JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

Council Assessment Report

Panel Reference	2016HCC008		
DA Number	49056/2015		
Local Government Area	Central Coast Council		
Proposed Development	Eighty (80) Unit Residential Flat Building (JRPP)		
Street Address	Lot: 36 SEC: 6 DP: 1591, Lot: 37 SEC: 6 DP: 1591, Lot: 35 SEC: 6 DP: 1591, 12, 14 and 16 Bent Street Gosford		
Applicant	DEM Aust Pty Ltd		
Owner	W Pan		
Date of DA Lodgement	22/12/2015		
Number of Submissions	Three (3)		
Recommendation	Approval - subject to conditions		
Regional Development Criteria (Schedule 4A of the Act)	Development with a capital investment value over \$20m (at the time of lodgement \$26.7 million)		
List of all relevant s79C(1)(a) matters	 Environmental Planning & Assessment Act 1979 - Section 79C Local Government Act 1993 - Section 89 Rural Fires Act 1997 State Environmental Planning Policy (SEPP) No 55 - Remediation of Land State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Gosford Local Environmental Plan 2014 Gosford Development Control Plan 2013 		
List all documents submitted with this report for the Panel's consideration	Proposed Conditions of Consent Architectural/Landscape Plans Applicant's Clause 4.6 submission Shadow Diagrams		
Report prepared by	R Eyre		
Report date	10 May 2017		

Summary of s79C matters	
Have all recommendations in relation to relevant s79C matters been	Yes
summarised in the Executive Summary of the assessment report?	
egislative 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	
peen listed, and relevant recommendations summarised, in the Executive	Yes
Summary of the assessment report?	
e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant	
ËP	
Clause 4.6 Exceptions to development standards	
f a written request for a contravention to a development standard (clause	Vaa
1.6 of the LEP) has been received, has it been attached to the assessment	Yes
eport?	
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions	Not Applicable
S94EF)?	
Conditions	
Have draft conditions been provided to the applicant for comment?	
Note: in order to reduce delays in determinations, the Panel prefer that draft	Yes
conditions, notwithstanding Council's recommendation, be provided to the	
applicant to enable comments to be considered as part of the assessment	
eport.	

Title:	Development Application No. 49056/2015, Proposed Eighty (80) Unit Residential Flat Building (JRPP) on Lot: 36 SEC: 6 DP: 1591, Lot: 37 SEC: 6 DP: 1591, Lot: 35 SEC: 6 DP: 1591, 12, 14 and 16 Bent Street Gosford	
Department:	Environment and Planning	

Central Coast Council

DRAF:

Report Purpose

To enable the determination of a development application.

Applicant	DEM Aust Pty Ltd
Owner	W Pan
Application Number	49056/2015
Description of Land	Lot: 36 SEC: 6 DP: 1591, Lot: 37 SEC: 6 DP: 1591, Lot: 35
	SEC: 6 DP: 1591,
	12, 14 and 16 Bent Street Gosford
Proposed Development	Eighty (80) Unit Residential Flat Building
Zoning	B4 Mixed Use
Site Area	1,666.55m ²
Existing Use	Dwelling houses
Value of Works	\$19,381,448.00
	(at the time of lodgement \$26.7 million)

Summary

It is proposed to demolish the 3 existing dwelling houses and construct a residential flat building containing 80 apartments in 14 storeys, with 3 basement car parking levels containing 84 car spaces.

Application Type	Development Application – Local.
Application Lodged	22/12/2015 Amended plans 3/2/2017.
Delegation level	Joint Regional Planning Panel

Advertised and Notified / Notified Only	Exhibition period closed on 12/02/2016
Submissions	Three (3)
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 of the Gosford Local Environmental Plan 2014 (GLEP 2014) to vary the development standard of clause 4.3 and 8.9 of the GLEP 2014 to permit the proposed development.
- B JRPP as consent authority grant consent to Development Application No 49056/2015 for eighty (80) Unit Residential Flat Building on Lot: 36 SEC: 6 DP: 1591, Lot: 37 SEC: 6 DP: 1591, Lot: 35 SEC: 6 DP: 1591, 12, 14 and16 Bent Street 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 two (2) years.
- D The objectors are notified of JRPP's decision.
- E The External Authorities be notified of the JRPP's decision.

Assessment

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

Summary of Non Compliance

Policy	Details		
GLEP 2014	Height. Variation nil to 17.3m (55.4%)		
Gosford Development Control Plan 2013	Side/rear setbacks. Variation nil to 4.5m (50%).		

Background

Council's records show no prior applications have been lodged on this site.

The original application submitted under this application proposed a 16 storey residential flat building containing 90 apartments, and 105 basement car parking spaces in 3 basement levels. The proposed height was 51.7m to 57.1m (RL 88.15m AHD) with an average Floor Space Ratio (FSR) of 4.79:1. The Gross Floor Area (GFA) of the development was 7,977m².

During the course of assessment and discussions with the applicant, the proposal has been reduced by two levels to 14 residential levels, 80 apartments, 3 basement car parking levels, and 84 car parking spaces.

The amended proposal has a height of 48.5m (RL 80.15m AHD) and an average FSR of 4.10:1. The proposed GFA is $6828m^2$.

The amended proposal now has a value of \$19,381,448.00. Despite being under the \$20Million JRPP threshold, this application when lodged was valued at over \$27 million and therefore determination by the JRPP is required.

Site & Surrounds

The site is located on the northern side of Bent Street between Watt Street and Henry Parry Drive, Gosford. A public reserve is located at the eastern end of Bent Street preventing access to Henry Parry Drive.

The site has a 36.68m frontage to Bent Street, and a depth of 45.43m. The site falls from falls from the street to the rear north-east corner with a slope of about 8%.

The site contains 3 single storey dwelling houses on 3 lots.



Figure 1 - Aerial photograph

The site is identified as "bushfire prone land" on Council's bushfire maps. A Bushfire Assessment Report prepared by Australian Bushfire Protection Planners P/L reference B152581-1 dated 20/6/2016 was submitted with the application.

The RFS has advised the proposal is to comply with BAL-40 on the northern, eastern and southern elevations and roof, and BAL-29 on the western elevation.

The site is surrounded by a mix of uses, ranging from single storey dwelling houses to 3-6 storey flats.

To the north is a medical/dental surgery, residential flat buildings, and townhouses. A 3 storey 8 unit residential flat building adjoins the eastern boundary at 18 Bent Street with a driveway adjoining the western boundary of this site. To the east of 18 Bent Street is a paper public road, and further to the east of the road is crown land/public reserve.

To the south on the opposite side of Bent Street are a number of dwelling houses. A development application (DA49534) for a high rise residential flat building has been submitted for 7-11 Bent Street which is currently under assessment.

To the west is a 2 unit residential building and 3-6 storey residential flat buildings. There is no significant vegetation on the site. The area is in transition from low density to high density development.

