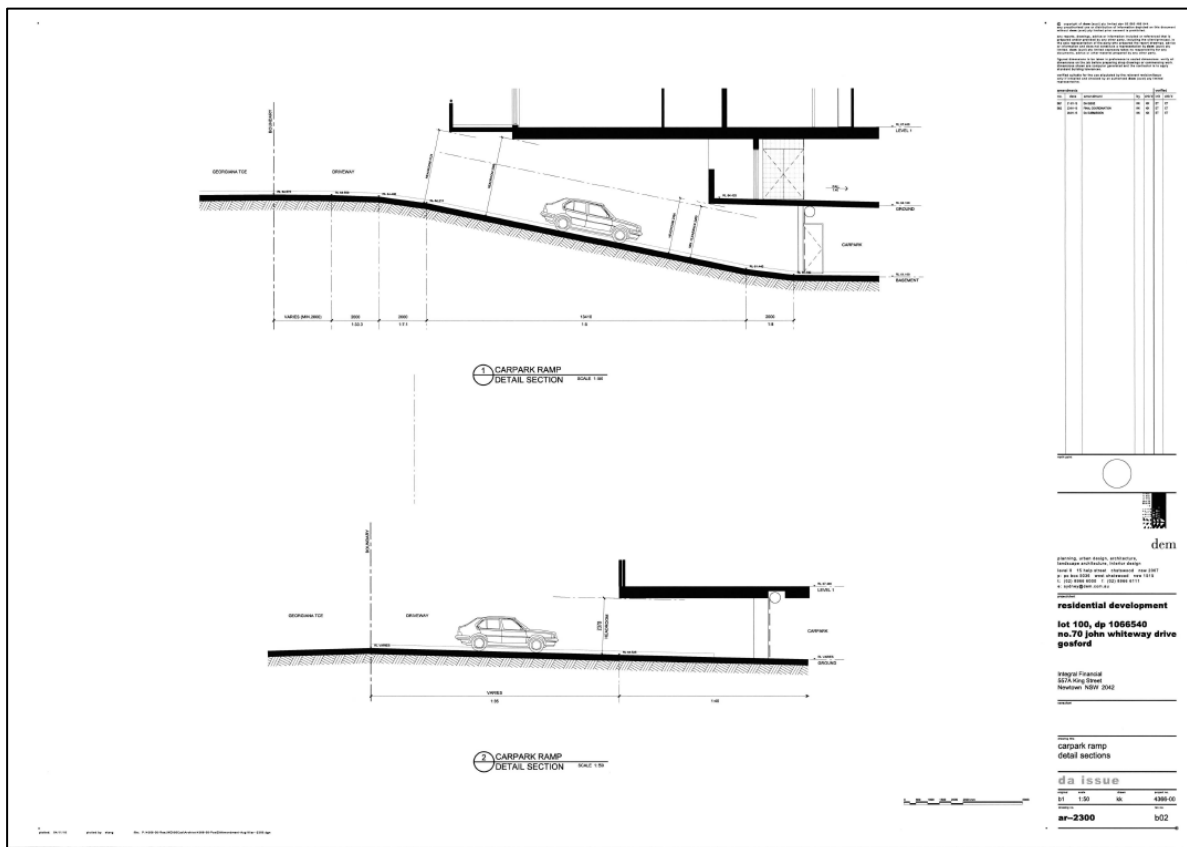
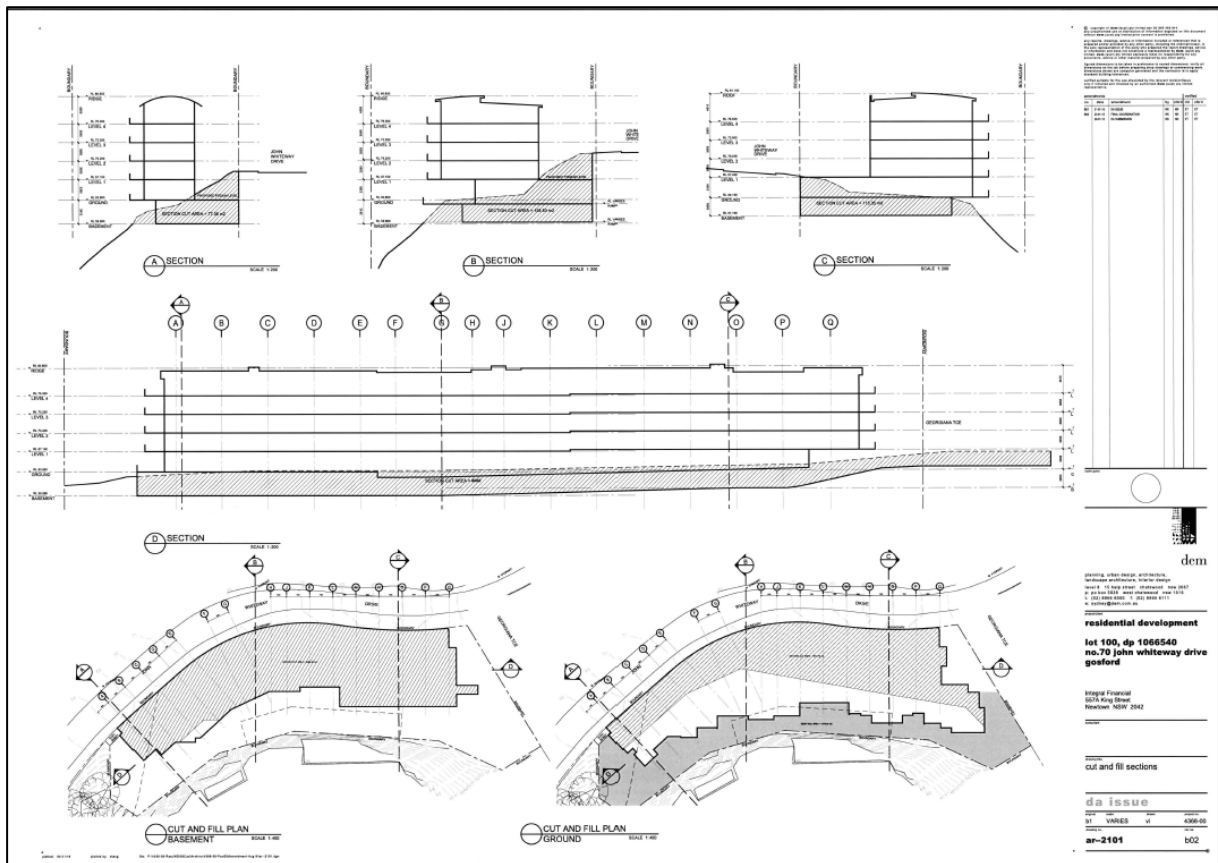
















