

INGHAM PLANNING Pty Ltd

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

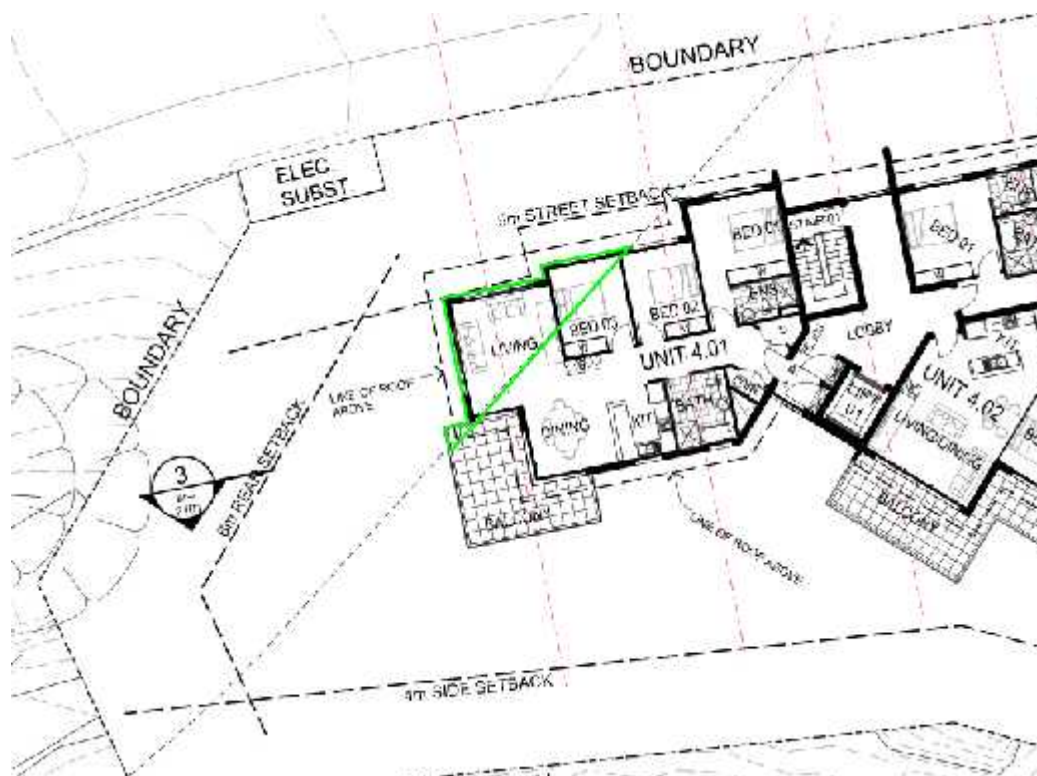
The objectives of this clause are as follows:

- (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.

Subclause 3 indicates that 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.

In accordance with the above it is requested on behalf of the applicant that Council permit non-compliance with the height standard applicable under Clause 4.3 of the LEP. In this regard the upper level of the building exceeds the height limit of RL77m that applies to the bulk of the site and the building partly encroaches into the area where there is a 0m height limit. The maximum extent of the non-compliance with the RL77m zone is 4.16m. The extent to which the building encroaches into the 0m height area is minor as indicated below.



The following points demonstrate compliance with Subclause (3).

Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control.

The stated objectives of the height standard are achieved despite the non-compliance.

In this regard:

(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.

(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.

(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 below). 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**.

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

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

The proposal is consistent with these objectives.

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 view from surrounding areas as detailed in the Visual impact Assessment at **Appendix D**. The impact of additional overshadowing is minor and due to the design and orientation of the adjoining towers, a high level of solar access will be maintained. Nor will there be any privacy impacts as the required separation is provided to the proposed building including the additional level.

There are sufficient environmental planning grounds to justify contravening the development standard

As noted above, the lack of environmental impact and the environmental benefits that arise from not complying, justify contravening the standard. Further, the proposal also has benefits in broader environmental terms. One of the objects of the EP&A Act is the *"orderly and economic use and development of land"*. It is appropriate to maximise the use of such land which is located close to a wide range of goods and service and public transport. This proximity reduces reliance on private transport and provides a high quality of life for residents. This outcome is also supportive of another of the objects of the Act which is *'ecologically sustainable development'*.

Conclusion

The provision of a building of 4-5 storeys on this site is consistent with the existing and desired future character of the area and ensures that this site, which is part of the Gosford Town Centre is utilised to maximum degree without having any unreasonable impacts, consistent with the objects of the EP&A Act.