The Proposal

The proposal comprises:

- 14 storeys, plus roof top terrace, with 80 apartments. This consists of 16 x studio apartments, 5 x one bedroom apartments, 55 x two bedroom apartments, and 4 x three bedroom apartments.
- Three basement car parking levels with 84 car spaces, 6 motorcycle spaces, and 34 bicycle spaces.
- Driveway access from Bent Street.
- Demolition of existing structures.



Figure 2 - Indicative Concept Design View from south-west



Figure 3 - Indicative Concept Design View from north-east

Applicable Planning Controls

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

- Environmental Planning & Assessment Act 1979 Section 79C
- Local Government Act 1993 Section 89
- Rural Fires Act 1997
- State Environmental Planning Policy No 55 Remediation of Land (SEPP 55)
- State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development (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)

Permissibility

The subject site is zoned B4 Mixed Use under GLEP 2014. The proposed development is defined as a residential flat building which is permissible in the zone with consent of Council.

State Environmental Planning Policies

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

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

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

State Environmental Planning Policy 55-Remediation of Land

Clause 7 of SEPP 55 requires Council to consider whether the land is contaminated when determining a Development Application.

The site has previously been used for residential purposes and Council has no information to indicate that the site may have any contamination. Therefore a contamination report is not required.

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

The proposal is subject to the requirements of SEPP 65. The application is supported by a Design Verification Statement prepared by DEM Architects, NSW Reg. Architect No .6582 and an assessment of compliance against the Apartment Design Guide (ADG) design criteria.

Council has assessed the proposal against the design quality principles which apply under SEPP 65 and conclude that the proposal meets the principles to a satisfactory degree. Council's assessment of the ADG design criteria is set out in the following table:

Design Criteria	Required	Proposed	Compliance
3D-1 Communal Open SpaceMinimum area of 25% of the site, 50% direct access to the principal usable part of the open space for 2 hours mid-winter.The Guide notes that where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should: • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space		Extensive communal courtyards and open space has been provided at lower ground floor level on the northern and eastern side of the development. Also space is provided on the western side at ground floor level, and on the roof deck area. The roof area in particular will provide outdoor sunlight access year round. These areas in total exceed the requirement.	Yes
3E-1 Deep Soil Zone			Yes
Separation/Visual Privacy (side & rear)Up to 25m (5-8 storeys): 9m setback Over 25m (9+ storeys): 12m setback • Between habitable rooms/balconies.side 6.		West side-3m, east side 4.5m, north side 6.4m. West side 4.82m, east side 4.5m, north side 9.4m. West side-9m, east side 9m, north side 12.4m.	No. See comments below.

3J-1 Car Parking	The development requires 84 car parking as per RMS Guide to Traffic Generating Developments.	84 spaces are provided	Yes
4A-1 Solar and Daylight Access	Min 70% of apartments receive 3hrs sunlight 9am-3pm mid- winter to living rooms, and maximum 15% receive no direct sunlight 9am-3pm mid- winter	 59 (73.7%) of apartments receive 2 hours or more sunlight. 47 (58.8% of apartments receive 3 hours or more of sunlight. 9 (11.3%) of apartments receive less than 2 hours sunlight. 12 apartments (15%) receive no sunlight. 	No. See comments below.
	Min 60% of apartments are naturally cross ventilated	64 units (80%) are naturally cross ventilated	Yes
4C-1 Ceiling Heights	Minimum 2.7m habitable, 2.4m non-habitable.	Ceiling heights comply.	Yes
4D-1 Apartment Size	Minimum size: Studio 35m ² 1 bedroom 50m ² 2 bedroom 70m ² 3 bedroom 90m ² Additional Bathrooms increase the minimum internal area by 5m ² each.	Proposed unit sizes comply as per the following: Studio: 42m ² 1 bedroom: 50m ² 2 bedroom: 70m ² 3 bedroom: 105m ²	Yes
4D-2 Room Depths	Maximum of 2.5 x the ceiling height for habitable rooms, maximum depth of 8m from a window in open plan layouts.	Ceiling height of 2.7m is provided. The maximum depth is 7.9m.	Yes
4D-3 Apartment Layout	Master bedrooms to have min area of 10m ² and other bedrooms of 9m ² . Bedrooms to have minimum dimension of 3m. Living rooms to have minimum width of 3.6m (studio/1br) or 4m (2br/3br).	All units complies with or exceeds the minimum.	Yes
4E-1 Balconies	Minimum: 1 bedroom 8m ² , depth 2m 2 bedroom 10m ² , depth 2m 3 bedroom 12m ² , depth 2.4m	Provided: Minimum 8m ² and 2m depth. Minimum 10m ² and 2m depth Minimum 12m ² and 3m depth	Yes
4F-1 Internal Circulation	Max 8 apartments per floor serviced by a single core.	Max 6 apartments per floor serviced by a single core.	Yes
4G-1 Storage	Minimum 1 bedroom 6m ² 2 bedroom 8m ² 3 bedroom 10m ²	Storage is provided in basement and 50% in apartments.	Yes

Building Separation

The ADG states that for up to 4 storeys, building separation between habitable rooms should be 12m with each site having a 6m setback to achieve this. This can be reduced by half (to 3m) on each site between non-habitable rooms.

For 5-8 storeys the separation distance increases to 18m, and for 9+ storeys increases to 24m.

The purpose of this requirement is to ensure visual privacy is achieved.

While the proposed building does not comply with the building separation/setbacks required, it is considered to meet the objectives of the ADG for the following reasons:

- The apartment layout has orientated the living areas and balconies mainly to the front and rear of the site, not to the side.
- There are minimal windows on the side elevations. The units are predominantly orientated to the front and rear.
- The existing building at 18 Bent Street has a driveway on the western side adding additional separation.
- Where balconies are located on the side of the building, privacy screens/planter boxes have been provided to limit overlooking to the side.
- The rear separation/setback variation is minor or complies as the rear of the site adjoins a dental practice car parking area.

Solar and Daylight Access

The proposed development seeks a variation from the ADG design criteria for solar and daylight access, under Section 4A of the Guide. Objective 4A-1 sets out the following:

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

The design criteria for Section 4A of the guide are set out as follows:

- 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas
- 2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.
- 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.

Section 4A also sets out the following design criteria for solar and daylight access:

Achieving the design criteria may not be possible on some sites. This includes:

• where greater residential amenity can be achieved along a busy road or rail line by orientating the living rooms away from the noise source

• on south facing sloping sites

• where significant views are oriented away from the desired aspect for direct sunlight

Design drawings need to demonstrate how site constraints and orientation preclude meeting the design criteria and how the development meets the objective

The proposed development seeks to provide the following amounts solar access/direct sunlight to living rooms and private open spaces between 9am and 3pm mid-winter:

- 59 (73.7%) of the apartments will receive 2 hours more of sunlight;
- Of those units that don't receive 2 or more hours sunlight, 9 (11.3%) will receive les than 2 hours sunlight.
- 12 (15%) of the apartments will receive no direct sunlight.

