

JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

Supplementary Assessment Report and Recommendation Cover Sheet – June 2017

Panel Reference	2015HCC003
DA Number	47044/2015
Local Government Area	Central Coast Council
Proposed Development	Residential Flat Building (67 Units) (JRPP)
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	• Environmental Planning & Assessment Act 1979 - Section 79C • Local Government Act 1993 - Section 89 • State Environmental Planning Policy No 19 - Urban Bushland (SEPP 19) • State Environmental Planning Policy No 65 - Design Quality of Residential Flat Buildings (SEPP 65) • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Gosford Local Environmental Plan 2014 (GLEP 2014) • Gosford Development Control Plan 2013 (GDCP 2013)
List all documents submitted with this report for the Panel's consideration	Proposed Conditions of Consent Architectural plans June Shadow Diagrams Section 88B Instrument & DP 1066540 Clause 4.6 Submission Geotechnical Assessment Report Previous JRPP Report 30 March 2017

Report prepared by	R A Eyre
Report date	June 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? <i>e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>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.</i>	Yes

Title: Development Application No. 47044/2015, Proposed Residential Flat Building (67 Units) on LOT: 100 DP: 1066540, 70 John Whiteway Drive Gosford

Department: Environment and Planning



Supplementary Assessment Report

Report Purpose

This report is provided in addition to and is to be read in conjunction with the previous JRPP Report of 30 March 2017.

This report seeks 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 (67 Units)
Zoning	R1 General Residential
Site Area	4776m ²
Existing Use	Vacant Land
Value of Works	Amended plans- \$20,080,400.00

Summary

A development application has been received seeking approval for construction of a residential flat building at 70 John Whiteway Drive Gosford. The JRPP considered the application on 30 March 2017 and deferred the matter for amended plans to delete the top floor level on Block 3 at the northern end of the proposed building.

The applicant has submitted amended plans which reduce the number of apartments from 75 to 67, a reduction of 8 apartments. The proposed development has been reduced in height, floor space, FSR and car parking required.

The amended application is recommended for approval subject to conditions.

Application Type	Development Application – Local
Application Lodged	29/01/2015
Delegation level	Joint Regional Planning Panel (JRPP) -
Reason for delegation level	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 JRRP 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 JRRP as consent authority grant consent to Development Application No 47044/2015 for Residential Flat Building (67 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.

Reasons for Deferral

This application was considered by the JRPP at its meeting on 30 March 2017. Determination of the application was deferred and the applicant was invited to submit an amended proposal which addressed the following matters:

- Deletion of the top level of "Block 3" (Units 4.10-4.17). this area may be provided as a communal open space area (with lift and stair access and partial shading/pergola elements and planter boxes not visible from the street, but no other rooms) provided it is suitably setback from the eastern building edge by at least 2m to avoid any adverse privacy impacts to the east;
- Revised overshadowing analysis to confirm the changes do not result in any additional overshadowing of the adjoining existing buildings to the east, or if such impact exists it shall be minimal or require further design refinement to reduce the overshadowing impact;
- Submission of an amended Geotechnical report that expressly addresses the proposed plans, acknowledges the changes to the building footprint compared to the previous approval and previous report and comprehensively addresses the matters required to be addressed in Part 4.1.7.4 of GDCP 2013;
- Confirmation there is no easement or Restriction to User under the Conveyancing Act (s88B) for any part of the site where building works are proposed (noting references to such restrictions in Part 4.1.7.4 of GDCP 2013).
- Submission of a revised Clause 4.6 Variation Request to reflect the revised plans, and any other details to reflect the above changes.

Each of these matters is discussed further within this supplementary report. It is requested that this report be read in conjunction with the previous assessment report from 30 March 2017.

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	Clause 4.3-Maximum height RL 77m AHD Proposed height 80.85m AHD Variation 3.85m or 5% which is supported
Gosford Development Control Plan 2013 (GDCP 2013)	Maximum height, variation supported building area - variation supported setbacks - variations supported

Background

The site was formerly part of 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. Engineering plans for civil works were approved on 23 March 2004. This development has physically commenced and the consent remains valid.

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 1** below.



Figure 1 – 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 January 2015 was submitted with the application. The NSW Rural Fire Service (RFS) have no objection to the proposal subject to conditions.

Additional Information

The applicant has taken the opportunity to reuse the plans to reduce the potential for overlooking and overshadowing.

1. Amended Plans

The applicant has submitted amended plans which:

- have deleted the top level of block 3 which reduces block 3 from 5 storeys to 4 storeys.
- has reduced the number of apartments from 75 to 67.
- results in a reduction in FSR from 1.5:1 to 1.34:1.
- reduces the basement car parking and the car parking provided from 106 spaces to 76 spaces (as required under RMS Guidelines as the site is within 400m of B3/B4 zoned land).

The applicant advises that consideration was given to a communal roof terrace on top of block 3, but it was concluded it was not desirable as it would only provide access to one-third of the units in the development, and most likely create overshadowing, noise and amenity impacts to the adjacent residential towers. A well set back private roof terrace has been provided to unit 409 which creates no adverse impacts on the adjacent towers as it is located on the John Whiteway Drive side of the proposed building.

The amended plans are included in attachment 2 and condition 1.1. The following section 2 through the northern end (Block 3) illustrates the comparison now between the adjacent tower and the proposed development.

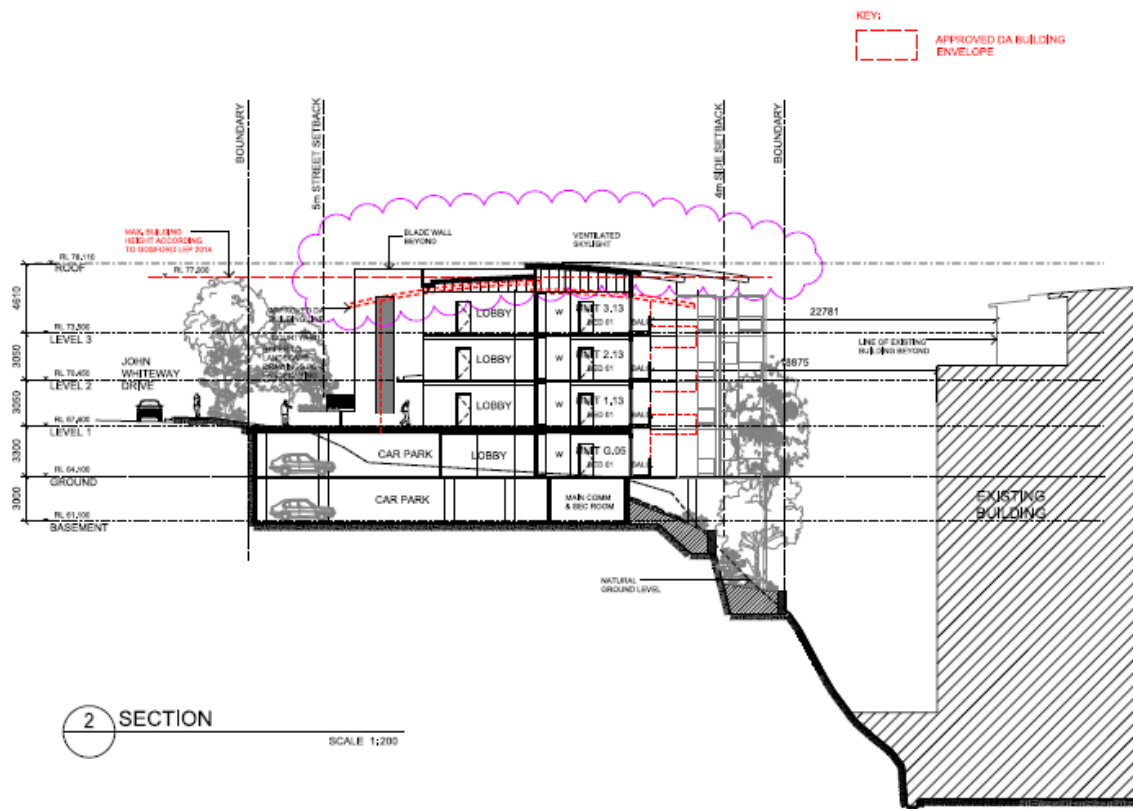


Figure 2: Proposed section

2. Revised shadow diagrams

The applicant has submitted amended shadow diagrams relating to the amended plans. **(Refer attachment 3)**. The shadowing impact is noted to be reduced compared to the previous proposal. Proposed blocks 1 and 2 now exceed the height limit by up to 5% and proposed block 3 exceeds the height limit by up to 1.48%. The shadow diagrams for June indicate that the amended plans do not result in any additional overshadowing of the adjoining Tower A to the east compared to the approved scheme.

The shadow diagrams show that the lower levels of Tower B (levels 2-5) receive additional shadow to a small extent (about 1 additional hour) mid winter. A series of hourly shadow diagrams have been provided which depict the amount of additional shadow impact of the proposed development compared to a compliant development.

This shows that between 9.00am and approximately 12.00pm there is no or very minimal additional shadow created by the development which affects the adjoining residential apartments. The proposal adds additional shadow from about 1.00pm onwards which is not unreasonable given the topography of the site and adjoining land which increases in height to the west.

Only 2 of the units affected, receive less than 3 hours sunlight but they still achieve more than 2 hours sunlight. The balconies on the adjoining towers are mostly treated on the northern, eastern and southern sides which will receive adequate morning sun and are generally orientated to the east and south to take advantage of distant water views.

Therefore, it is considered that the 1.4% to 5% height variation does not add any significant shadow as a result of the height non-compliance and the adjoining towers still receive adequate sunlight in June and even greater in March/September.

Therefore, the impact is considered to be minimal and does not require any further design change.

3. Amended Geotechnical Report

Clause 4.1.7.4 of Chapter 4.1 of GDCP 2013 states:

An amended Geotechnical Report has been provided (27 April 2017- **attachment 6**) which addresses the amended plans and acknowledges the changes to the proposed building footprint compared to the previous consent.

The Geotechnical Report identifies the southern end of the site as having a low to medium stability risk ratio, and makes recommendations for foundations/retaining walls. The report also identifies that there is no stability risk from adjoining land.

The report addresses the matters stated in Clause 4.1.7.4 of Chapter 4.1 of GDCP 2013.

“Buildable Area - The buildable area of each lot is illustrated in Figure 7.2 and coincides with the Restriction as to User on the title of the relevant lots under the Conveyancing Act, 1919. The

Restriction as to User has application only where the restriction is not inconsistent with the provisions of the relevant planning instrument.

The covenant supporting the designated buildable areas has application, as the buildable area provisions have been included in this DCP.

The function of the buildable area is to clearly define areas suitable for development, taking into consideration a wide diversity of natural and human influenced opportunities and constraints. The integrated components of ridgeline, geology and vegetation, contrast with the legacy of extractive activities and define the visually sensitive elements of the precinct. Adherence to the buildable areas and supporting development controls will ensure the visual and environmental integrity of the precinct and individual allotments will be maintained.

Development within and variations to the designated buildable area must be supported by a comprehensive geotechnical survey conducted by a qualified geotechnical engineer which assesses the stability risk posed to both the ridge, proposed development and existing development. This information is to be submitted with the development application. In particular the geotechnical report should specifically assess:

- any unacceptable stability risk to the ridgeline posed by the development,
- any risk to existing and approved potential development, and
- appropriate measures to minimise this risk to both the ridgeline and the proposed development, including recommendations for acceptable setbacks.

In some cases, lots may be further excavated as a means to achieve the development potential on the land. Excavation depth shall be determined by the geotechnical assessment and subject to the maintenance of an adequate gravity feed to Council's stormwater system.

Geotechnical engineers are advised of the existence of cracking in the quarried caves within Lots 4 and 5 DP 778384. Verification of the extent of this cracking, and its influence upon development should be assessed in relation to ridgeline affected lots".