ATTACHMENT 3 - Applicant's Clause 4.6 Submission

REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF THE LEP

The majority of the site is subject to a height control of RL77m (see **Figure 1**). The proposal breaches this control by a maximum of 4.16m. A small part of the site is subject to 0m height limit. This is aimed at reflecting the DCP requirement which does not allow development in certain areas of the John Whiteway Drive Precinct that have potential geotechnical issues. However these issues have been fully addressed in the previous and current DA and both the approved scheme and current scheme provide for a small part of the building within the 0m height limit area (see **Figure 2**).



Figure 1 – LEP Height Map

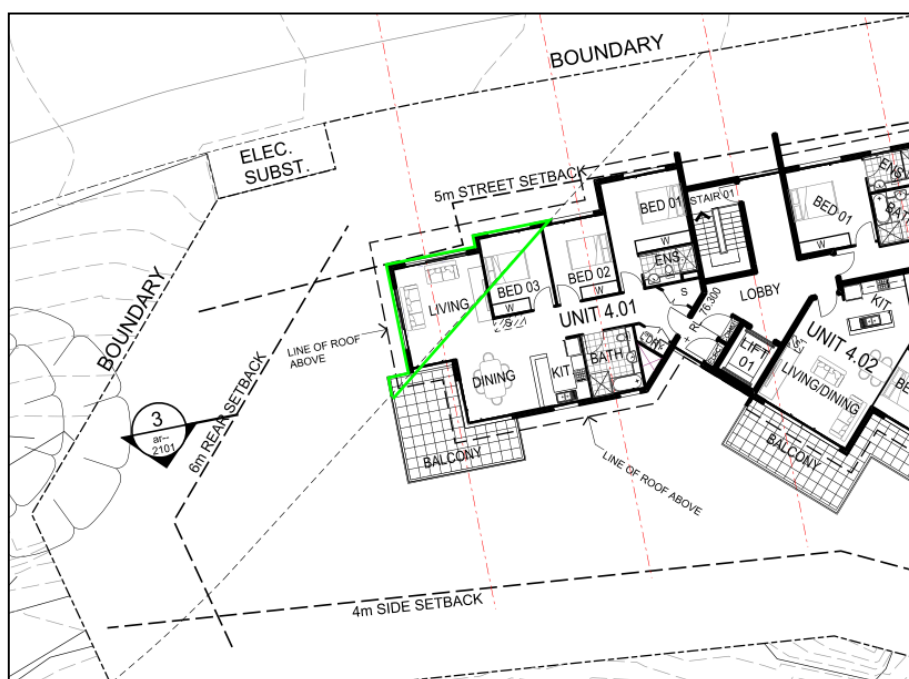


Figure 2 – shows area of building within 0m height area

Therefore pursuant to Clause 4.6 of the LEP a request to breach the height standard is required.

The relevant parts of Clause 4.6 of Gosford LEP 2014 are:

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

The purpose of this written request is to satisfy (3)(a) and (b) above and to demonstrate that (4)(a)(ii) and 5(a) and (b) can be satisfied. In preparing this request, regard has been had to the document: *"Varying development standards: A Guide (August 2011)"* prepared by the NSW Department of Planning & Infrastructure and; relevant Land Environment Court judgements such as *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*.

Clause (3)(a) - whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Whilst it was prepared in relation SEPP 1, the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), is referred to in the Four2Five judgment and remains relevant to the consideration of concept of compliance being unreasonable or unnecessary. The DP&I Guide referred to above outlines the following 5 part test used in *Wehbe*:

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

In regard to the issue here, it is considered that 1 and 4 above are applicable to the various objectives of the height control contained in Clause 4.3 of the LEP.

Tests 1 - relating to the objectives of the height standard

(a) to establish maximum height limits for buildings,

This of course is subject to clause 4.6.

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

The applicant could construct the approved development of the site. The proposal is to replace the approved development with a higher quality, more contemporary building. This comes at significant additional cost, some of which is offset by the additional height that is able to be achieved. Therefore the proposed building height assists in encouraging a higher quality urban form than has been previously approved.

Notwithstanding the above, the proposed height is consistent with the desired character of the street and compatible with surrounding development. It represents a high quality urban form.

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

The proposal will have minimal impact on the public domain. Due to the design and orientation of the adjoining towers, they will not be significantly affected by the additional level. This is discussed in further detail attached Addendum to the SEE.

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

The proposal provides for a transition in height that appropriately increases closer to the top of the escarpment. In this regard it is logical that the proposed building is higher than the building lower down the slope, below the site, but still achieves the desired 4 storey appearance from the street (see **Figure 3**). This is because the development is partly excavated into the site and sits below the level of the street. There are various buildings along this street which are much higher than 4 storeys and the adjoining towers are 8 storeys. The proposed building will, therefore, be consistent with the character of the area.

(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,*

The proposal does not affect any view corridors identified in the DCP. Further the building will be minimally visible from areas around the site as detailed in the Visual Impact Assessment at **Appendix D** of the submitted SEE.

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

The proposal does not overshadow any significant area of public open space and does not block views of identifying natural features.

Whilst it is not a stated objective, the purpose of the 0m height control is to restrict development because of potential geotechnical issues. However this has been previously addressed and the approved building is located within this area. The proposal has also suitably demonstrated that this objective can be achieved.

Therefore the proposal achieves the objectives of the LEP height standard, despite the non-compliance.



Figure 3 – perspective of proposal showing 4 storey presentation to street

Test 4 – abandonment of the height standard

Whilst it could not be said that Council has abandoned the standard, as noted above, it has previously approved development within the 0m height area and so, as the objective of this control has been suitably addressed again in the current DA, upholding the standard should not carry significant weight.

Having regard to the above it is considered that the proposal satisfies (to varying degrees) 'tests' 1 and 4 outlined in *Wehbe*. Therefore it would be unreasonable and unnecessary to enforce compliance as a better outcome is achieved in relation to the objectives of the height control by not complying.

Clause (3)(b) – whether there are sufficient environmental planning grounds to justify contravening the development standard

Compliance would result in poorer planning outcomes

Lowering the building to achieve compliance would result in the developer relying on the existing development consent. As this was approved some time ago the level of amenity and architectural quality is not as good as is now proposed. Therefore the overall planning outcome is considered to be worse if the additional height is not achieved.