As the site is not within the Sydney Metropolitan Area or within the Newcastle or Wollongong LGAs, the ADG requires that 70% of apartments must receive 3 hours direct sunlight. 47 apartments (58.8%) receive 3 hours of sunlight during winter.

The justification for the reduced solar access requirement in the Sydney Metropolitan Area and Newcastle and Wollongong LGAs is based upon the increased densities within connected urban centres. Where 3 hours was the normal expectation for low density residential development, higher density development often struggles to achieve the full 3 hours of direct sunlight and often achieves this at the expense of another design quality, such as views or orientation.

The Gosford City Centre (and the site) is subject to a range of medium to high density controls which promote a built form consistent with (or even greater than) that permitted in most equivalent Sydney metropolitan centres, or within Newcastle or Wollongong. In this regard, the proposal is consistent with built forms that would be required to provide only 2 hours of solar access under Section 4A. Therefore, it is considered appropriate to apply the 2 hour minimum direct sunlight control, rather than the 3 hour control.

Further (and in general terms), it is the opinion of Council that the ADG has overlooked the Gosford City Centre in the phrasing of this control, as the built form within Gosford would be consistent with and within the same broad metropolis of those areas listed under Section 4A(1).

Accordingly, this assessment concludes that the 2 hour control is appropriate to apply in this instance, and in other instances within the Gosford City Centre.

When assessed against Section 4A(1), the proposal would provide 73.7% of apartments with at least 2 hours direct sunlight. The extent of this variation is supported.

In regard to Section 4A(3), the ADG requires that a maximum of 15% of units receive no sunlight. In this regard, the proposal complies.

The applicant has justified this outcome as a response to the orientation of units to achieve views to the south-west, in order to capture views of the city and water beyond.

This assessment concludes that the ADG makes allowance for such variations and despite the extent of the variation, the loss of solar amenity to each unit is replaced by the possible attainment of views over the city and water beyond. Further, Council's Architect has assessed the development and raises no objections in regard to the level of unit amenity. In conclusion, the variation to the control for south-facing units is acceptable.

State Environmental Planning Policy No 71 – Coastal Protection

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

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

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

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

Gosford Local Environmental Plan 2014



The subject site is zoned B4 Mixed Use under GLEP 2014.

Figure 4 - Zoning Plan (sites edged red)

B4 Mixed Use

The objectives for the B4 Mixed Use zone are:

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

The development is located in an accessible location relative to public transport, shopping and services. The proposal provides a wholly residential development on the outskirts of the City Centre which will provide additional residential accommodation to meet the 10,000 population target to revitalise the city centre. The development provides for a mix of apartment sizes and will increase the dwelling mix in the locality. The proposed development meets the objectives of the zone.

Development Standard	Required	Proposed	Compliance with Controls	Variation	Compliance with Objectives
Clause 4.3 Maximum Building height	12 Bent St- 62.4m [*] 14/16 Bent St-31.2m [*]	48.5m	No - see comments below	Nil to 17.3m (55.4%)	Yes - see comments below
Clause 4.4 Maximum FSR	12 Bent St- 6.175:1 [*] 14/16 Bent St- 5.2:1 [*]	12 Bent St- 2.64:1 14/16 Bent St- 4.83:1	Yes	Nil	Yes
Clause 8.4 Minimum Building Street Frontage	24m	36.68m	Yes	Nil	Yes

Principle development standards

* Includes 30% bonus permitted under Clause 8.9 of GLEP 2014.

4.3 Height of buildings

The provisions of Clause 4.3 GLEP 2014 establish a maximum height limit for buildings. To promote development within Gosford and surrounds, the GLEP was amended in April 2015 via Amendment 12 to extend the 30% bonus height and floor space provisions under Clause 8.9. The incentive provision applies to all applications lodged prior to 1 April 2016.

The subject application was lodged on 22 December 2015 and so has the benefit of the bonus height and floor space provisions

In relation to height:

- 12 Bent Street has a maximum height with the bonus of 62.4m. The proposed height is 48.5m. This is 13.9m below the development standard.
- 14 and 16 Bent Street have a maximum height with the bonus of 31.2m. The proposed height is 48.5m. This is a variation of +17.3m or 55.4% to the development standard.

In considering the height variation, attention is also drawn to Clause 5.6 Architectural roof features of GLEP 2014 which states:

- 1) The objectives of this clause are as follows:
 - (a) to permit variations to maximum building height standards for roof features of visual interest,
 - (b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard.
- 2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.
- 3) Development consent must not be granted to any such development unless the consent authority is satisfied that:
 - (a) the architectural roof feature:
 - *i)* comprises a decorative element on the uppermost portion of a building, and
 - ii) is not an advertising structure, and
 - *iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - iv) will cause minimal overshadowing, and

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

The proposal includes a roof top deck with communal open space and landscaping. This roof feature adds to the decorative appearance of the building which is considered a better design outcome than a normal roof. If the architectural roof feature is discounted, the height variation would be reduced to 13.1m instead of 17.3m.

A clause 4.6 variation has been provided in this case. (Refer attachment 3)

4.4 Floor space ratio

The provisions of Clause 4.4 GLEP 2014 establish a maximum floor space ratio for buildings.

In relation to floor space:

- 12 Bent Street has a maximum FSR with the bonus of 6.175:1. The proposed FSR is 2.64:1. This is well below the permissible FSR.
- 14 and 16 Bent Street has a maximum FSR with the bonus of 5.2:1. The proposed FSR is 4.83:1. This is also below the permissible FSR.

4.6 Exceptions to Development Standards

The Clause 4.6 request for building height concludes the following:

"This exception request is well founded as it demonstrates, as required by Clause 4.6 of the GLEP2014, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention and it results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- The development fits with Council's expectation for the 'desired future character' of the built environment in the area;
- The development meets the objectives of the development standard and where relevant, the objectives of the B4 Mixed Use zone notwithstanding the variation;
- The development is in the public interest and there is no public benefit in maintaining the standard; and
- The contravention does not raise any matter of State or Regional significance.

The variation is therefore considered appropriate in the circumstances of the case."

In accordance with Clause 4.6(4), consent must not granted for a development that contravenes a development standard unless:

• The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3)

<u>Response</u>:

The Clause 4.6 requests submitted by the applicant have 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.

The proposed height is considered a reasonable outcome given the two significantly different height controls over the site. The proposed height provides a transition from higher height to the lower height limit. While the eastern side of the development is 17.3m above the height control, the western part of the development is 13.9m below the height control. To have a building complying with the respective height controls on each side of the site which have

not resulted in a good design outcome. In this way the overshadowing caused by the development is also minimised.

Council is satisfied that the matters required to be demonstrated in subclause (3) have been adequately addressed for the variation to the building height development standard.