[illegible]

4. Restriction as to user

The easement for support and restriction as to user were created when the former Lot 2 DP 778384 was subdivided into two lots being Lots 100 and 101 DP 1066540. Lot 101 currently contains the four residential towers and Lot 100 is vacant and is subject to the current application.

- Lot 100 has the benefit of easements for services and electricity purposes over Lot 101.
- Lot 101 has the benefit of an easement for support and restriction as to user over Lot 100.
- The easement/restriction is on the eastern side of the site and is 8m wide and 53.82m in length.
- The easement restriction relates to rock anchor bolt support for the towers over that part of Lot 100 affected by the easement/restriction, but only for any works (including,

excavation, drilling, boring or similar works, or any structure) on Lot 100 below RL 55m AHD.

The proposed development has a lowest level of excavation/building of RL 59.8m AHD. The proposed development therefore, does not contravene the existing easement/restriction under the s88B Instrument.

5. Revised Clause 4.6 Variation

The applicant has submitted a revised Clause 4.6 submission (**Refer attachment 5**) which reflects the amended plans and revised Geotechnical Report.

4.3 Height of buildings

The maximum height permitted under the GLEP 2014 and GDCP 2013 is:

- RL 77m AHD inside the buildable area
- 0m outside the buildable area.

The GDCP Clause 4.11.7.4 establishes that the function of the buildable area is to clearly define areas suitable for development and that variations to the buildable area must be supported by a Geotechnical Survey.

A Geotechnical report has been submitted which addresses the GDCP 2013.

The amended proposed roof height is up to RL 80.85m AHD for Blocks 1 and 2, and RL 78.11m AHD for Block 3 at the northern end of the building. This is a reduction in height for Block 3 of 3.05m compared to the previous scheme. The variation in height to the development standard is 3.85m or 5% for Blocks 1 and 2, and 1.11m or 1.48% for Block 3. This variation for Block 3 is illustrated in the section below in figure 2.

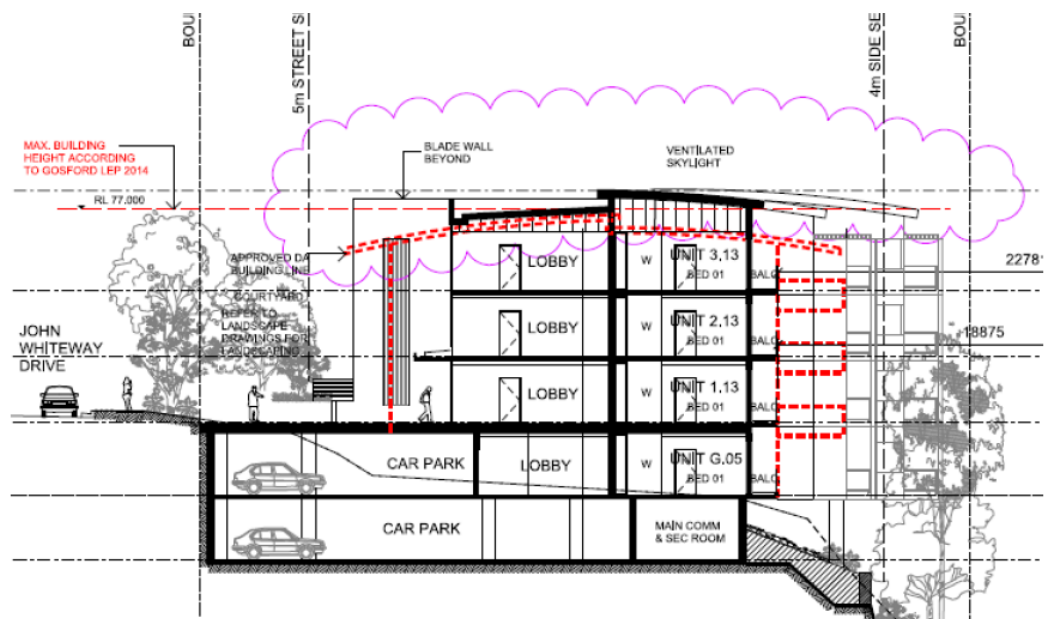


Figure 2 – Section 2 of the submitted plans showing height of lowered part of building

The portion of the building which exceeds the height limit is 875m² (13.1%) out of a 6677m² building. It is noted that the portion of the building which exceeds the height limit is 5.0m-15.3m to walls and 4.7m-10.2m to balconies from the western boundary. The setback area is proposed to include landscaping.

Figure 3 shows that part of the previously approved plans and the current application which encroach within the 0m height area. This shows that within the 0m area, the following is proposed:

- Unit GO1 – part of living, bed 03, terrace and balcony on ground floor level of Block 1
- Units 1.01, 2.01, 3.01 and 4.01 – part of balcony, living and bed 03
- Roof of Block 1.

The proposed extent of development within the 0m area is reduced compared to the previous approval.

The differences are minor and not significant.

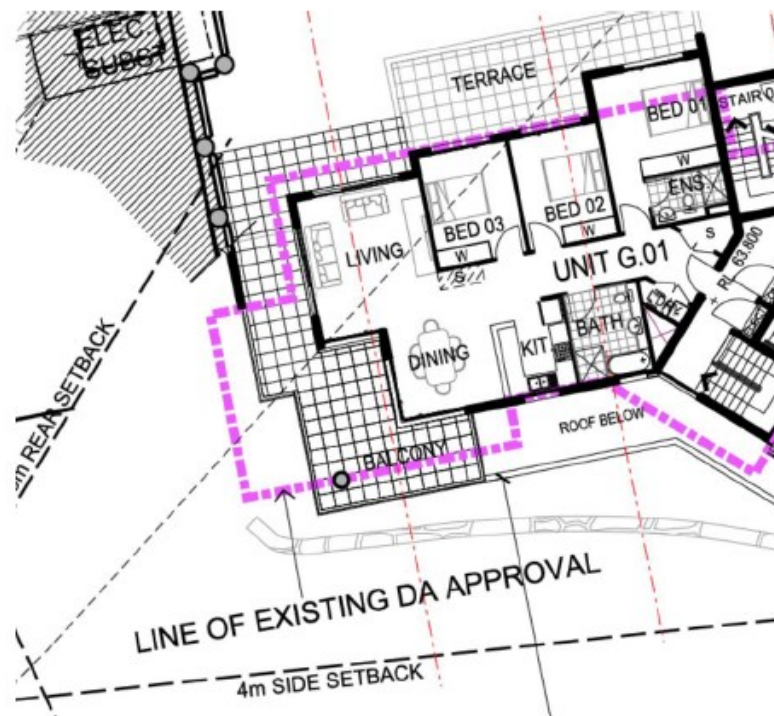


Figure 3 – comparison of approved (pink line) and proposed encroachment within 0m height area

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.

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: *Wehbe 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 80.85m 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 3-4 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 amended height of building is to be up to 80.85m AHD. The portion of the building which exceeds the height limit is 875m² (13.1%) out of a 6677m² building. It is noted that the portion of the building which exceeds the height limit is 5.075m-15.366m to walls and 4.76m-10.22m to balconies from the western boundary. The variation of 1.11m (1.4%) to 3.85m (5%) 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 setbacks to the street, good articulation, varying external materials and a modest roof form. The design incorporates various design elements which activate the design as viewed from the public domain.

The development does present as a 3-4 storey development when viewed from the public domain along John Whiteway Drive. The development will provide for a well articulated frontage which has clear entry points, pedestrian footpaths, appropriate street scale and landscaping.

(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 separated from the adjoining towers of The Sanctuary by between 18.1m to 27.8m (proposed Block 3 relative to the northern tower). The separation between Block 1 and the adjoining tower is 30.7m. Shadow diagrams for midwinter and the equinox have been submitted which illustrate the overshadowing generated by the proposal.

The separation distance is considered to comply with and is in excess of that required under the Apartment Design Guidelines (ADG). The variation to height does not result in any significant additional over shadowing.

(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 (82.4m)/crest on the western side of John Whiteway Drive. The proposed height of 80.85m provides for stepping of development in a manner which compliments the natural land form.

(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.

The development (77m) maintains views to Rumbalara Reserve.

(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. It also adds to the local apartment mix which responds to the needs of the community.

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 development is within walking distance of shops and restaurants in the centre which will support economic performance of Gosford. 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 development is of a human scale, provides for footpaths and passive surveillance of the street. The site is within walkable distances of shopping, services and public transport.

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.

Other Matters for Consideration

Under clause 7.3.13 of Chapter 7.3 of GDCP 2013- Public Notification of Development Applications, an amended development application is not required to be advertised or notified if in the opinion of Council the amendments are minor, or will result in no additional impacts.

The amendments have reduced the height and number of apartments. These changes will have no additional impacts on adjoining sites and result in less impact. Therefore advertisement/notification is not required.

Conclusion

The amended proposal complies with the planning controls of the GLEP 2014 except for 13% of the floor plate which exceeds the maximum height by between 1.4% to 5%.

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 deletion of the top floor level on Block 3 has reduced the impact on the adjoining towers to the east. The proposed variation to the height limit 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.

Additionally, the development seeks a GDCP 2013 variation in relation to building area, and side setbacks to habitable rooms.

The variations to building setbacks discussed in the previous report of 30 March 2017, 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 minor and generally 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 which also provides additional bushfire protection to the existing towers of The Sanctuary.

The applicant has addressed the 5 points raised by the JRPP when the matter was deferred at its meeting on 30 March 2017.

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. 24359829

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. 24359903
Basix Certificate	ECM Doc No. 20203637
Flora and Fauna Assessment	ECM Doc No. 20203640
Aboriginal 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. 24359872

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	b06	18/4/2017
ar-1200	Basement Plan	1	b07	18/4/2017
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	b05	18/4/2017
ar-1206	Roof plan	1	b05	18/4/2017
ar-2100	Sections	1	b04	18/4/2017
ar-2101	Cut and fill sections	1	b03	18/4/2017
ar-2300	Carpark ramp detail sections	1	b02	29/1/2015
ar-2500	Elevations sheet 1	1	b03	18/4/2017
ar-2501	Elevations sheet 2	1	b03	18/4/2017
ar-3300	Adaptable Unit typical layout	1	b02	29/1/2015
ar-3500	Site Coverage and deep soil calculation diagrams	1	b02	29/1/2015
ar-3501	FSR calculation diagrams	1	b03	18/4/2017
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/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 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	1/5/2017
Victor Lin and Associates P/L	Basix Certificate No 597786M_02	25/1/2015
Australian Bushfire Protection Planners P/L	Bushfire Protection Assessment	22/10/2015
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 REV 2	27/4/2017
dem architects	Shadow Diagrams 21 June	18/4/2017

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

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- b. Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
- 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.

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- 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.
 - 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:

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- 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 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 **\$401,608.00** 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:

3. PRIOR TO COMMENCEMENT OF ANY WORKS

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

- 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 area 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

- 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).
- 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 Satıcı 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'.

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- 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.
- 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.

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- 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*.

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- 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.
 - 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.

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- 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);
- 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-Architectural Plans







1. The proposed development is a residential development consisting of a multi-unit residential building (MURB) and a commercial building (CB). The MURB is a 10-storey building with a total floor area of 10,000 sqm. The CB is a 2-storey building with a total floor area of 2,000 sqm. The total floor area of the proposed development is 12,000 sqm.

2. The proposed development is located on a site of 10,000 sqm. The site is bounded by the M100 Motorway to the north, the M100 Motorway to the south, the M100 Motorway to the east, and the M100 Motorway to the west.

3. The proposed development is a residential development consisting of a multi-unit residential building (MURB) and a commercial building (CB). The MURB is a 10-storey building with a total floor area of 10,000 sqm. The CB is a 2-storey building with a total floor area of 2,000 sqm. The total floor area of the proposed development is 12,000 sqm.