Lack of impact

As noted above the additional level will result in the building having a 4 storey appearance in the public domain as viewed from John Whiteway Drive, which is consistent with the character of the area. The additional level will not unreasonable increase the prominence of the building when viewed from surrounding areas as detailed in the Visual impact Assessment at **Appendix D** of the SEE. The impact of additional overshadowing is minor and due to the design and orientation of the adjoining towers, an appropriate level of solar access will be maintained (see attached Addendum to the SEE). Nor will there be any privacy impacts as the required separation is provided to the proposed building including the additional level.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrants contravention of the height standard.

Clause (4)(a)(ii) – whether 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

As noted above the proposal will be consistent with the objectives of the height standard. In relation to the objectives of the subject R1 zoning the following comments are made:

- *To provide for the housing needs of the community.*

Comment – the additional height will allow more housing to be provided which will better achieve this objective than a complying building.

- *To provide for a variety of housing types and densities.*

Comment – the proposal will contribute to the types of housing available within the R1 around the Gosford town centre.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment – only residential uses are proposed.

- *To ensure that development is compatible with the desired future character of the zone.*

Comment – as noted above the scale of the building is consistent with the desired streetscape character and also with the scale of other buildings in the locality.

- *To promote best practice in the design of multi dwelling housing and other similar types of development.*

Comment – through the provision of more contemporary architecture and improved design, the proposal will better achieve this objective than the approved development.

- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.*

Comment – the proposal will not unreasonably reduce amenity as discussed above. The demands for services are addressed through Council's Section 94 Plan and an increased contribution can be sought for the increase in height as construction cost is increased.

Clause 5(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

No, the variation of the height standard is a minor matter and not uncommon. It does not raise any issues at a regional or state level.

Clause 5 (b) the public benefit of maintaining the development standard

For the reasons outlined above there is no public benefit in maintaining the standard. In fact there will be public benefits in allowing a variation as a better planning outcome will be achieved.