• The consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Response:

This Report has assessed the proposal against the objectives of the building height development standard, FSR development standard and the B4 Mixed Use zone and is satisfied that the proposal achieves consistency with these objectives. 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.

• The concurrence of the Secretary has been obtained.

<u>Response</u>: Planning Circular PS 08-003 issued 9 May 2008 states that Council may assume the concurrence of the Director-General when considering exceptions to development standards under clause 4.6. The Council is therefore empowered to approve the application.

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

- 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 requests 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 is well founded and are worthy of support.

5.5 Development within the coastal zone

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

The proposed development is of a scale and design considered compatible with its location in the city centre mixed use zone. The development is not considered likely to impact the amenity of the coastal foreshore, headlands or have impacts on biodiversity or ecosystems. The relevant matters have been considered in the assessment of this application and are considered consistent with the stated aims and objectives.

5.10 Heritage Conservation

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

7.1 Acid sulphate soils

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

8.4 Minimum building street frontage

This clause requires developments to have a minimum street frontage of 24m. The subject site has a 36.68m total frontage and so complies.

8.1 Objectives.

The objectives of Part 8 for the Gosford City Centre are:

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

The proposal complies with the above objectives. The development will provide increased population, near a major public transport route, to support the economic and social revitalisation of the Gosford City Centre. The design generally meets the criteria for design excellence and SEPP 65 requirements. The proposal adds to housing choice in the locality, and is within walking distance of a range of shops, services and public transport.

8.5 Design Excellence

The requirements for design excellence in Clause 8.5 of GLEP 2014 have been considered in the assessment of the application. Assessment of the proposal against the matters attributed to design excellence under Clause 8.5(3) concludes that Council is satisfied that the proposal exhibits design excellence as per below:

In particular, the proposal offers a high standard of architectural design, which is appropriate for the intended development of the area, and employs design features and articulation that enhance the appearance of the development and the amenity of units, and minimise impacts on any surrounding properties. The design is supported by a design verification statement which has been assessed and outlines a number of reasons which confirm that the design incorporates appropriate features and methods which demonstrate excellence.

The development provides for a mix of 1, 2 and 3 bedroom apartments which will add to housing mix in the locality. The units have been assessed against the ADG and are considered appropriate. The design is complimented by a BASIX certificate which confirms that the development is able to achieve environmental sustainability criteria. The development is considered likely to establish a high standard of design to be built upon by future developments in the locality as Gosford continues to grow and develop.

Control	DCP Standard	Proposed Development	Complies	Variation
Street Setback/Building Alignment	Bent St: 2m-2.5m	2m	Y	
Street Frontage Height	10.5-16m	16m	Y	
Maximum Floor Plate Size	$750m^2 > 16m$ height	600m ²	Y	
Maximum Building Dimension	45m	31	Y	
Maximum Building Depth (Excluding Balconies)>16m height	24m	26m	Ν	2m
	Front – Street Setback (2m-2.5m)	2m	Y	
Minimum Boundary Setback	Side – 3m (NHR)	3m	Y	
Residential Uses < 12m	Side – 6m (HR)	3m-5.9m	N	0.1-3m
	Rear – 6m (NHR)	6.4m	Y	
	Rear – 6m (HR)		Y	
	Front – 6m	6m	Y	
Minimum Davidary Catholog	Side – 4.5m (NHR)	4.5m	Y	
Minimum Boundary Setback Residential Uses 12-24m	Side – 9m (HR)	4.5m-9m	N	Nil -4.5m
Residential Oses 12-2411	Rear – 6m (NHR)	9m	Y	
	Rear – 9m (HR)	9m	Y	
Minimum Doundon, Cothool	Front – 8m	8m	Y	
Minimum Boundary Setback Residential Uses > 24m	Side – 13m	9m	N	4m
Residential Uses > 2411	Rear – 13m	12.4m	N	0.6m
Minimum Floor to Cailing	Commercial office: 3.3m	N/A		
Minimum Floor to Ceiling Heights (new buildings)	Retail/Restaurant: 3.6m	N/A		
	Residential: 2.7m	2.7m	Y	
Maximum Site Cover	60%	54.5%	Y	
Deep Soil Zone	Min 15% of total site area	15.6%	Y	

Gosford Development Control Plan 2013: Chapter 4.1 Gosford City Centre

Control	DCP Standard	Proposed Development	Complies	Variation
Active Street Frontages and Address	Bent St – Street Address required	Lobby to Bent St.	Y	
Awnings	Not required		Y	
Building Exteriors			Y	
Car Parking Above Ground Level Floor to Ceiling Height	2.8m	Car parking below ground level	Y	
Car Parking (DCP)	109	84	N	-25
Car Parking (RMSG)	84	84	Y	
Motorcycle Parking	6	6	Y	
Bicycle Parking	34	34	Y	
Wind	Wind Tunnel Test		N	
Dwelling Mix	1 Bedroom: 10% - 25%	21 (26.2%)	N	1 (1.2%)
	2 Bedroom: Max 75%	55 (68.7%)	Y	

Note: NHR = Non Habitable Room, HR = Habitable Room, RMSG = RMS Guide to Traffic Generating Development

The variations identified above are discussed in detail below, as well as further specific assessment of the proposal under the provisions of GDCP 2013.

Maximum Building Depth

The maximum building depth or width above 16m height is 24m. The proposal has a width of 26m which is a 2m variation. However the variation is supported in this case as it only occurs over a small part in the centre of the building and adds to the variation to the elevations, articulation and external appearance.

The proposal is consistent with the objectives of Chapter 4.1.2.4 which promotes creation of buildings with good internal amenity. The extent of the minor variation will not give rise to unacceptable adverse outcomes in regard to internal amenity, usable space, view sharing or the appearance of bulk and scale. The variation is supported.

Side and Rear Building Setbacks

The proposal does not comply with the side building setbacks required for habitable rooms under GDCP 2013. The variations are up to 3m at the lower levels and up to 4.5m at the middle levels. The variation to the side setbacks are considered to be justified in this case for the following reasons:

- The apartment layout has orientated the living areas and balconies mainly to the front and rear of the site, not to the side.
- There are minimal windows on the side elevations.
- The existing building at 18 Bent Street has a driveway on the western side adding additional separation.
- Where balconies are located on the side of the building, privacy screens/planter boxes have been provided to prevent overlooking to the side.
- The rear separation/setback variation is minor or complies as the rear of the site adjoins a dental practice car parking area.

The rear setback at above 24m is 12.4m whereas 13m is required. This is a variation of 0.6m or 4.6%. The proposed setback variations are also considered consistent with the objectives of Chapter 4.1.2.5 which seek to ensure an appropriate internal amenity while achieving a

pleasant and usable public domain The variation is supported in this case as the variation is minor and not significant, and the adjoining development to the north is a car parking area for a dental centre.