4. The proposed development is located on a site of 10,000 sqm. The site is bounded by the M100 Motorway to the north, the M100 Motorway to the south, the M100 Motorway to the east, and the M100 Motorway to the west.

5. The proposed development is a residential development consisting of a multi-unit residential building (MURB) and a commercial building (CB). The MURB is a 10-storey building with a total floor area of 10,000 sqm. The CB is a 2-storey building with a total floor area of 2,000 sqm. The total floor area of the proposed development is 12,000 sqm.

6. The proposed development is located on a site of 10,000 sqm. The site is bounded by the M100 Motorway to the north, the M100 Motorway to the south, the M100 Motorway to the east, and the M100 Motorway to the west.

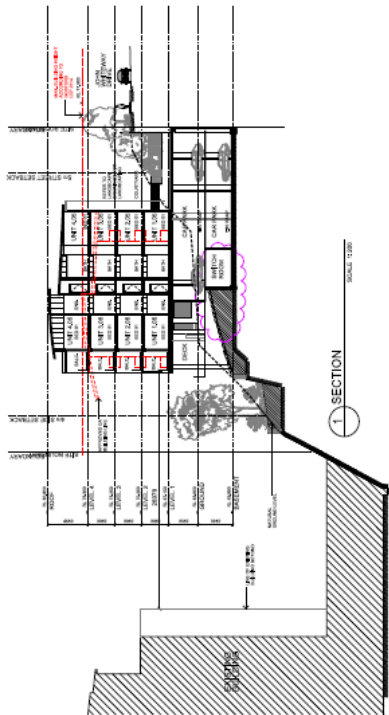
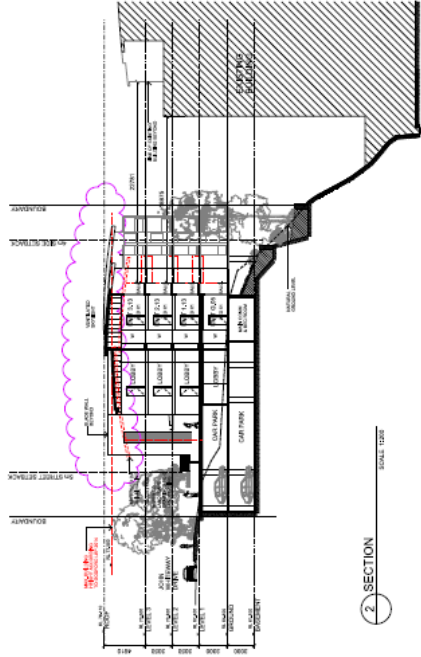
7. The proposed development is a residential development consisting of a multi-unit residential building (MURB) and a commercial building (CB). The MURB is a 10-storey building with a total floor area of 10,000 sqm. The CB is a 2-storey building with a total floor area of 2,000 sqm. The total floor area of the proposed development is 12,000 sqm.

8. The proposed development is located on a site of 10,000 sqm. The site is bounded by the M100 Motorway to the north, the M100 Motorway to the south, the M100 Motorway to the east, and the M100 Motorway to the west.

9. The proposed development is a residential development consisting of a multi-unit residential building (MURB) and a commercial building (CB). The MURB is a 10-storey building with a total floor area of 10,000 sqm. The CB is a 2-storey building with a total floor area of 2,000 sqm. The total floor area of the proposed development is 12,000 sqm.

10. The proposed development is located on a site of 10,000 sqm. The site is bounded by the M100 Motorway to the north, the M100 Motorway to the south, the M100 Motorway to the east, and the M100 Motorway to the west.

APPROVED DEVELOPMENT



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Architectural Services
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no.70 john whiteway drive
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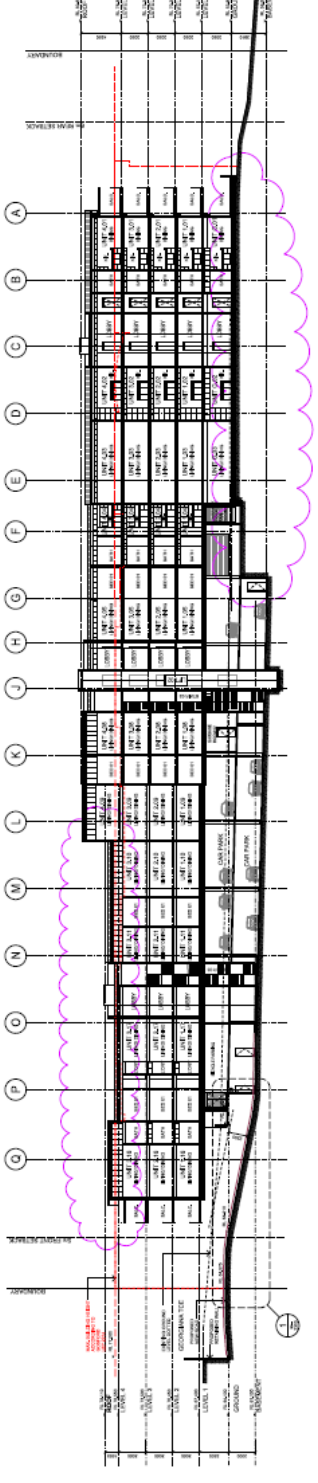
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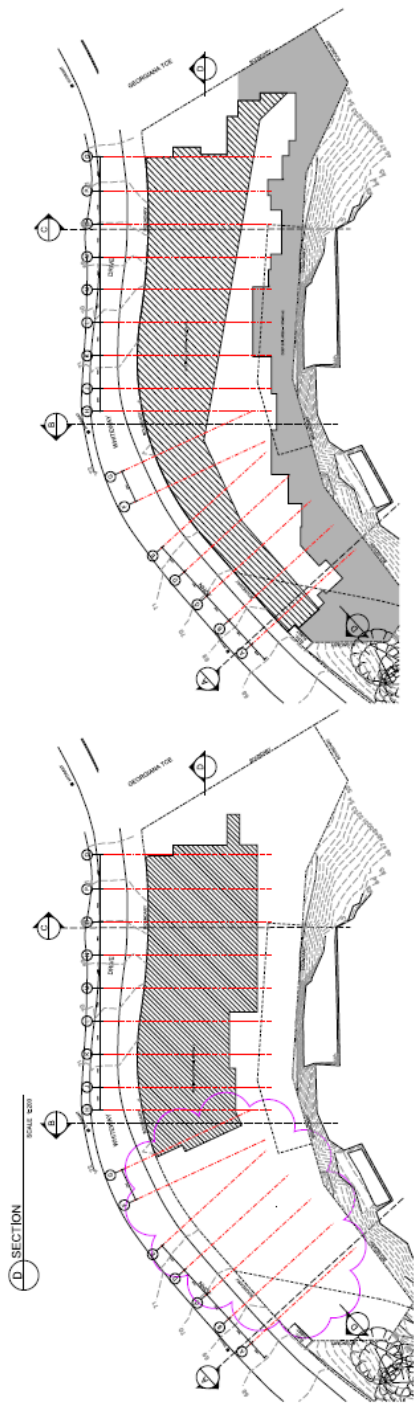
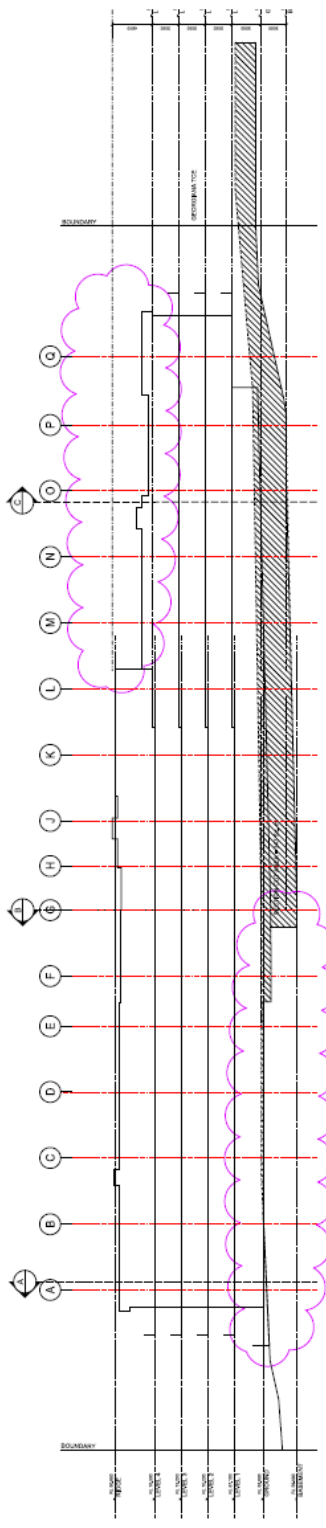
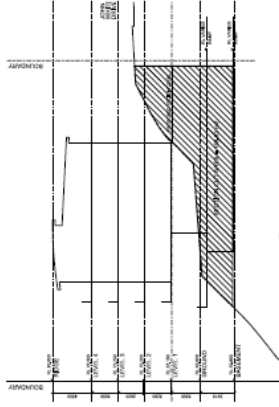
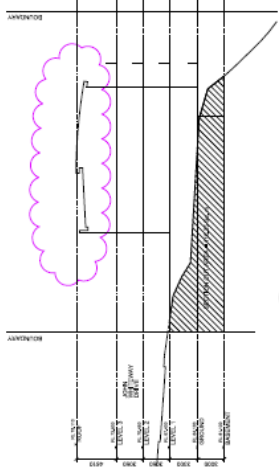
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CUT AND FILL PLAN
 SCALE 1:100

CUT AND FILL PLAN
 SCALE 1:100

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 no.70 john whiteway drive
 geistford
 Integrated Planning
 10/10/2024
 Newmarket NSW 2042
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1. The proposed development is shown in red on the site plan. The existing building is shown in grey. The site plan is located on sheet 1 of 2.

2. The proposed development is shown in red on the site plan. The existing building is shown in grey. The site plan is located on sheet 1 of 2.

3. The proposed development is shown in red on the site plan. The existing building is shown in grey. The site plan is located on sheet 1 of 2.

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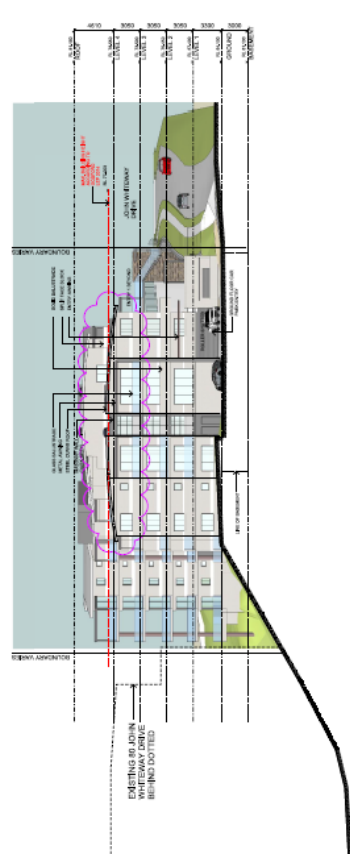
6. The proposed development is shown in red on the site plan. The existing building is shown in grey. The site plan is located on sheet 1 of 2.