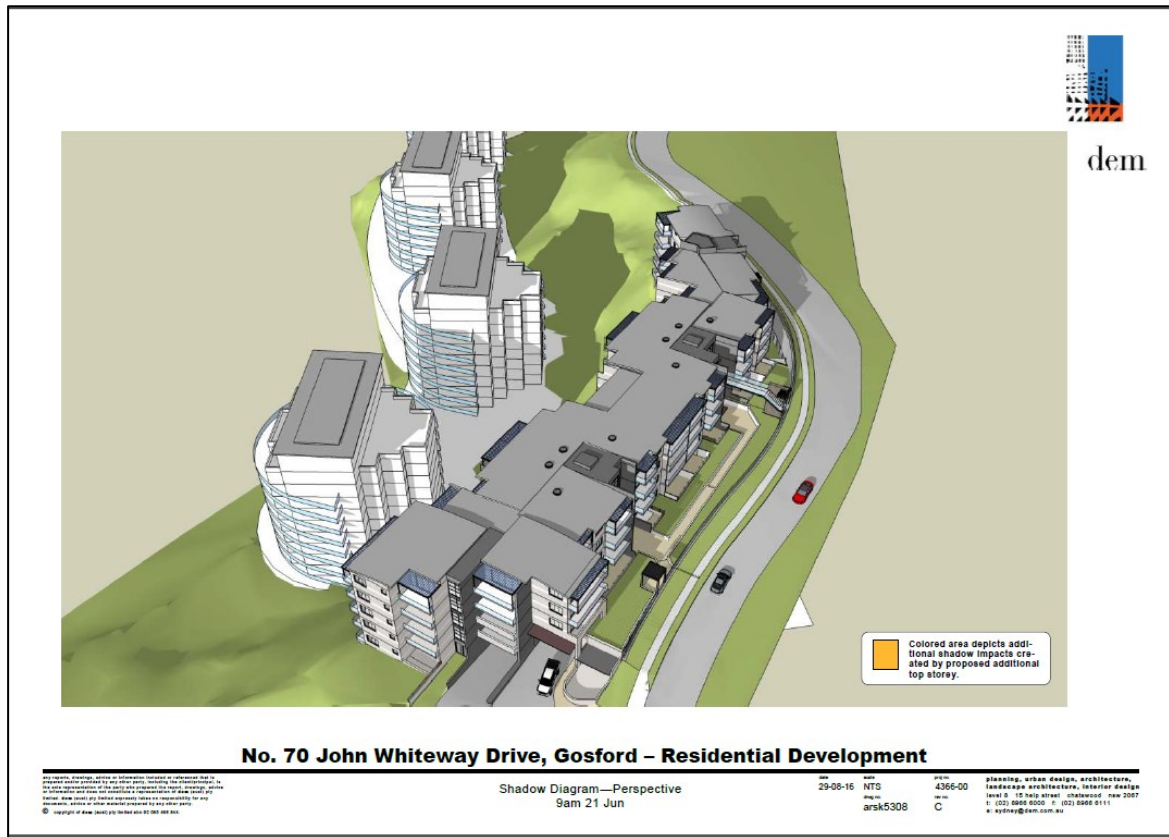
Conclusion

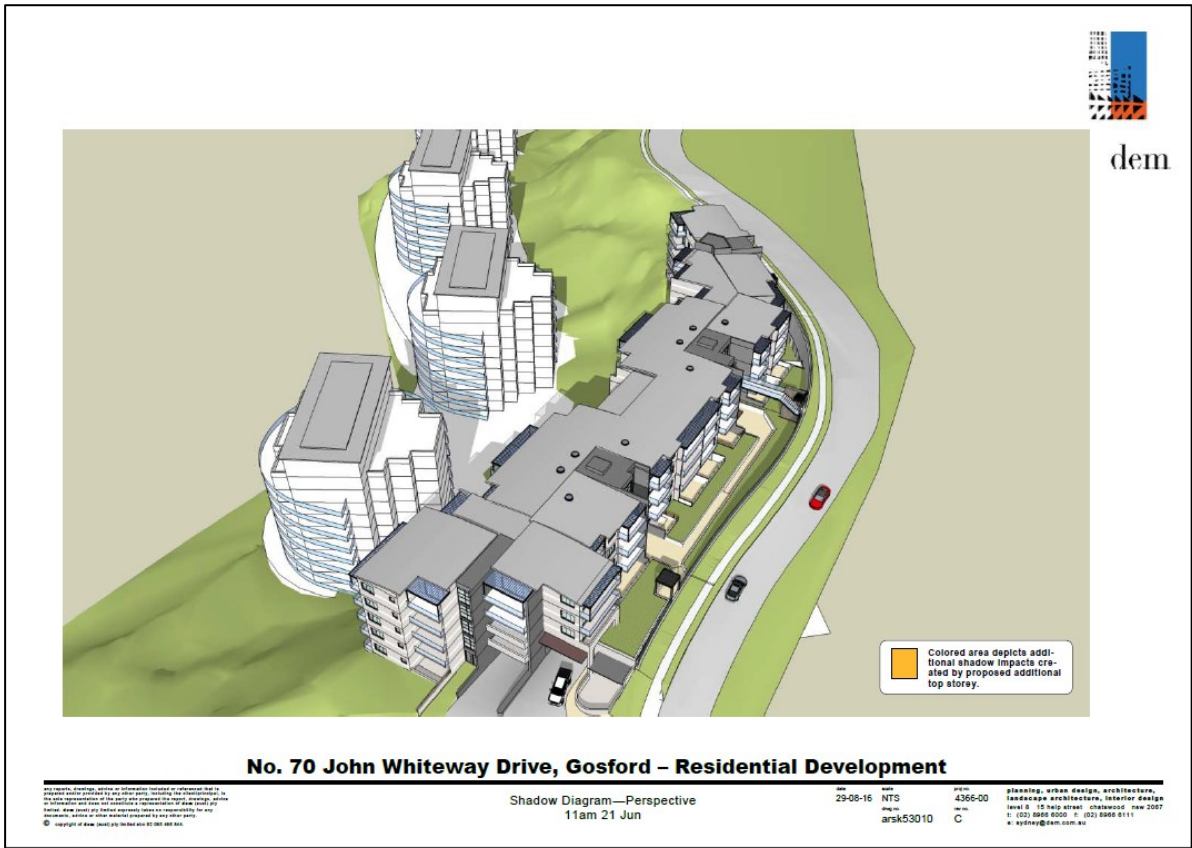
Having regard to the above it is considered that this written request satisfies the requirements of Clause 4.6 and that the consent authority can be satisfied that the proposal also meets the other requirements of Clause 4.6. The proposed contravention of the standard will meet the objectives of Clause 4.6 as it achieves *"better outcomes for and from development by allowing flexibility in particular circumstances"*.

It is considered that the proposal represents a high quality planning outcome for the site.