Car Parking

The proposal provides for onsite parking, but does not fully comply with the car parking requirements of this Chapter 4.1.4.4. However the site is zoned B4 and under the ADG may utilise the RMS Guide to traffic generating development car parking rate. Under RMS guidelines, a total of 84 spaces are required. The proposal provides 84 spaces which complies with RMS guidelines. Therefore car parking is considered adequate. It is noted that the site is within walking distance of the Gosford train station and bus interchange.

Wind Effects Report

As the building exceeds 14m height, a wind effects report is required. This can be submitted prior to the issue of a construction certificate. **(Refer condition 2.12)**

Dwelling Mix

Under GDCP 2013, a maximum of 25% of apartments should be two bedroom units. The proposal provides 21 or 26.2% as two bedroom units. The development consists of 16 x studio apartments, 5 x one bedroom apartments, 55 x two bedroom apartments, and 4 x three bedroom apartments. It is considered the variation is minor and the proposal complies with the objective of having a mix of units in a development given that the development comprises studios, one two and three bedroom apartments.

Other Matters for Consideration:

Central Coast Regional Plan 2036

The Central Coast Regional Plan 2036 (CCRP) was approved and launched by the NSW Department of Planning and Environment on 14 October 2016. The CCRP sets out the vision for the Central Coast over the next 20 years and identifies economic, social and environmental opportunities to build a more prosperous region, and actions to guide development and land use.

The proposal has been assessed against the relevant goals and actions of the CCRP in the following table:

Goal/Action No.	Goal/Action	Assessment
Goal 1	A prosperous Central Coast with more jobs close to	The proposed development will
	home	increase population to support the
Direction 1	Grow Gosford City Centre as the region's capital	city centre and local businesses. The
Action 1.1	Grow Gosford City Centre as the region's capital and focus of professional, civic and health services for the region's population.	site is located close to public transport and schools and within walking distance of the Gosford
Action 1.3	Attract and facilitate greater commercial development within Gosford City Centre by improving the public domain and providing opportunities for development through local planning controls.	waterfront.

Goal/Action No.	Goal/Action	Assessment
Action 1.8	Ensure that development in Gosford City Centre responds to its natural setting and complements the public domain.	The site is located within an established residential area identified for medium density. The height and façade of the proposal responds to its natural setting and complements the public domain with active street frontage. The proposal is consistent with this action.
Action 7.1	Facilitate economic development that will lead to more local employment opportunities on the Central Coast	The proposal will produce construction employment opportunities and provide new residential accommodation which will support local businesses. The proposal is consistent with this action.
Goal 4	A variety of housing choice to suit needs and lifestyles	The proposal will provide 80 new
Action 20.1	Improve housing choice by supporting housing delivery in and near the growth corridors and local centres.	residential units with an acceptable mix of 1, 2 and 3 bedroom units. The proposed dwelling supply is
Action 20.3	Implement policies, plans and investment options that will support greater housing diversity in centres.	appropriately located and will improve housing choice that suits a range of needs and lifestyles.

Having regard to the above assessment, the proposal is consistent with the relevant goals, directions and actions of the Central Coast Regional Plan 2036.

Gosford City Centre Masterplan: Our City Our Destiny

In 2008 the "Gosford Challenge" was initiated as a process of community participation and partnership between the then Gosford City Council and the community to establish the objectives which would guide the revitalisation of Gosford.

The masterplan is not a statutory matter for consideration.

Under Section 3.5 Living in the City, the Masterplan identifies the targeted areas for residential growth to achieve an increase of 10,000persons in 6,000 dwellings by the year 2031. The Masterplan identifies that the site is within an area of the Gosford City Centre that will accommodate up to 2,810 additional residents. The proposed development is consistent with these aspects of the Masterplan, being a medium/high density residential development providing increased housing supply and choice within the City Centre.

The proposal is generally consistent with the relevant initiatives, goals and key elements of the Masterplan.

Isolated Lot

The proposal results in 18 Bent Street being an isolated lot between the proposed development and the paper road/public reserve to the east. This site currently contains three storey apartments owned by the NSW Land and Housing Corporation. (The Corporation also advises it owns 10 Bent Street on the western side of the proposed development).

A submission was received from the Corporation concerning the future development of 18 Bent Street and isolation by the proposed development. There is no opportunity to amalgamate with the public reserve to the east.

A driveway exists along the western boundary of 18 Bent Street which reduces the impact of the proposed development. Greater side setbacks have been provided on the eastern side of the proposed development than on the western side in an attempt to provide greater separation.

The future development of 18 Bent Street will not have the benefit of the 30% bonus to height and FSR the current application has. Future development on 18 Bent Street will be limited to a height of 24m and FSR of 4:1. The site has a width of 15.95m and an area of 721.7m2.

It is unlikely without amalgamation or road closure and purchase that the maximum height and FSR could be achieved. Council is unlikely to agree to a road closure and purchase as the paper road effectively forms part of and access to the public reserve.

In accordance with the decisions in *Melissa Grech v Auburn Council* [2004] NSWLEC 40, and *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, the two questions to be asked are;

- 1. What negotiations have occurred between the owners of the two sites, and if unsuccessful or not feasible;
- 2. Would the proposed development preclude reasonable development of 18 Bent Street.

The applicant approached the NSW Land and Housing Corporation being the owner of 10 and 18 Bent Street regarding sale of these lots. The Corporation advised the applicant by letter dated 27 October 2015 that if the properties are to be sold, they are sold via contracted real estate agents, and that the Corporation sales policy does not allow direct negotiation for the sale of a property.

If the properties at 10 and 18 Bent Street are to be developed separately, they will be subject to the planning controls at that time. The applicant submitted a concept design for the future development of 18 Bent Street which indicates that 17 units may be able to be developed on the site. The site however also has additional site constraints which may restrict future development. In particular, 18 Bent Street is subject to a higher and direct bushfire risk.

It is considered that the applicant has attempted to include the adjoining site in the proposal and this has been rejected. The Land and Housing Corporation has not indicated that the site is likely to be redeveloped in the near future. Nevertheless, it is not considered the proposal unreasonably precludes future development of the adjoining sites.

Visual Impact.

Figure 2.14 of Chapter 4.1 of GDCP identifies the significant view corridors to be retained. The GDCP identified that the view corridors to be protected are from Kibble Park and the Gosford waterfront to Waterview Park and Rumbalara Reserve.

The subject site is not located within any significant view corridor identified in the GDCP to be retained.

It is considered that due to the height of the proposed building will be highly visible from the surrounding area, however this is acceptable given the heights permitted under the GLEP and objectives for creating a more active and vibrant mixed use locality.

Shadow Impacts.