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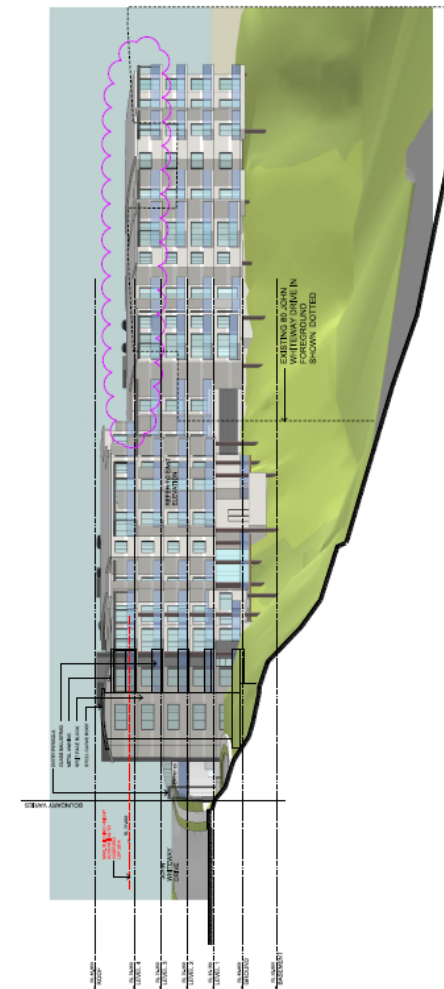
8. The proposed development is shown in red on the site plan. The existing building is shown in grey. The site plan is located on sheet 1 of 2.

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10. The proposed development is shown in red on the site plan. The existing building is shown in grey. The site plan is located on sheet 1 of 2.



1 NORTH ELEVATION



2 SOUTH ELEVATION

dem

residential development

lot 100, dp 1066540
no.70 john whiteway drive
geesford

Integral Environmental
555A King Street
Newtown NSW 2042

elevations
sheet 2

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Attachment 3-June Shadow Diagrams



No. 70 John Whiteway Drive, Gosford – Residential Development

DATE: 18-04-17
DRAWN BY: NTS
CHECKED BY: arsk301
PROJECT NO: 4366-00
SCALE: B
PROJECT NAME: No. 70 John Whiteway Drive, Gosford – Residential Development
CLIENT: [REDACTED]
DESIGNER: [REDACTED]
PLANNING, urban design, architecture,
landscape architecture, interior design
T: (02) 8566 6000 F: (02) 8566 6111
E: sydney@dem.com.au

Shadow Diagram
9am 21 Jun

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planning, urban design, architecture,
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proj no
4368-00
rev no
E

date
18-04-17
NTS
arsk302

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10am 21 Jun

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Shadow Diagram
11am 21 Jun

planning, urban design, architecture,
landscape architecture, interior design
level 8 15 holt street chateau nsw 2067
t: (02) 8966 6000 f: (02) 8966 6111
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price
4386400
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date
18-04-17
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landscape architecture, interior design
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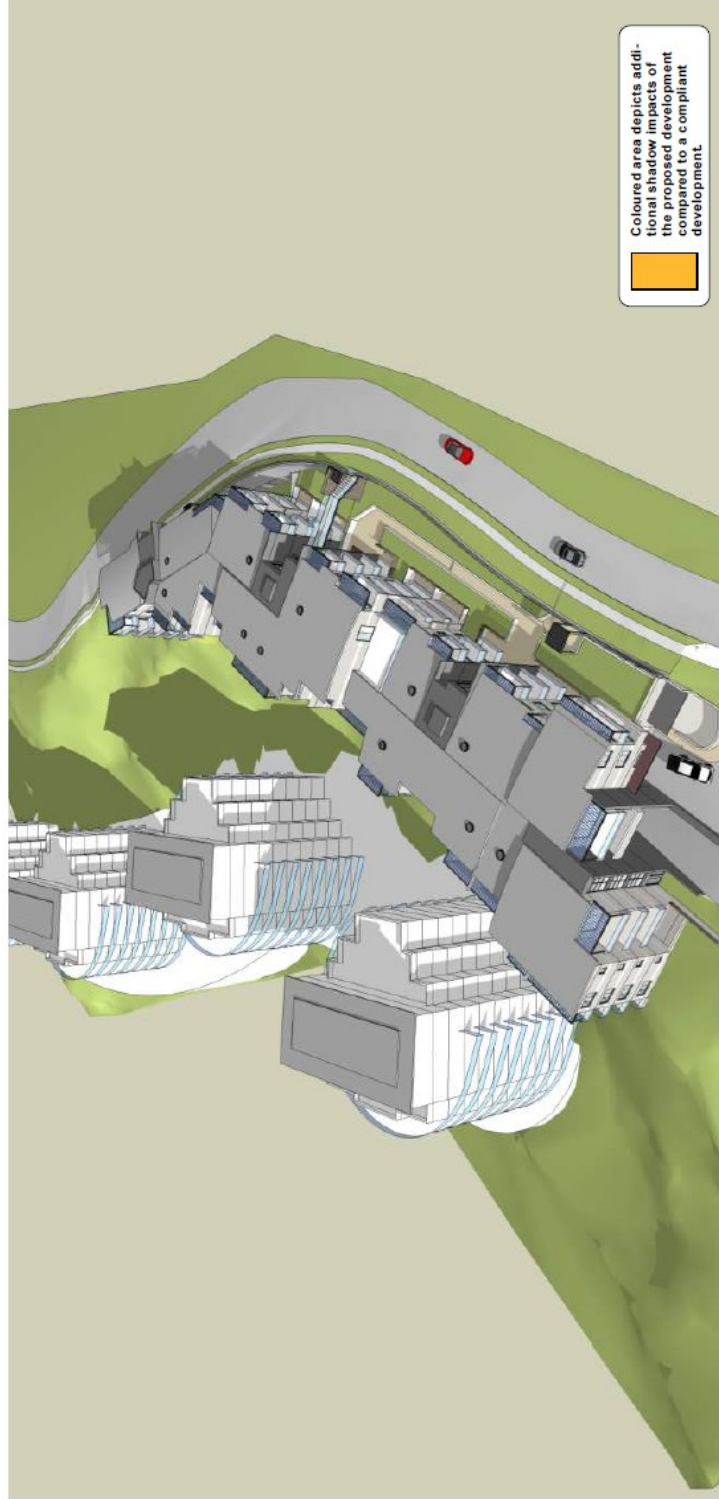
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Shadow Diagram—Perspective
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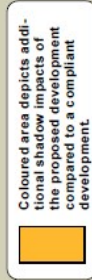
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Shadow Diagram—Perspective
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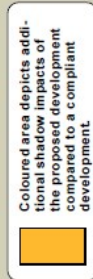
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Shadow Diagram—Perspective
11am 21 Jun

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No. 70 John Whiteway Drive, Gosford – Residential Development

Shadow Diagram—Perspective
12pm 21 Jun

**planning, urban design, architecture,
landscape architecture, interior design**
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t: (02) 8566 6000 f: (02) 8566 6111
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scale	part no.
NTS	4366-00
drawg no.	rev no.
arsk5311	E

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No. 70 John Whiteway Drive, Gosford – Residential Development

plan, urban design, architecture,
landscape architecture, interior design
level 3 - 15 hup street chateau new 2007
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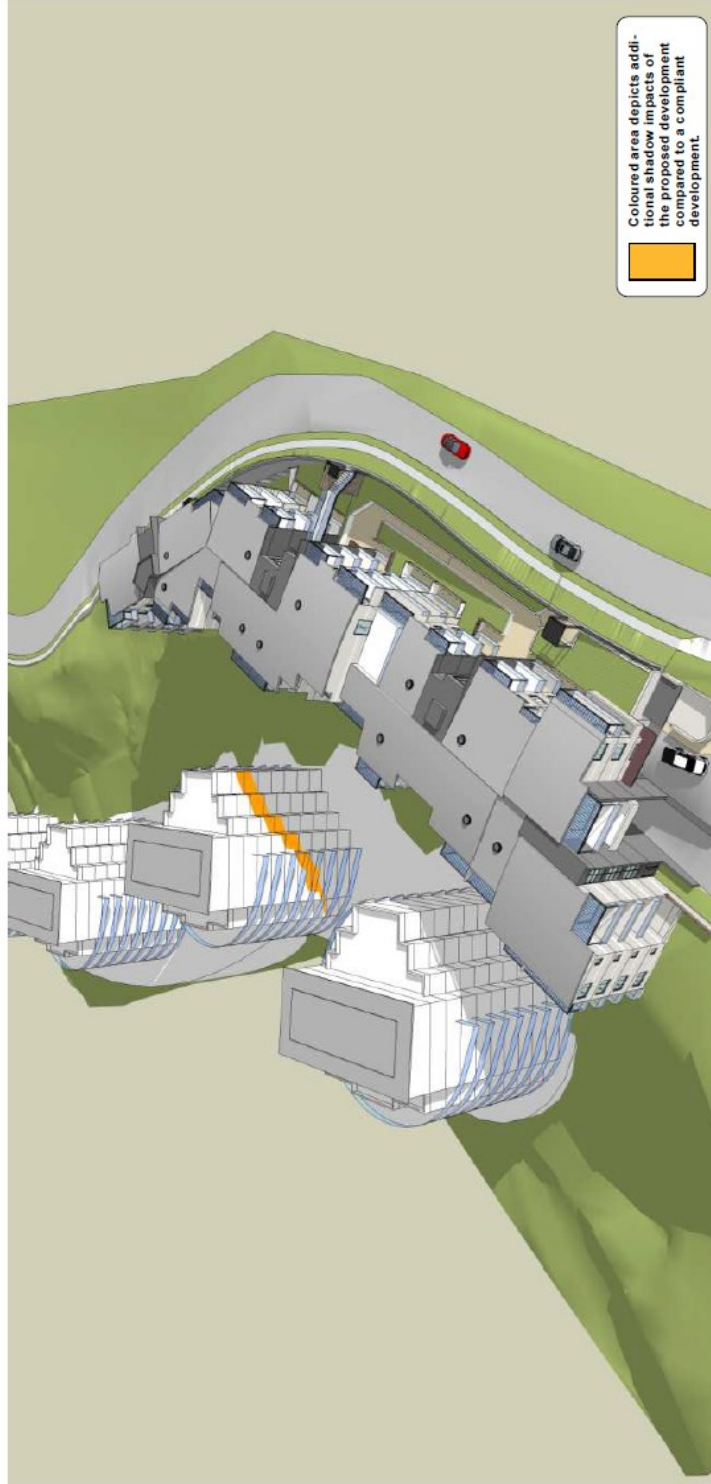
proj no. 4366-00
rev no. E
date 18-04-17
NTS
designer ark5312

Shadow Diagram—Perspective
1pm 21 Jun

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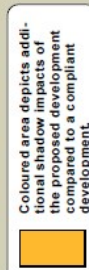
No. 70 John Whiteway Drive, Gosford – Residential Development

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ref: 4366-00
date: 18-04-17
site: NTS
author: arsk5313

Shadow Diagram—Perspective
2pm 21 Jun

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No. 70 John Whiteway Drive, Gosford – Residential Development

Shadow Diagram—Perspective
3pm 21 Jun

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date	18-04-17	size	NTS	prod no.	4366-00
				rev no.	E
			chg no.	arsk5314	

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Attachment 3-Section 88B Instrument & DP 1066540



tasc conveyancing

PO Box 131, Georges Hall NSW 2198
Fax: (02) 8323 4276
Mob: 0418 813 277
Mob: 0487 770 486

Our Ref: SF:AA:Integral
Direct Emails:
sam@tascconveyancing.com.au
annmarie@tascconveyancing.com.au

27 April 2017

DEM (Aust) Pty Ltd
Level 8, 15 Help Street
CHATSWOOD NSW 2067

Dear Sirs

RE: Development Application - 70 John Whiteway Drive, Gosford
Confirmation of Existence of Restriction as to Use

Reference is made to the Record of Deferral issued by the Hunter and central and Joint Regional Planning Panel on 30 March 2017 (*Record of Deferral*) and, in particular to Item 4 "*Confirmation there is no easement or Restriction to user under the Conveyancing Act (Section 88B)...*" of the Terms of Deferral.

We confirm that easements and restrictions do exist on the subject site, namely an easement for electricity and an easement for services that benefit this site and, an Easement for Support and to Permit Encroaching Structure to Remain and a restriction as to use which burden this site – see attached Section 88B Instrument.