Brett Brown
Ingham Planning Pty Ltd

ATTACHMENT 4 – Shadow Diagrams and Perspectives







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Shadow Diagram—Perspective
1pm 21 Jun

DATE
29-08-16

SCALE
NTS

REF ID
arsk5312

PROJECT
4366-00

DATE
C

planning, urban design, architecture,
landscape architecture, interior design
level 0 15 help street chelwood new 2007
t: (02) 9966 6000 f: (02) 9966 6111
e: sydney@dem.com.au



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Shadow Diagram—Perspective
2pm 21 Jun

DATE
29-08-16

SCALE
NTS

REF ID
arsk5313

PROJECT
4366-00

DATE
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landscape architecture, interior design
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Shadow Diagram—Perspective
3pm 21 Jun

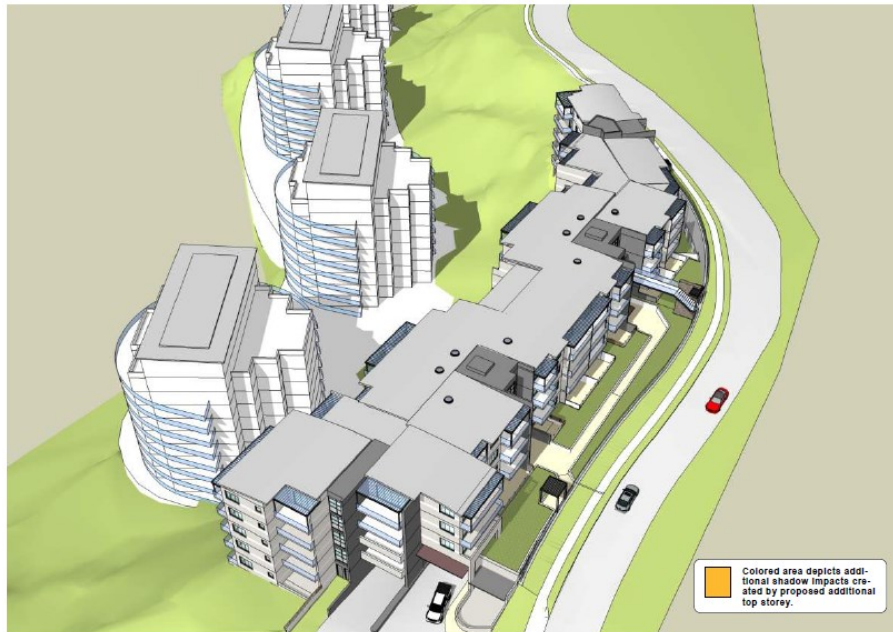
date	issue	pld no.	planning, urban design, architecture, landscape architecture, interior design
29-08-16	NTS	4366-00	15 help street chadwood nsw 2067 t: (02) 8966 6000 f: (02) 8966 6111
draw no.	rev no.	cat	
arsk5314			



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Shadow Diagram—Perspective
9am 21 September

date	name	price	description
29-08-16	NTS	4366-00	planning, urban design, architecture, landscape architecture, interior design
	drag no	exp no	level 8 15 help street chislewood new 2067
	arsk5507	A	t: (02) 8966 6000 f: (02) 8966 6111 e: sydney@dem.com.au