The proposed height will have long shadow impacts particularly to the south of the site. The shadow diagrams submitted for June indicate the shadows to the south, while extensive in length, are fast moving across the surrounding area with most properties to the south being in shadow about 2 hours and still receiving adequate sunlight at some time of the day. As the permitted building height on 12 Bent Street is much higher than that proposed, the shadow impact is considered reasonable for the proposal. **(Refer attachment 4)**

Planning Agreements:

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

Development Contribution Plan:

The subject site is located within Development Contribution Plan S94A Contribution Plan-Gosford City Centre, where residential flat developments are subject to s94 contributions. The applicable contribution amount of 4% of the value of the development was calculated and imposed as a condition of consent requiring the contribution to be paid prior to the issue of any Construction Certificate.

(Refer to Condition 2.11)

Referrals:

Internal Referral Body	Comments
Waste Officer	Supported subject to conditions.
Architect	<u>CONTEXT AND NEIGHBOURHOOD CHARACTER</u> The site to the east is a low rise strata titled RFB on a single site. To the west is a single storey dual occupancy. It is acknowledged that the site is now zoned for higher density and the amended application generally complies with the current controls and will be consistent with the likely future character.

BUILT FORM AND SCALE

The amendments have significantly reduced the extent of non-compliances with height and setback controls.

The site has a split zoning with two thirds having a height control of 31.2 metres and the remainder a height control of 62.4 metres. The amended application proposes a single height of approximately 43 metres. This is considered an acceptable transition between the lower height control on the east and the higher control on the west.

The ADG requires 6 metre setback to habitable rooms and balconies up to 4 levels, 9 metres up to 8 levels and 12 metres above this. There remains non-compliance with building separation controls with balconies on levels 5, 7 and 8 on both the east and west having setbacks of 4.5 metres or 50% non-compliance though it is acknowledged that screen planting or screening is provided to these balconies.

In other areas setbacks generally comply with lower levels being setback 3 to 4.5 metres with no windows in side walls.

<u>DENSITY</u>

The amended application complies with density controls.

<u>SUSTAINABILITY</u>

BASIX certificate supplied.

<u>LANDSCAPE</u>

There remains concern that the entire site is occupied by car parking. Landscaping and deep soil planting should be an integral part of the design, not relegated to left over space. It is acknowledged that the soil volume at the rear is approximately 3 metres deep which is adequate for significant planting.

The remainder of the landscaping is located on the structure with soil depths of 500 to 800mm and are largely covered by the building above. It is questionable whether some of the species proposed will grow in this soil volume however it will provide a green outlook and communal space for the residents.

<u>AMENITY</u>

Amenity within the development is generally acceptable though north facing single bedroom units on levels 1 and 2 are poorly planned and

Tree Assessment Officer	should be amended. These bedrooms rely on borrowed light and face directly onto the kitchen. Though this may comply with the minimum standards of the BCA it results in poor amenity. <u>SAFETY</u> The application has balconies and windows overlooking the street and courtyards to provide surveillance. <u>HOUSING DIVERSITY AND SOCIAL INTERACTION</u> The application provides a variety of unit types including accessible units. <u>AESTHETICS</u> <u>Aesthetics is generally acceptable</u> . Council's Engineer has requested comment on a tree located on the road reserve in front of 8 Bent Street, as the development requires a storm water pipeline down the road reserve to connect to the existing drainage pit near the Watt Street intersection. The tree is a mature White Mahogany approx 15m high. The tree has existing major encroachments into its structural root zone by past construction of road, K&G and small retaining wall for access to No 8. Regardless of the existing encroachments, the proposed pipeline will
	require an excavation of up to 1m wide and 1m deep, in the vicinity of the trees trunk. It is accepted that the tree must be removed to install the stormwater pipeline. Considering the state of the unformed road reserve, a tree replacement condition has not been recommended on this occasion.
Development Engineer	 Bent Street is a small road that intersects with Watt Street near a crest in the formation of Watt Street. As a result of this crest there is limited sight distance to the north that has resulted in the implementation of "No Right Turn": restrictions into and out of Bent Street. A traffic report prepared by Transport & Traffic Planning Associates (Reference 15283, Rev B dated December 2015) was submitted with the application. This report indicates that the surrounding road network has the capacity to accommodate the additional traffic generated by the development, and that the access, parking, & servicing arrangements are satisfactory and comply with AS2890 & Council's requirements. Supported subject to conditions.
Building Surveyor.	Council's interpretation of the classification of buildings and structures in accordance with Part A3 of the BCA is: 2 & 7a (possible 7b) for a new building. No objection to the proposal is raised. The site is not mapped landslip risk on Council's map and thus no

specialised geotechnical engineering report is required. A normal site classification report is required as part of the standard information gathering process for a building of this size. A report has been prepared by Pell Sullivan Meynink, reference PSM- 2929-002L dated 17 th December 2015. This report has been reviewed with no matters of concern raised.
The applicant has also submitted various other reports including an access consultant's report and BCA design compliance report. Those reports being <i>abs</i> , job number 215512, dated 17-12-2015 and the BCA assessment report <i>City Plan Gosford Pty. Ltd., report number 154561R,</i> dated 18/12/2015. Review of both these reports reveals nothing substantial that warrants change at DA stage.

External Referral Body	Comments
NSW Rural Fire Service	S100B Bushfire Safety Certificate issued subject to conditions.

Political Donations:

During assessment of the application there were no political donations were declared by the applicant, applicant's consultant, owner, objectors and/or residents.

Public Submissions:

Three (3) public submissions were received in relation to the application. Those issues associated with key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submissions are detailed below.

1. The proposal inhibits development of 18 Bent Street as it would become an isolated site with no option to consolidate with an adjoining lot.

Comment – The adjoining 18 Bent Street would become an isolated site. Offers to purchase the site and incorporate it into the development were made. Also the applicant submitted a concept design for the future development of 18 Bent Street which indicates that 17 units may be able to be developed on the site subject to site constraints. As such appropriate efforts have been made in this respect.

2. Council's GDCP requires a 3-6m side setback. The proposed development does not comply with this requirement which will burden 18 Bent Street and impact amenity, sunlight, view sharing, wind mitigation, and privacy.

Comment – The eastern side setback proposed is 4.5m and greater up to level 8. Above level 8 the side setback is 9m. The layout has been designed so that there are few windows from

living areas on the eastern side, and privacy screens provided where needed on balconies or windows to address privacy concerns.

3. The 90 unit development will increase parking and traffic congestion in the area. There are concerns with pedestrians and children crossing Watt Street.

Comment – The development has been reduced to 80 units and adequate on site car parking has been provided in accordance with the RMS guide to traffic generating development. The street network can cater for the additional traffic generated by the proposal. It is also noted that there are pedestrian crossings in the area to support persons crossing Watt Street.

4. The proposal will block sunlight and views of the sky to the south-west from 61-65 Beane Street. The proposal is out of character with 1-3 storey development in this area. The development should not be over 4 storeys.