The Amended DA Plans (see attached schedule) provided to us note that the lowest basement level of the proposed development is set at RL 59.8 AHD. Accordingly, we confirm that the Amended Plans do not contravene the restriction that applies to the subject site, namely the restriction fourthly referred to in the attached Section 88B Instrument being:

No excavation, drilling, boring or similar works to be undertaken on that part of the lot burdened below a level of RL 55 AHD nor shall any structure of any kind be constructed installed or built below that level.

Reference is also made to the updated Report of Pells Sullivan Meynibk dated 27 April 2017 which reviews the provisions of Clause 4.1.7.4 of the Gosford Development Control Plan relative to the respective provisions and other matters stated in the attached instrument pursuant to Section 88B of the Conveyancing Act 1919.

Yours faithfully,
TASC CONVEYANCING

TASC Conveyancing (NSW) Pty Ltd ABN 49 611 116 619
Licence No: 5006061
Proud members of the Australian Institute of Conveyancers

SCHEDULE

- ar--0200[B06]18Apr2017 - Site Plan
- ar--1200[B07]18Apr2017 - Basement Floor Plan
- ar--1201[B06]16Sep2016 - Ground Floor Plan
- ar--1202[B05]16Sep2016 - Level 1 Floor Plan
- ar--1203[B04]16Sep2017 - Level 2 Floor Plan
- ar--1204[B04]16Sep2016 - Level 3 Floor Plan
- ar--1205[B05]18Apr2017 - Level 4 Floor Plan
- ar--1206[B05]18Apr2017 - Roof Plan
- ar--2100[B04]18Apr2017 - Sections
- ar--2101[B03]18Apr2017 - Cut/Fill Sections
- ar--2300[B02]29Jan2015 - Carpark Ramp Detail Sections
- ar--2500[B03]18Apr2017 - Elevations Sheet 1
- ar--2501[B03]18Apr2017 - Elevations Sheet 2
- ar--3300[B02]29Jan2015 - Adaptable Units
- ar--3500[B02]29Jan2015 - Site Coverage & Deep Soil calculation diagrams
- ar--3501[B03]18Apr2017 - FSR Calculation Diagrams
- arsk5301 - 5314[E]18Apr2017 - Shadow Diagrams
- arsk9001 - 9004[D]17Apr2017 - 3D perspectives

INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED
 PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 1 of ⁵4 Sheets)

Lengths are in metres

DP1066540

Subdivision of Lot 2 in
 Deposited Plan 778384 covered by
 Council Certificate No. 6614
 of 02.04.2004

PART 1

Full name and address of
 Proprietor of the land.

Estate Property Holdings Pty Limited
 P.O Box 6011
 BAULKHAM HILLS B.C. 2153

1. Identity of Easement firstly
 referred to in the abovementioned
 plan

Easement for Electricity Purposes
 Variable Width

Schedule of lots etc affected

Lot burdened

Lot benefited

101

100

2. Identity of Easement secondly
 referred to in the abovementioned
 plan

Easement for Services
 Variable Width

Schedule of lots etc affected

Lot burdened

Lot benefited

101

100

3. Identity of Easement thirdly
 referred to in the abovementioned
 plan

Easement for Support
 and to Permit Encroaching
 Structure to Remain 8 wide

Schedule of lots etc affected

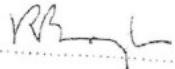
Lot burdened

Lot benefited

100

101

Approved by: Gosford City Council.....

Authorised Person : 

INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED
PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 2 of ⁵ Sheets)

Lengths are in metres

DP1066540

Subdivision of Lot 2 in
Deposited Plan 778384 covered by
Council Certificate No. 664
of 02-04-2004

PART 1 (Cont'd)

4. Identity of Restriction fourthly
referred to in the abovementioned
plan

Restriction as to Use

Schedule of lots etc affected

Lot burdened

Lot benefited

100

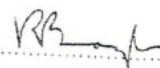
101

PART 2

EASEMENT FOR SUPPORT AND TO PERMIT ENCROACHING STRUCTURE TO
REMAIN THIRDLY REFERRED TO IN THE ABOVEMENTIONED PLAN

1. The owner of the lot benefited:
- (a) may insist that the parts of the structure (being rock anchor bolts acting as support for the lot benefited and structures erected upon it, "the encroaching structure") on the lot benefited which, when this easement was created, encroached on the lot burdened remain, but only to the extent they are within the site of this easement, and
 - (b) must keep the encroaching structure in good repair and safe condition, and
 - (c) may from time to time install and maintain on the lot burdened, but only within the site of the easement, whatever further rock anchor bolts that are reasonably necessary to support the surface or sub-surface of the lot benefited or any part of it or any structural works on the lot benefited and paragraphs 1(a) and (b) above and 3 below shall apply to such further rock anchor bolts as may be installed, and

Approved by: Gosford City Council.....

Authorised Person : 

INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED
PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 2 of ⁵ Sheets)

Lengths are in metres

DP1066540

Subdivision of Lot 2 in
Deposited Plan 778384 covered by
Council Certificate No. 6614
of 02.04.2004

PART 1 (Cont'd)

4. Identity of Restriction fourthly
referred to in the abovementioned
plan

Restriction as to Use

Schedule of lots etc affected

Lot burdened

Lot benefited

100

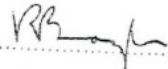
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PART 2

EASEMENT FOR SUPPORT AND TO PERMIT ENCROACHING STRUCTURE TO
REMAIN THIRDLY REFERRED TO IN THE ABOVEMENTIONED PLAN

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 - (b) must keep the encroaching structure in good repair and safe condition, and
 - (c) may from time to time install and maintain on the lot burdened, but only within the site of the easement, whatever further rock anchor bolts that are reasonably necessary to support the surface or sub-surface of the lot benefited or any part of it or any structural works on the lot benefited and paragraphs 1(a) and (b) above and 3 below shall apply to such further rock anchor bolts as may be installed, and

Approved by: Gosford City Council.....

Authorised Person : 

INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED
PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 3 of ⁵ Sheets)

Lengths are in metres

DP1066540

Subdivision of Lot 2 in
Deposited Plan 778384 covered by
Council Certificate No. 6614
of 02.04.2004

PART 2 (Cont'd)

- (d) may do anything reasonably necessary for those purposes, including:
- (i) entering the lot burdened, and
 - (ii) taking anything on to the lot burdened, and
 - (iii) carrying out work, and
 - (iv) maintaining, removing, replacing and tensioning the rock anchor bolts.
2. In exercising those powers, the owner of the lot benefited must:
- (a) ensure all work is done properly, and
 - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
 - (c) restore the lot burdened as nearly as is practicable to its former condition, and
 - (d) make good any collateral damage, and
 - (e) cause as little damage as practicable to the lot burdened.
3. The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the encroaching structure including the owner of the lot burdened must not carry out any excavation work on that part of the lot burdened below a depth of RL55AHD.

Approved by: Gosford City Council.....

Authorised Person : 

INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED
PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 4 of ⁵ Sheets)

Lengths are in metres

DP1066540

Subdivision of Lot 2 in
Deposited Plan 778384 covered by
Council Certificate No. 6614
of 02.04.2004

TERMS OF RESTRICTIONS AS TO USE FOURTHLY REFERRED TO IN THE
ABOVEMENTIONED PLAN

No excavation, drilling, boring or similar works shall be undertaken on that part of the lot
burdened below a level of RL55AHD nor shall any structure of any kind be constructed,
installed or built below that level.

NAME OF PERSON OR AUTHORITY EMPOWERED TO RELEASE, VARY OR MODIFY
THE RESTRICTIONS AS TO USE FOURTHLY REFERRED TO IN THE
ABOVEMENTIONED PLAN

Estate Property Holdings Pty Limited and such other person or company nominated by
Estate Property Holdings Pty Limited in writing for that purpose and if Estate Property
Holdings Pty Limited is not in existence and there shall be no such person or company so
nominated then the person for the time being who is the registered proprietor of the land
having the benefit of these restrictions.

The Common Seal of Estate Property Holdings
Pty Limited was affixed to this document in
accordance with its articles of association
in the presence of:

Signature of Secretary

Samuel Pogson
Name of Secretary - please print

Signature of Director

MURRAY JOHN LAPHAM
Name of Director - please print



Signature of Witness

Name of Witness (BLOCK LETTERS)

Address and Occupation of Witness

Approved by: Gosford City Council.....

Authorised Person : [Signature]

INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE
CREATED PURSUANT TO S.88B OF THE CONVEYANCING ACT 1919

(Sheet 5 of 5 sheets)

The Common Seal of Australian Capital
Reserve Limited was affixed to this
document in accordance with its articles of
association in the presence :

.....
Signature of Secretary

.....
Name of Secretary- please print



.....
Signature of Director

.....
Name of Director

The Common Seal of Capital Finance
Australia Limited was affixed to this
document in accordance with its articles of
association in the presence :

.....
Signature of Secretary

.....
Name of Secretary- please print

.....
Signature of Director

.....
Name of Director

EXECUTED BY CAPITAL FINANCE
AUSTRALIA LIMITED ACN 002 663 136
BY ITS DULY APPOINTED ATTORNEYS

.....
BETTY LEWIS

.....
MADY COUSSET

Full Names

PURSUANT TO POWER OF
ATTORNEY OF WHICH THEY HAVE NO
NOTICE OF REVOCATION
IN THE PRESENCE OF:

.....
Witness VERA TAM

.....
Signature
.....
Signature

no 965
3004 4288

DP1066540



Attachment 4-Clause 4.6 Submission

INGHAM PLANNING Pty Ltd

REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF THE LEP (REVISED APRIL 2017)

This request relates to amended plans required following consideration of the DA by the Hunter and Central Coast Planning Panel. The Panel required the deletion of the top level of Block 3 (Units 4.10-4.17). The amended plans are indicated in the following Schedule:

- ar-0200[B06]18Apr2017 - Site Plan
- ar-1200[B07]18Apr2017 - Basement Floor Plan
- ar-1201[B06]16Sep2016 - Ground Floor Plan
- ar-1202[B05]16Sep2016 - Level 1 Floor Plan
- ar-1203[B04]16Sep2017 - Level 2 Floor Plan
- ar-1204[B04]16Sep2016 - Level 3 Floor Plan
- ar-1205[B05]18Apr2017 - Level 4 Floor Plan
- ar-1206[B05]18Apr2017 - Roof Plan
- ar-2100[B04]18Apr2017 - Sections
- ar-2101[B03]18Apr2017 - Cut/Fill Sections
- ar-2300[B02]29Jan2015 - Carpark Ramp Detail Sections
- ar-2500[B03]18Apr2017 - Elevations Sheet 1
- ar-2501[B03]18Apr2017 - Elevations Sheet 2
- ar-3300[B02]29Jan2015 - Adaptable Units
- ar-3500[B02]29Jan2015 - Site Coverage & Deep Soil calculation diagrams
- ar-3501[B03]18Apr2017 - FSR Calculation Diagrams
- arsk5301 - 5314[E]18Apr2017 - Shadow Diagrams
- arsk9001 - 9004[D]17Apr2017 - 3D perspectives

The majority of the site is subject to a height control of RL77m (see **Figure 1**). The proposal achieves a maximum height of RL80.85m (at the northern end of Block 2) which is a 3.85m breach of this control. The lift overruns are slightly higher but being located to the western side of the building, have minimal impact. It is noted that the section of the building subject of the Panel requirement to delete the top level is now far more compliant with the height control. As indicated on Section 2 of the submitted drawings (see **Figure 2**), the ridge of this part of the building is now only 1.1m above the height control and the eastern edge of the roof (where overshadowing is generated from) is compliant. This ensures that the Panel's requirement that the amendments do not create additional overshadowing of the adjoining buildings, is achieved. In addition it is noted that the amended DA is fully compliant with the provisions of SEPP 65 which requires increased floor to ceiling heights to those required when the original active Development Consent was approved. The requirement to satisfy SEPP 65 design excellence provisions provides an amenity benefit to the development without any flow on additional overshadowing impacts to the existing residential tower building to the east.