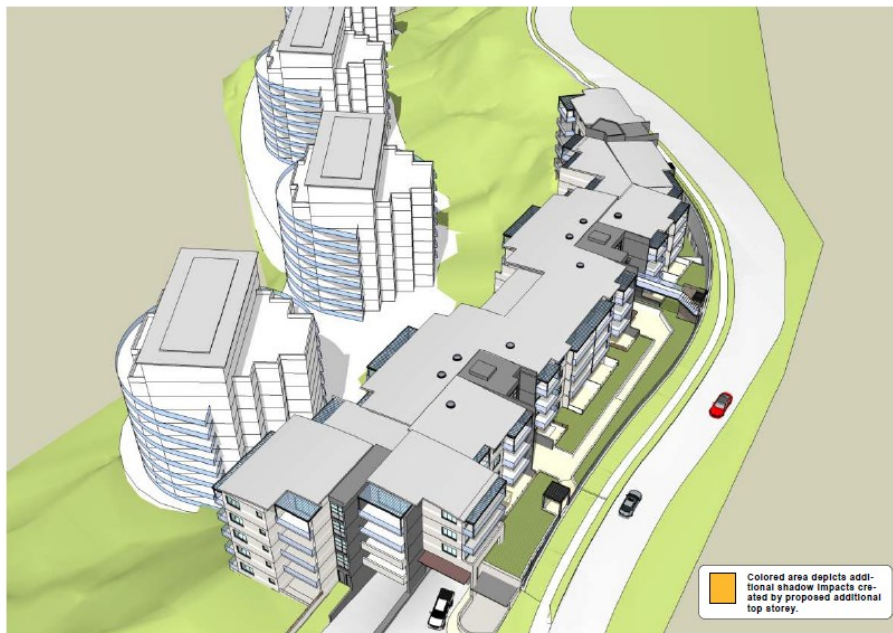


No. 70 John Whiteway Drive, Gosford – Residential Development

any person, whether or not a professional, who is involved in the preparation of a shadow diagram for the purpose of a shadow study, shall be taken to have accepted the responsibility for the accuracy of the diagram and the information contained therein.

Shadow Diagram—Perspective
10am 21 September

date 29-05-13
drawn by NTS
checked by arsk5508
project 4366-00
sheet A
drawing title planning, urban design, architecture, landscape architecture, interior design
level 3 15 help street chatwood new 2007
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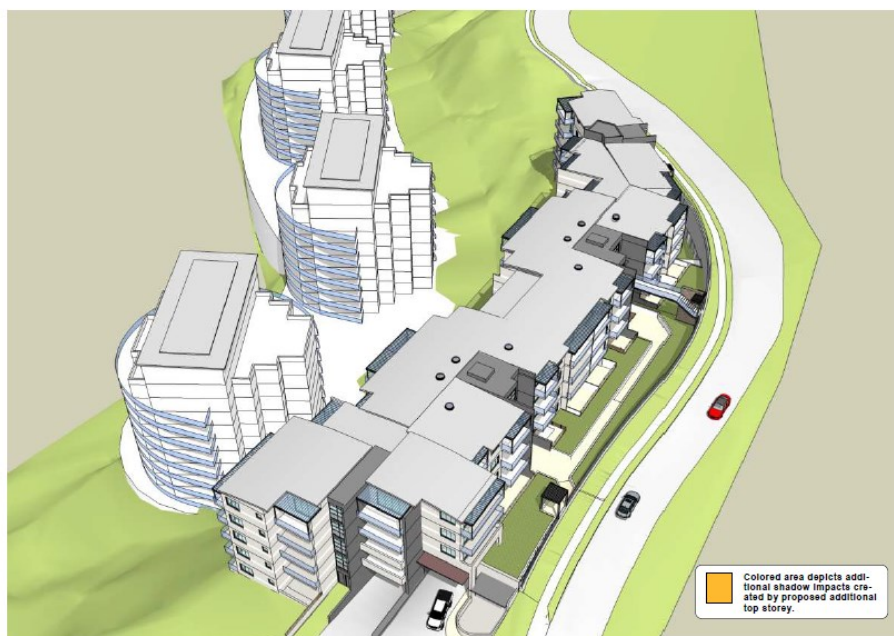


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Shadow Diagram—Perspective
11am 21 September

date 29-05-13
drawn by NTS
checked by arsk5509
project 4366-00
sheet A
drawing title planning, urban design, architecture, landscape architecture, interior design
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Shadow Diagram—Perspective
12pm 21 September

date	29-08-16
scale	NTS
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part no.
4366-00
new no.
A

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Shadow Diagram—Perspective
1pm 21 September

date	note
29-08-16	NT
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	acc

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Colored area depicts additional shadow impacts created by proposed additional top storey.

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Shadow Diagram—Perspective
2pm 21 September

DATE	29-08-16	NTS	4366-00	planning, urban design, architecture, landscape architecture, interior design
PROJECT	NTS	4366-00	level 6 15 help street chatewood new 2007	
CLIENT	arsk5512	A		
CONTACT				T: (02) 9958 0000 F: (02) 9958 0111 E: sydney@dem.com.au



dem



Colored area depicts additional shadow impacts created by proposed additional top storey.

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Shadow Diagram—Perspective
3pm 21 September

DATE	29-08-16	NTS	4366-00	planning, urban design, architecture, landscape architecture, interior design
PROJECT	NTS	4366-00	level 6 15 help street chatewood new 2007	
CLIENT	arsk5513	A		
CONTACT				T: (02) 9958 0000 F: (02) 9958 0111 E: sydney@dem.com.au