Comment – The site is located to the south-west of 61-65 Beane Street and will not affect sunlight access to the townhouses. There is no significant view loss from 61-65 Beane Street across the subject site. It is noted that the Gosford CBD is currently undergoing substantial growth and investment and the character of streets in the locality is changing. The introduction of higher density residential forms in close proximity to the CBD and public transport nodes is supported.

5. The proposal will cause lots of noise or air pollution and damage adjoining properties during excavation.

Comment – The proposal is for a residential development which will generate noise etc consistent with a high density residential development. The site is located in the Gosford City Centre where Council is aiming for a 10 000 population increase to revitalise the city centre. It is noted that there may be disturbance during the temporary construction period, however this can be managed on site through watering and site fencing.

6. The location of townhouses at 61-65 Beane Street are not shown and they may be affected by privacy and noise generated by the proposal.

Comment- The townhouses on 61-65 Beane Street are located to the north-east of the site and separated from the site by 18 Bent Street and the vegetated road reserve lot. The townhouses are adequately separated from the proposed development.

Ecologically Sustainable Principles

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles. The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts. The proposed development is considered satisfactory in relation to climate change.

Likely Impacts of the Development

a) Context and Setting

The site is located within the B4 Mixed use zone, which is currently in transition to include more higher density forms of development. The impacts of the proposal has been considered in the assessment of the application. The residential development is considered to be in line with the desired future character of the area.

b) Access and Transport

The impact of the proposal on pedestrian access, parking and the road network has been considered by Council's traffic engineer who supports the application subject to conditions. The site is within walking distance of public transport, and a range of commercial, service and retail opportunities.

Natural Environment

The site is within the established urban area and is currently developed for housing. It is not considered that the development will result in unacceptable impacts on the natural environment.

Suitability Of The Site For The Development

The site is zoned B4 Mixed Use which permits a range of uses. The development is considered to be in accordance with the desired future character of the area as envisaged by the GDCP 2013. The site is not impacted by constraints such as flooding, or flora and fauna constraints. As such the site is considered suitable for this type of development.

The Public Interest: (s79c(1)(e)):

The approval of the application is considered to be in the public interest. The development will provide additional housing choice, including a range of apartment sizes in a locality which is highly accessible to Gosford city centre and related employment services and transport options.

Conclusion:

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. While the proposal varies the height and setbacks required under GLEP 2014 and GDCP 2013, the design is considered appropriate for the site having regard to the provisions of SEPP 65 and the ADG.

There were 3 public objections to the proposal. Two were from the apartments to the northeast, which are not impacted by shadows but will be able to see the proposed building due to the height. However the views toward the development is not unreasonable as the site is located to the rear of these apartments, and is separated by vegetation and landscaping areas.

The adjoining site at 18 Bent Street (and 10 Bent Street) is owned by the Land and Housing Corporation and the attempts to amalgamate/purchase this site by the applicant was rejected.

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.*

Plans for Stamping:

Amended Plans ECM Doc No. 23950647, sheets ar-0200, ar-1200, ar-1202 DN 24310402.

Supporting Documents for Binding with consent:

BASIX Certificate Number 693907M, ECM Doc No 21962464 Waste Management Plan, ECM Doc No 21962707 Geotechnical Report, ECM Doc No 21962899 Landscape Plan, ECM Doc No 23950645

Attachments:

Attachment1 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-0200	Site Plan	1	A05	19/4/2017
ar-1200	Basement 3 Floor Plan	1	A04	19/4/2017
ar-1201	Basement 2 Floor Plan	1	A03	3/2/2017
ar1202	Basement 1 Floor Plan	1	A04	19/4/2017
ar-1203	Lower Ground Floor Plan	1	A03	3/2/2017
ar-1204	Ground Floor Plan	1	A03	3/2/2017
ar-1205	Level 1 Floor Plan	1	A03	3/2/2017
ar-1206	Level 2 Floor Plan	1	A03	3/2/2017
ar-1207	Level 3 Floor Plan	1	A03	3/2/2017
ar-1208	Level 4 Floor Plan	1	A03	3/2/2017
ar-1209	Level 5 & 6 Floor Plan	1	A04	3/2/2017
ar-1210	Level 7 Floor Plan	1	A04	3/2/2017
ar-1211	Level 8-12 Floor Plan	1	A04	3/2/2017
ar-1213	Roof level Communal Open Space	1	A04	3/2/2017
ar-1214	Roof Plan	1	A03	3/2/2017
ar-2100	South Elevation	1	A02	3/2/2017
ar-2101	North Elevation	1	A02	3/2/2017
ar-2102	West Elevation	1	A02	3/2/2017
ar-2103	East Elevation	1	A02	3/2/2017
ar-2500	Section 1	1	A02	3/2/2017
ar-2501	Section 2	1	A02	3/2/2017
ar-3100	FSR Calculation Diagram Sheet	1	A04	3/2/2017
	01/02			
ar-3101	FSR Calculation Diagram Sheet	1	A04	3/2/2017
	02/02			
ar-3102	Site Coverage	1	A02	3/2/2017
La-0301	Landscape Demolition Plan	1	A02	21/12/2016

La-0501	Landscape Design-Lower Ground Floor	1	A02	21/12/2016
La-0502	Landscape Design-Ground Floor Plan	1	A02	21/12/2016
La-0503	Landscape Design-Level 5 Floor Plan	1	A02	21/12/2016
La-0504	Landscape Design-Level 7 Floor Plan	1	A02	21/12/2016
La-0505	Landscape Design-Level 8 Floor Plan	1	A02	21/12/2016
La-0506	Landscape Design-Roof Level Floor Plan	1	A02	21/12/2016
La-cv00	Landscape Design Cover Sheet	1	A02	21/12/2016

Supporting Documentation

Document	Title	Date
Ingham	Statement of Environmental Effects Job No 15116	21/12/2015
Planning P/L		
Ingham	Clause 4.6 Submission	November
Planning P/L		2016
Australian	Amended Bushfire Protection Assessment Report No	20/6/2016
Bushfire	B152581-1	
Protection		
Planners P/L		
Pells Sullivan	Geotechnical Assessment Ref:PSM2929-002L	17/12/2015
Meynink		
Victor Lin &	BASIX Certificate 693907M	21/12/2015
Assoc		
DEM	Crime Prevention Through Environmental Design	Undated
Naturally	Arboricultural Impact Appraisal and Method	10/10/2015
Trees	Statement	
Accessible	Access Report	17/12/2015
Building		
Solutions		
City Plan	BCA Assessment Report	18/12/2015
Gosford P/L		
DEM	Waste Management Plan	22/12/2015
	Traffic Report	
C & M	Stormwater Management Plan Report No R01559-	December
Consulting	SWMP Rev A 2015	

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

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE All conditions under this section must be met prior to the issue of any Construction Certificate

- 2.1. No activity is to be carried out on site until any Construction Certificate has been issued, other than:
 - a. Site investigation for the preparation of the construction, and / or
 - b. Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
 - c. Demolition of existing structures.
- 2.2. Provide details showing that the eastern, southern and northern elevations and roof, of the proposed building shall comply with Sections 3 and 8 (BAL 40 Australian Standard AS3959-2009: 'Construction of buildings in bushfire prone areas', and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection 2006'

Provide details showing that the western elevation of the proposed building shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009: 'Construction of buildings in bushfire prone areas', and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection 2006'

2.3. 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).