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 3**).

A revised Geotechnical assessment titled "70 John Whiteway Drive Geotechnical Assessment Report" dated 27th April has been prepared by Pells Sullivan Meynink Pty Ltd has been submitted with the amended DA which now expressly addresses the revised DA plans acknowledging the changes to the building footprint compared to the current active Development Consent on the subject site and comprehensively addresses the matters required to be addressed in Part 4.1.7.4 of GDCP 2013. This report concludes that the proposed amended DA plans are in accordance with the provisions of the above mentions GDCP Part 4.1.7.4 requirements.

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Figure 1 – LEP Height Map

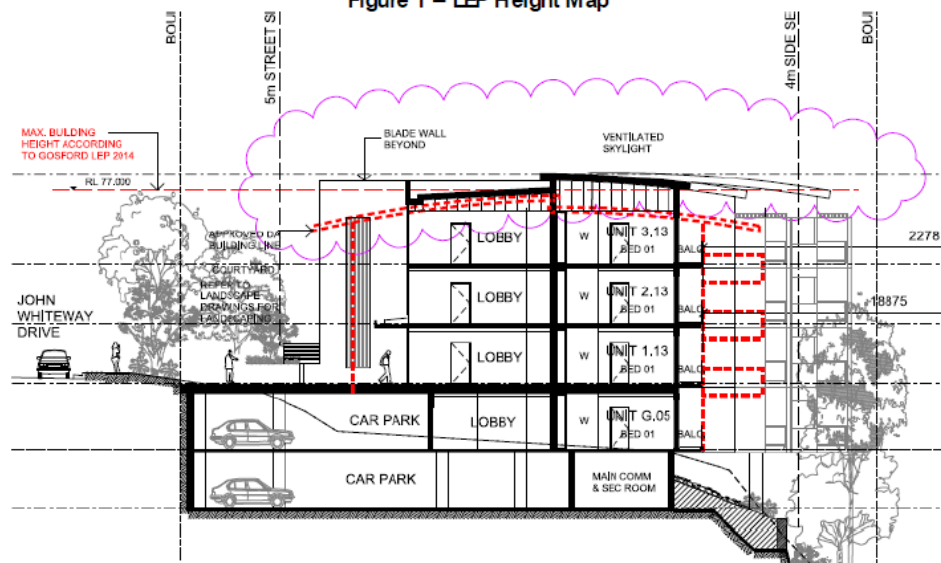


Figure 2 – Section 2 of the submitted plans showing height of lowered part of building

The floor plan for Unit G.01 includes the following rooms and features:

- Rooms:** BED 01, BED 02, BED 03, LIVING, DINING, KITCHEN (KIT), BATH, ENSURE (ENS), and a BALCONY.
- Setbacks:** A 4m SIDE SETBACK is indicated at the bottom. A 2m REAR SETBACK is indicated on the left side.
- Other Features:** A TERRACE is located above the unit. A ROOF BELOW is indicated below the unit. A dashed line represents the LINE OF EXISTING DA APPROVAL.

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

- 77 -

INGHAM PLANNING Pty Ltd

- (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

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achieved. Therefore the proposed building height assists in encouraging a higher quality urban form than has been previously approved.

Further, as requested by the Newcastle and Central Coast Planning Panel, the proposal has been amended to delete the upper level of the northern part of the building. This assist in achieving the Panel's desire for a higher quality urban form.

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. The removal of the upper level in the northern part of the building reduces impacts on neighbouring buildings. The living areas and private open space of the adjoining development will maintain solar access in accordance with the ADG.

- (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. 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 in certain areas because of potential geotechnical issues. The DCP provides provisions in relation to this matter:

Development within and variations to the designated buildable area must be supported by a comprehensive geotechnical survey conducted by a qualified geotechnical engineer which assesses the stability risk posed to both the ridge, proposed development and existing development. This information is to be submitted with the development application. In particular the geotechnical report should specifically assess:

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- any unacceptable stability risk to the ridgeline posed by the development,
- any risk to existing and approved potential development, and
- appropriate measures to minimise this risk to both the ridgeline and the proposed development, including recommendations for acceptable setbacks.

In some cases, lots may be further excavated as a means to achieve the development potential on the land. Excavation depth shall be determined by the geotechnical assessment and subject to the maintenance of an adequate gravity feed to Council's stormwater system.

In this case a variation of the 0m height limit is justified as the revised geotechnical report specifically addresses the above DCP requirements and concludes that there will be no unacceptable risks from the proposed encroachment. This ensures that the objectives of the standard can be met in satisfaction of point 1 of the *Wehbe* test.

Test 4 – abandonment of the height standard

The approved scheme provided geotechnical justification as to why the development should be permitted within the 0m area. The extent of the approved encroachment at the lowest building level is compared to that now proposed at **Figure 2**. As can be seen, in some cases the encroachment is reduced, in others it is increased. The fact that Council has previously approved development in this area goes to point 4 of the *Wehbe* test in that council abandoned the application of the standard previously. Whilst there is an overall increase in the encroachment, it is not significant and has been appropriately justified by the geotechnical expert.

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

Further lowering of the building to achieve compliance would result in either the developer relying on the existing development consent or reversing some of the increase setbacks that have been provided. The existing consent was approved some time ago the level of amenity and architectural quality is not as good as is now proposed. The overall planning outcome is considered to be worse if the additional height is not achieved.

Lack of impact

As noted above the (part) additional level will result in the building having a 3-4 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 unreasonably increase the prominence of the building when viewed from surrounding areas as detailed in the Visual Impact Assessment at **Appendix D** of the SEE. This has been further reduced through the deletion of the upper level of the northern building required by the Planning Panel. This amendment completely removes any additional impact on adjoining Tower A compared to the approved scheme.

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Tower B is still overshadowed to a small degree as can be seen in the submitted amended shadow diagrams. However all but two apartments will maintain the minimum 2 hours solar access required. One of the ground floor and one of the first floor apartments are already overshadowed by Tower A between 9am and 11am making it difficult to achieve compliance. The proposal has a maximum impact only 20 minutes on the apartments after this time, which is considered a good outcome given the topography and the relationship between the sites.

Given that Tower A will be unaffected by the proposal (beyond that approved) and that the vast majority of apartments will retain well over 2 hours solar access, this minor level of additional impact is considered reasonable.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant 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.*

INGHAM PLANNING Pty Ltd

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
1st May 2017

Attachment 5- Geotechnical Assessment Report



Pells Sullivan Meynink

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Rock-Soil-Water

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Our Ref: PSM669-002L REV2

27 April 2017

DEM (Aust) Pty Ltd
Level 8, 15 Help Street
CHATSWOOD NSW 2067

ATTENTION: EDMOND TANG
By email: Edmond.tang@dem.com.au

Dear Edmond

**RE: 70 JOHN WHITEWAY DRIVE, GOSFORD
GEOTECHNICAL ASSESSMENT REPORT**

1 INTRODUCTION

Pells Sullivan Meynink (PSM) is pleased to present our geotechnical assessment report for the proposed development at 70 John Whiteway Drive, Gosford, NSW. The work was undertaken in accordance with our proposal letter PSM669-001L, dated 26 February 2015.

PSM understand the following about the proposed development site:

- A Development Application (DA) was submitted to Gosford City Council (GCC) and approved in 2003 for the development of a residential flat building on Lot 2 (now Lot 100) John Whiteway Drive, referred to as Gosford Cliff Apartments. PSM provided a geotechnical report to assist with the DA (Ref: PSM669.R1 dated 2 April 2003).
- A new DA has recently been submitted for the site, with an additional residential floor and an additional level of basement car park within the extent of the currently approved building footprint
- GCC has requested additional information in the form of a Geotechnical Assessment Report, to be prepared in accordance with Chapter 6.4 of Development Control Plan (DCP) 2013.
- DEM have amended the proposed building footprint. PSM were advised that the proposed DA design reduces the extent of previously approved active DA building footprint along the eastern and southern boundaries bounding the existing adjacent residential towers.

-
- The building amended architectural DA drawings are detailed in the following documents
 - i. ar-0200 REV b06, dated 18/04/2017
 - ii. ar-1200 REV b07, dated 18/04/2017
 - iii. ar-1201 REV b06, dated 16/09/2016
 - iv. ar-1202 REV b05, dated 16/09/2016
 - v. ar-1203 REV b04, dated 16/09/2016
 - vi. ar-1204 REV b04, dated 16/09/2016
 - vii. ar-1205 REV b05, dated 18/04/2017
 - viii. ar-1206 REV b05, dated 18/04/2017
 - ix. ar-2100 REV b04, dated 18/04/2017
 - x. ar-2101 REV b03, dated 18/04/2017
 - xi. ar-2300 REV b02, dated 29/01/2015
 - xii. ar-2500 REV b03, dated 18/04/2017
 - xiii. ar-2501 REV b03, dated 18/04/2017
 - xiv. ar-3300 REV b02, dated 29/01/2015
 - xv. ar-3500 REV b02, dated 29/01/2015
 - xvi. ar-3501 REV b03, dated 18/04/2017

The advice provided in this letter is applicable to the proposed development as documented in the drawings listed above.

This letter has been updated to address the relevant conditions in the following documents:

- Condition 3 (Part 2 – Easement for support and to permit encroaching structure to remain thirdly referred to in the abovementioned plan) of *“Instrument setting out terms of easement intended to be created pursuant to section 88B of the conveyancing act, 1919”*, dated 2 April 2004.
- Section 4.1.7.4, (Part b. – Buildable area) of Gosford Development Control Plan (DCP) 2013 *“Special Area - John Whiteway Drive Precinct”*.

2 DESKTOP STUDY

In 2003, PSM completed a report relating to the geotechnical conditions for the design and construction of the Gosford Cliff Apartments on Lot 2, John Whiteway Drive (Ref: PSM669.R1 dated 2 April 2003).

Test pits and boreholes were completed in 1999 for an investigation across the whole site; further investigation was completed in 2002 for a proposed retaining wall at the western boundary of the site. The borehole and test pit logs were compiled with the 2003 report and are included with this geotechnical assessment report in Attachment A.



Recommendations were also provided relating to the design of foundations and retaining walls for the construction of the Cliff Apartments and are, in the main, repeated herein.

The subsurface conditions outlined in this report were inferred from the factual data obtained during the 1999 and 2002 site investigation works. The location of the completed boreholes and test pits relevant to this geotechnical assessment are illustrated in Figure 2.

3 SCOPE OF WORK

PSM understand that the site is mapped in a Category 2 – Medium Hazard Landslip Area (Ref: GCC DA No. 47044/2015 Additional Information Request, dated 10 February 2015).

DCP 2013 Chapter 6.4 (Geotechnical Requirements for Development Applications) describes a Category 2 site to be *“Land area of potential landslip hazard and possible soil creep or a moderately steep soil covered slope.”*

A Class 2 geotechnical report is therefore required as part of the development application process. The requirements for a Class 2 report, sourced from Table R2 in DCP 2013, are set out below.

**TABLE R2
MINIMUM INFORMATION IN GEOTECHNICAL REPORT**

ITEM	DESCRIPTION	REPORT	
		Class 1	Class 2
1	A description of the assessment process adopted and the work undertaken to provide the assessment [See Note 1].	✓	✓
2	A site description, including vegetation, bedrock outcrops, site seepage & groundwater, existing development, etc.	✓	✓
3	Description of site substrata and identification of the geological formations present in accordance with standard geological practice [eg. Terrigal Formation (Rnt) of the Narrabeen Group].	✓	✓
4	The depth to weathered bedrock over the site generally and within the building area in particular.	✓	✓
5	The site slopes observed [expressed in degrees] and maximum site slope. Delineation of site into areas of common slope and measured slope angles in the various areas.	✓	✓
6	A site plan indicating relevant geological features & location of proposed development on the land relative to those features [preferably at a scale of 1:200].	✓	
7	At least one geological section through the site and proposed development [preferably at a scale of 1:200]	✓	

ITEM	DESCRIPTION	REPORT	
		Class 1	Class 2
8	Logs of boreholes put down to determine depth of soil/weathered rock strata. The borehole to penetrate the site strata to bedrock and at least one borehole to be within the building area of the site.	✓	
9	A "Risk Assessment" of the various parts of the land in accordance with the Australian Geomechanics Society Guidelines – March 2000 or as subsequently amended, delineation of the land into areas where different degrees of risk are determined, together with a site classification in accordance with As 2870- 1996 [or latest amended edition].	✓	✓
10	A statement of the effect of the proposed site development on the site, and adjoining land, stability.	✓	✓
11	An assessment of the stability of the land immediately surrounding and above/below the site and possible effects of instability [eg. a rock fall] on the adjoining/nearby land on the site.	✓	✓
12	A descriptive Geotechnical Report which includes: • Sufficient detailed information and recommendations for a structural engineer and/or civil engineer to provide a design for the development to accommodate any instability, or potential instability, considered to affect the land and/or related land. • A table providing the specific data required in items 3, 5 & 9 in the format set out in Table R3. • Any items that are required to be inspected by the Geotechnical Engineer during the course of construction together with details of any further geotechnical studies required at the site.	✓	✓

4 FIELDWORK

A visual appraisal of the site was undertaken on 4 March 2015, to confirm surface conditions and potential stability hazards.

The site surface conditions observed during the site visit are discussed in Section 5.2.

The observed site stability hazards are discussed in Section 6.2.

Selected photos from the site visit are included in Figure 3.

5 SITE

5.1 Geological Setting

The 1:100,000 Gosford – Lake Macquarie Geological Map (2003) indicates the site to be underlain by the Terrigal Formation (Rnt) of the Narrabeen Group. This formation comprises interbedded laminate, shale and quartz to lithic quartz sandstone, with minor red claystone.

5.2 Surface Conditions

The site comprises a relatively flat, vegetated strip of land at the top of a hill overlooking Gosford city. A steel-wire fence surrounds what is assumed to be the extent of the development site.

The eastern boundary is located at the edge of an existing residential complex consisting of four (4) towers of units. A steep (50° to 60°) slope with some sub-vertical rock faces separates the existing residential complex and the proposed development site. The proposed development site is approximately 20 m above the basement level of the existing residential complex.

The steep slope comprises shotcrete face support and an open concrete drain at the crest, as well as exposed bedrock with rock anchors. It is noted that the drain is almost completely filled with leaves and soil. Numerous trees can be seen protruding from the shotcrete.

At the southern extent of the development site, a large portion of the boundary slope is not supported by shotcrete. This section features thick vegetation, exposed bedrock and sandstone 'floaters' – rock that has detached from the in-situ bedrock and moved downslope. This section slopes at around 26° to 34°.

The western boundary of the site comprises a sub-vertical bedrock face up to 5 m high. The southern end of the exposed bedrock features a steep slope (40° to 50°) with fill, topsoil and colluvial soils, as well as sandstone boulders and dense vegetation. The bedrock face tapers out to join the natural slope towards the northern extent of the site.

A large number of loose rocks, concrete blocks and fill can be seen at the base of the exposed face. A low retaining wall constructed of sandstone blocks and concrete was previously built in front of the exposed bedrock, extending to the north.

5.3 Subsurface Conditions

The following summary of subsurface conditions is based on the geotechnical conditions observed during the site investigation works undertaken in 1999 and 2003.

Table 1 summarises the inferred geotechnical units likely to be encountered during excavation works within the development footprint. It is noted that additional geotechnical units were observed in the recovered core samples, but are not considered relevant for this geotechnical assessment as they are likely to be encountered at depths much greater than that to which excavation works are expected to extend.

The encountered subsurface conditions are consistent with the published information in the geological map.

Groundwater was not observed in any of the test pits or boreholes.

TABLE 1
SUMMARY OF INFERRED GEOTECHNICAL UNITS WITHIN THE BUILDING
FOOTPRINT

INFERRED UNIT	INFERRED TOP OF UNIT DEPTH BELOW GROUND SURFACE (m)	DESCRIPTION
SOIL	0	Typically comprising uncontrolled fill of variable consistency and colluvial (slopewash) soils. Materials include silty and sandy soils, sandstone cobbles and boulders, some building products and occasional pieces of steel.
UNIT A	1.0 to 2.6	Interbedded layers of sandstone and mudstone below soil materials. Typically expected to comprise low to medium strength rock. Sandstone bands are between about 0.3 m and 1 m thick and the mudstone bands are between about 0.2 m and 0.5 m thick.
UNIT B	3.2 to 5.8	High strength sandstone rock with few defects. Compressive strength is typically between 25 and 30 MPa.

Additional boreholes and test pits were undertaken to assess the subsurface conditions along the alignment of the proposed retaining wall at the western boundary. Table 2 presents a summary of the inferred geotechnical units likely to be encountered.

It is noted that the investigation along the alignment of the retaining wall was undertaken directly adjacent to John Whiteway Drive, approximately 5 to 8 m above the inferred ground level for the geotechnical units discussed in Table 1. The subsurface conditions discussed in Table 2 are expected to be present above Unit A.

TABLE 2
SUMMARY OF INFERRED GEOTECHNICAL UNITS ALONG THE RETAINING WALL
ALIGNMENT

INFERRED UNIT	INFERRED TOP OF UNIT DEPTH BELOW GROUND SURFACE (m)	DESCRIPTION
FILL	0	Materials typically comprise uncontrolled fill of variable consistency. Materials include silty and sandy soils, sandstone cobbles and some boulders. Some minor building products and occasional pieces of steel may also be present.
TOPSOIL	0.6 to 1.8	Minor strata of silty sand topsoil, buried below fill materials; only expected to be present at the northern end of the retaining wall alignment.
RESIDUAL	0.8 to 2.1	Hard, sandy and silty clay soils derived from sandstone. Unit up to 1.3 m thick.
UPPER SANDSTONE	0.5 to 3.0	The upper sandstone unit comprises highly and moderately weathered, medium strength rock. Some bands of low strength rock may be present in the lower 1 m of the unit.
SILTSTONE AND LAMINITE	2.5 to 6.4	Siltstone, laminate and some fine grained sandstone rock unit. At least 3 m thick along the majority of the retaining wall alignment, thinning out to about 1 m at the southern end where natural or quarry activities have removed the upper parts of the unit. Unit comprises mostly low and very low strength rock in the upper 0.5 m, becoming low and medium strength below this. Toward the southern end of the wall alignment, the unit becomes more extensively weathered and weaker, with seams of completely weathered rock or clay present.
LOWER SANDSTONE	4.1 to 6.8	High strength sandstone with few defects. Compressive strength typically ranged between 24 and 34 MPa. This unit is expected to be present above or blending into Unit A.

The depth to weathered bedrock varies across the site, from 0.5 m along the crest of the exposed bedrock up to 3 m at the crest of the shotcrete slope along the eastern boundary. Fill up to a depth of 4 m may be encountered at the southern extent of the site, adjacent to John Whiteway Drive.

6 DISCUSSION

6.1 Site Classification

In accordance with AS2870 2011 – Residential Slabs and Footings, PSM consider the property to be strictly Class P, due to the presence of uncontrolled fill and colluvial soils.

Portions of the site may be able to be re-classified as Class S during the design stage, pending further investigation works.

6.2 Site Stability

The visual appraisal of the site identified three (3) main areas of potential site slope instability during and after construction. These are:

1. Area 1 – The exposed sub-vertical bedrock and steep-sloping soil face at the western boundary of the site.
2. Area 2 – The steep shotcrete slope separating the development site from the existing residential complex.
3. Area 3 – The vegetated slope at the southern end of the site which does not have shotcrete face support.

The approximate location and extent of these areas is illustrated in Figure 1.

Area 1

There is potential for the exposed bedrock face to release rock blocks during and after construction. Landslip may also occur where topsoil, fill and natural soils are exposed and the natural vegetation is removed. Undercutting of the bedrock face or soil slope during excavation works will exacerbate the potential for rocks and soil to move downslope and impact the development.

The exposed bedrock and soil face can be stabilised with an appropriately designed retaining system, as discussed in Section 7.2.

Area 2

The steep slope separating the development site and the existing residential complex was stripped of the majority of natural vegetation during construction works for the residential complex, exposing the fill and colluvial soils and sandstone 'floaters' within those units. The slope has since been stabilised with shotcrete, and a concrete drain constructed at the crest of the slope to control overland water flows.

It is anticipated that construction works undertaken at the crest of the slope may alter the imposed loads and drainage conditions behind the shotcrete face, possibly leading to failure of the shotcrete and instability of the underlying soil unit.

Careful consideration of the long-term effects on the supported slope must be given prior to commencement of the development works.

Area 3

The southern extent of the site comprises a heavily vegetated, 26° to 34° slope, with numerous sandstone boulders. The top part of the slope in this area has not been stabilised with shotcrete.

It is understood that a number of large 'floaters' have previously been stabilised in this area with rock anchors.

It is anticipated that construction works within this area will involve clearing of the natural vegetation and excavation of the fill and natural soils and possibly shallow weathered bedrock units. The works may de-stabilise the unsupported slope, and allow downslope movement of the fill and colluvial soils as well as 'floater' sandstone boulders.

Construction works in this area must be managed such that the timely provision of support of the undercut soil and bedrock units is achieved. Further stabilisation of encountered 'floaters' may be required, either by underpinning or anchoring to the underlying bedrock with grouted rock anchors.

6.3 Qualitative Risk Assessment

PSM have conducted a qualitative risk assessment of the site stability issues discussed in Section 6.2. This assessment was based on guidelines proposed by the Australian Geomechanics Society (AGS) Landslide Risk Management (Volume 42, 2007).

Table 3 below illustrates the results of the qualitative risk assessment.

TABLE 3
QUALITATIVE RISK ASSESSMENT

ITEM	LIKELIHOOD	CONSEQUENCE TO PROPERTY	OVERALL LEVEL OF RISK
Area 1 – release of rock blocks from exposed face, movement of soil units and 'floaters' during construction	Unlikely	Medium	Low
Area 2 – overloading of shotcrete face due to construction works, leading to landslip of the retained soil unit	Unlikely	Medium	Low
Area 3 – downslope movement of fill/colluvial soils and boulders due to excavation works	Possible	Medium	Medium

6.4 Geotechnical Report Data

In order to comply with DCP 2013 Section 6.4, PSM have included a completed Table R3 below.

**TABLE R3
GEOTECHNICAL REPORT DATA**

ASSESSED BY:	PSM – MR GARRY MOSTYN ASSESSMENT DATE: 4 MARCH 2015		
LOT NO:	STREET # 70	STREET: JOHN WHITEWAY DRIVE	
		SUBURB: GOSFORD	
SITE DATA	AREA 1	AREA 2	AREA 3
Site Classification [AS 2870]:	P	P	P
Land slope [degrees]:	Sub-vertical bedrock / 40° - 50° soil slope	Sub-vertical bedrock / 50° - 60° shotcrete slope	26° - 34°
Geological abbreviation of underlying bedrock type:	Rnt	Rnt	Rnt
Description of surficial soil:	Uncontrolled fill, colluvial and residual soils	Uncontrolled fill, colluvial and residual soils (Shotcrete face support)	Uncontrolled fill, colluvial and residual soils
Type of Stability Risk [eg. landslide, rockfall, etc.]:	Rockfall/landslip from exposed bedrock face and soil slope during construction	Landslip of overlying soils and sandstone boulders due to failure of the shotcrete face support	Landslip of overlying soils and sandstone boulders due to excavation works
Risk Assessment [eg. low, moderate, etc.]:	Low	Low	Medium
Geotechnical Inspections required during construction? [yes/no]:	Yes	Yes	Yes
Risks from adjoining land:	N/A	N/A	N/A

7 RECOMMENDATIONS

7.1 Foundations

PSM recommend that footings for the apartments be founded on Unit A or Unit B rock and be designed for the following allowable bearing pressures under vertical centric loading, remote from the crest of a batter:

- Unit A – 1000 kPa
- Unit B – 3000 kPa

It is noted that footings along the eastern boundary of the slope will be located within the very steep slope separating the existing residential complex and the development site (Area 2 as discussed in Section 6.2). Whilst these footings can be designed for an allowable bearing pressure of 3000 kPa, consideration must be given for the effect of additional loading on the shotcrete support beneath and adjacent to the footing, as previously discussed in Section 6.2.

Local slope reinforcement will be required beneath and adjacent to footings located on slopes with no shotcrete support.

7.2 Retaining Wall

PSM understand that a retaining wall is proposed along the western boundary of the site, behind the current crest of the exposed rock face. Figure 2 illustrates the approximate location of the wall.

A significant length of the proposed wall may be formed by near vertical excavation in rock. Support may be required in the form of localised rock bolting to retain rock blocks and wedges formed by the intersection of defects. Rock anchors are expected to be installed in the Upper and Lower Sandstone, and Siltstone and Laminite materials and may be designed on the ultimate grout to rock bond shear strengths given below:

- Upper Sandstone – 1500 kPa
- Siltstone and Laminite – 300 kPa
- Lower Sandstone – 3500 kPa

It is anticipated that shotcreting of weak siltstone/shale seams will also be required. We recommend that cut batters be inspected by an experienced geotechnical engineer to assess the need for support.

A tied back and permanent, braced retaining wall will be required at the southern and northern ends of the wall alignment, and can be designed for earth pressures on the basis of a rectangular earth pressure distribution given by:

$$\begin{array}{lll} \text{Temporary} & \sigma_h & = 0.2 \gamma H + 0.5 q + 5 \\ \text{Permanent} & \sigma_h & = 0.25 \gamma H + 0.5 q + 5 \end{array}$$

where:

- σ_h is the horizontal pressure acting on the back of the wall, in kPa.
- γ is the effective unit weight of the fill, and can be assumed to be 19 kN/m³, assuming fill is able to drain.
- H is the total depth of soil or fill being retained, in metres. The equations above are applicable for walls to a maximum height of 4 m with a horizontal surface at the top.
- q is any uniform distributed vertical surcharge loading on top of the soil or fill within 0.6H of the rear of the wall, in kPa.

This equation assumes that the retaining wall design will incorporate appropriate drainage to prevent build-up of hydrostatic pressures within the retained material behind the wall.

The retaining wall is anticipated to be founded on the upper sandstone or siltstone and laminate materials, and can be designed based on the following recommended allowable bearing pressures under vertical centric loading:

- Upper Sandstone – 1500 kPa
- Siltstone and Laminite – 500 kPa
- Lower Sandstone – 3000 kPa

The value for Siltstone and Laminite given assumes rock is encountered. This may need to be verified at the southern end of the wall where weak seams of completely weathered rock may be encountered.

8 PSM RESPONSE TO THE COUNCIL DOCUMENTS

8.1 Condition 3 (Part 2) of “Instrument setting out terms of easement intended to be created pursuant to section 88B of the conveyancing act, 1919”, dated 2 April 2004

We note Condition 3 (Part 2 of S88B) states:

- “3. The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the encroaching structure including the owner of the lot burdened must not carry out any excavation work on that part of the lot burdened below a depth of RL55mAHD”

PSM Response:

We note that the proposed basement level is at RL 59m AHD. We consider the proposed development can satisfy the above requirement provided the development is undertaken in accordance with PSM advice in this letter.



8.2 Clause 4.1.7.4 (Part b. – Buildable area) of Gosford Development Control Plan (DCP) 2013 “Special Area - John Whiteway Drive Precinct”

We have been requested to address the following extract of Clause 4.1.7.4 (Part b) of GDCP 2013, which states:

- “b. *Buildable Area - The buildable area of each lot is illustrated in Figure 7.2 and coincides with the Restriction as to User on the title of the relevant lots under the Conveyancing Act, 1919. The Restriction as to User has application only where the restriction is not inconsistent with the provisions of the relevant planning instrument.*

The covenant supporting the designated buildable areas has application, as the buildable area provisions have been included in this DCP. The function of the buildable area is to clearly define areas suitable for development, taking into consideration a wide diversity of natural and human influenced opportunities and constraints. The integrated components of ridgeline, geology and vegetation, contrast with the legacy of extractive activities and define the visually sensitive elements of the precinct. Adherence to the buildable areas and supporting development controls will ensure the visual and environmental integrity of the precinct and individual allotments will be maintained.

Development within and variations to the designated buildable area must be supported by a comprehensive geotechnical survey conducted by a qualified geotechnical engineer which assesses the stability risk posed to both the ridge, proposed development and existing development. This information is to be submitted with the development application. In particular the geotechnical report should specifically assess:

- *any unacceptable stability risk to the ridgeline posed by the development,*
- *any risk to existing and approved potential development, and*
- *appropriate measures to minimise this risk to both the ridgeline and the proposed development, including recommendations for acceptable setbacks.*

In some cases, lots may be further excavated as a means to achieve the development potential on the land. Excavation depth shall be determined by the geotechnical assessment and subject to the maintenance of an adequate gravity feed to Council's stormwater system.

Geotechnical engineers are advised of the existence of cracking in the quarried caves within Lots 4 and 5 DP 778384. Verification of the extent of this cracking, and its influence upon development should be assessed in relation to ridgeline affected lots.”

PSM Response:

This letter provides assessment on the stability risk posed to the ridge, proposed development and existing development. Please refer to Sections 6.2, 6.3 and 6.4 of this letter.

If you have any queries, do not hesitate to contact the undersigned.

For and on behalf of
PELLS SULLIVAN MEYNINK



AGUSTRIA SALIM
Associate



GARRY MOSTYN
Principal

Encl.
Figure 1 Survey Plan
Figure 2 Borehole and Test Pit Locality Plan
Figure 3 Selected Site Photos
Attachment A Engineering Logs

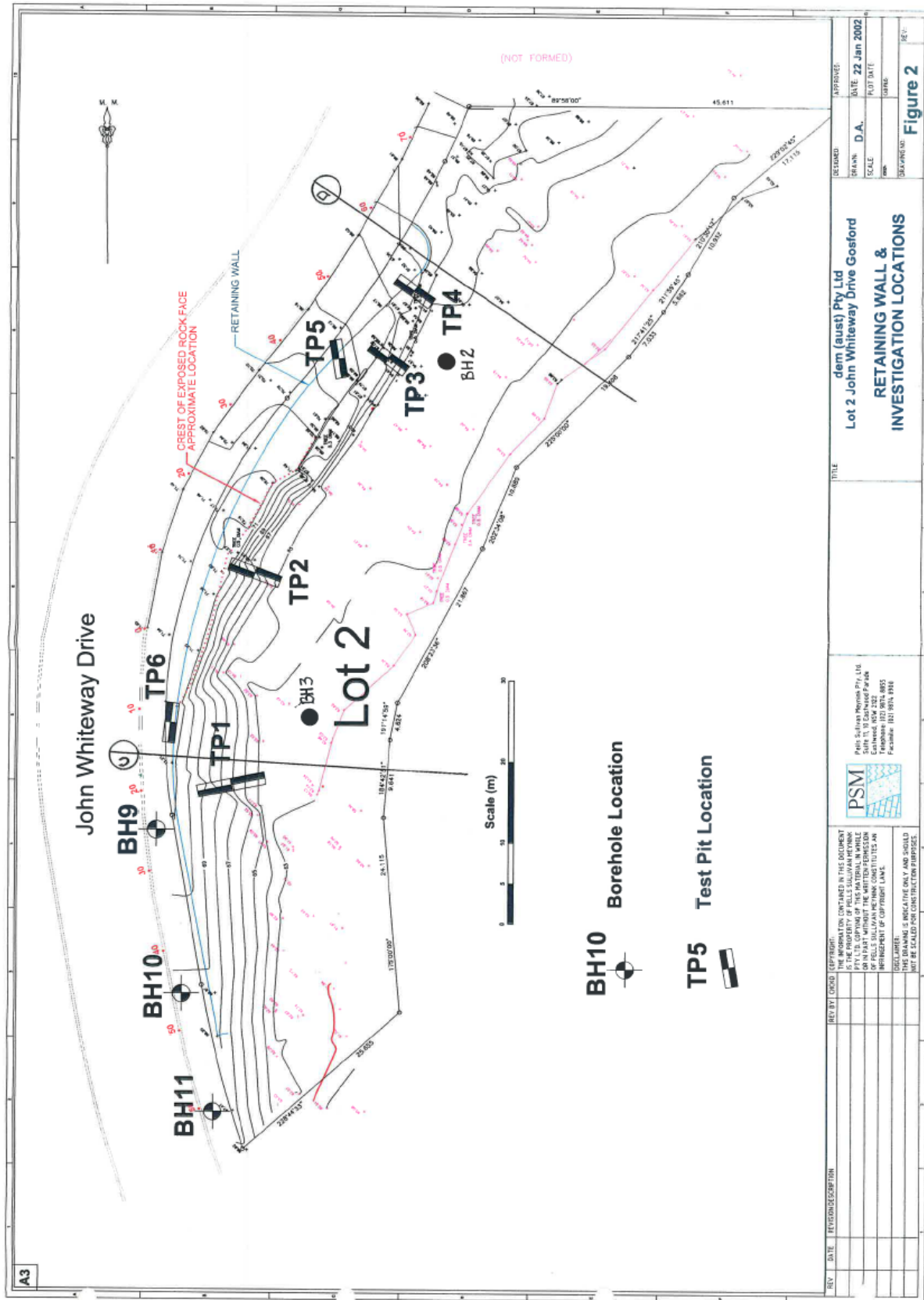




Photo 3 - Exposed bedrock in Area 1



Photo 4 - Northern extent of Area 1



Pellis Sullivan Meynink

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DEM (Aust) Pty Ltd 70 John Whiteaway Drive, Gosford GEOTECHNICAL ASSESSMENT REPORT SELECTED SITE PHOTOS (2 OF 3)	PSM669-002L	Figure 3B



Photo 1 - Northern extent of site looking south



Photo 2 - Northern extent of site looking north



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DEM (Aust) Pty Ltd 70 John Whiteaway Drive, Gosford GEOTECHNICAL ASSESSMENT REPORT SELECTED SITE PHOTOS (1 OF 3)	PSM669-002L	Figure 3A



Photo 5 - Shotcrete slope in Area 2, at eastern boundary



Photo 6 - Unsupported slope above shotcrete face in Area 3



Pellis Sullivan Meynink

PSM669-002L

Figure 3C

DEM (Aust) Pty Ltd
70 John Whiteway Drive, Gosford
GEOTECHNICAL ASSESSMENT REPORT
SELECTED SITE PHOTOS (3 OF 3)

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Photo 3 - Exposed bedrock in Area 1



Photo 4 - Northern extent of Area 1



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PSM669-002L

Figure 3B

DEM (Aust) Pty Ltd
70 John Whiteway Drive, Gosford
GEOTECHNICAL ASSESSMENT REPORT
SELECTED SITE PHOTOS (2 OF 3)

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Photo 5 - Shotcrete slope in Area 2, at eastern boundary



Photo 6 - Unsupported slope above shotcrete face in Area 3



Pells Sullivan Meynink

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70 John Whiteway Drive, Gosford
GEOTECHNICAL ASSESSMENT REPORT
SELECTED SITE PHOTOS (3 OF 3)

PSM669-002L

Figure 3C

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