2.4. 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. Half width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum 6m wide road pavement across the full frontage of the site in Bent Street.
- b. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in Bent Street.
- c. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the full frontage of the site in Bent Street.
- d. Heavy-duty vehicle crossing that has a width of 10.25m at the property boundary and splayed to 11m at the kerb line, and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- e. All redundant dish crossings and / or damaged kerb and gutter must be removed and replaced with new kerb and gutter.
- 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 located in Bent Street.
- h. Longitudinal street drainage from the site frontage to the existing stormwater pit located in front of No 8 Bent Street 9near the intersection of Bent Street & Watt Street). These works will also require the removal & reinstatement of the existing kerb & gutter along Bent Street, the reconstruction of any affected concrete footpath (minimum 1.2m wide reinforced (SL72 steel fabric, 100mm thick)), reconstruction of the affected vehicle access crossing to No 8 Bent Street, and the removal of the street tree adjacent to the pavement within the frontage of No 8 Bent Street.
- i. 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.
- 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.

2.5. Submit a pavement report prepared by a practising Geotechnical Engineer for works within a public road reserve. This report must be submitted with the Roads Act application and approved by Council under the *Roads Act, 1993*.

The pavement depths must be determined in accordance with Council's specifications and the following traffic loadings:

Name of Street	Traffic Loading (ESAs)
Bent Street	2 x 10 ⁶

- 2.6. 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.
- 2.7. Pay a security deposit of \$100,000 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.
- 2.8. 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 <u>www.gosford.nsw.gov.au</u>. Early application is recommended.

2.9. Submit engineering details prepared and certified by a practising structural engineer to the Council (Water Authority) for development constructed near or over the sewer main and / or adjacent to Council's water mains. The engineering details must comply with Council's guidelines for "Building Over or Near Council Sewer and Water Mains" and must be approved by Council. A fee for engineering plan assessment must be paid when submitting the engineering details.

Additional fees for the submission of contractor's documentation and sewer inspection fees apply for the adjustment or encasement of Councils sewer main. Subject to approval of the engineering plans, and payment of the prescribed fees, the developer must contact Council's Water and Sewer Quality Inspector on mobile phone 0419 412 725 a minimum of one week prior to commencement of any work involving building over and / or adjacent to sewer mains.

2.10. Submit design details of the following engineering works within private property:

- a. Driveways / ramps and car parking areas must be designed according to the requirements of AS2890: *Parking Facilities* for the geometric designs, and industry Standards for pavement designs.
- b. A stormwater detention system must be designed in accordance with the Gosford DCP 2013 Chapter 6.7 Water Cycle Management and Council's Civil Works Specification. The stormwater detention system must limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1% AEP storm event, and limit the storm water outflows for the whole site back to the predevelopment flows associated with that part of the site that naturally drains to the southern side of the crest in Watt Street in front of No 8 Bent Street. 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 shall accompany the design.
- e. A secondary flow path is to be provided from the on-site detention system to Bent Street to ensure that potential storm water overflows from the on-site detention system can drain to Councils storm water system in Bent Street.
- f. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to Council's drainage system located in Bent Street.

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

2.11. Pay to Council a contribution amount of **\$775,258.00**, that may require adjustment at time of payment, in accordance with the Section 94A Development Contribution Plan - Gosford City Centre.

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

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

Any Construction Certificate must not be issued until the developer has provided the accredited certifier with a copy of a receipt issued by Council that verifies that the Section 94 contributions have been paid. A copy of this receipt must accompany the

documents submitted by the certifying authority to Council under Clause 104 of the *Environmental Planning and Assessment Regulation 2000*.

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

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

2.12 Prior to the issue of a Construction Certificate for building works, a Wind Effects Report be prepared by a suitably qualified person which demonstrates that the building and Towers will not create significant wind effects on the locality and not exceed a maximum of 16metres/second at street level.

2.13 Submit amendments to the approved plans to the accredited certifier pursuant to Clause 139 of the *Environmental Planning Regulation 2000: Applications for construction certificates* that must detail:

a. An amended BASIX Cerificate.

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. 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.*
- 3.3. 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.

3.4. 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.

- 3.5. 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 routes to and from the site. Approval of these details must be obtained from Council. Details must be provided at latter stages of construction if details change.
- 3.6. Tree Protection is to be as per the Arboricultural Impact Appraisal and Method Statement, by Naturally Trees 10/10/15.
- 3.7. Preparation of and approval by the Principal Certifying Authority of a Construction Management Plan. The Plan shall be prepared with the aim of causing minimal impact on the operation of the road network during construction of the development.

The Plan shall provide for workers' parking, storage and delivery of materials, hours of work, 24 hour emergency contacts, loading/delivery of materials.

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. Cease all works if any Aboriginal objects or artefacts are uncovered during works. Immediately contact the NSW Office of Environment & Heritage and comply with any directions or requirements.
- 4.6. 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.
- 4.7. Any tree located on Council managed land that requires removal due to works approved by a Development Application must be undertaken at the full cost and responsibility of the developer / owner using a Pre-qualified Tree Contractor. Contact Central Coast Council on 02 4325 8222 for the current list of relevant contractors.
- 4.8. Compliance with all commitments as detailed in the Waste Management Plan by DEM (Aust) Pty Ltd, Revision A DA Issue, dated 22 December 2015
- 4.9 No obstructions to the wheel out of the waste bins is permitted including grills, speed humps, barrier kerbs etc.
- 4.10 A vertical ceiling height of 4.0m must be provided in all areas accessed by waste vehicles.
- 4.11 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.

- 4.12 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.
- 4.13 Undertake demolition involving asbestos in accordance with the *Work Health and Safety Act 2011.*

The person having the benefit of this consent must ensure that the removal of:

- a. more than 10m² of non-friable asbestos or asbestos containing material is carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist, and
- b. friable asbestos of any quantity is removed by a licensed removalist with a friable (Class A) asbestos removal licence.

The licensed asbestos removalist must give notice to the regulator before work commences in accordance with Clause 466 of the *Work Health and Safety Regulation 2011.*

- 4.14 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).
- 4.15 Demolish buildings in a safe and systematic manner in accordance with AS2601-2001: *The demolition of structures.* Waste materials must be disposed of at a waste management facility.
- 4.16 The provision of water, electricity and gas shall comply with section 4/1/3 of "Planning for Bush Fire Protection 2006".

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. Complete works within the road reserve that required approval under the Roads Act. The works must be completed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control, and documentary evidence for the acceptance of such works must be obtained from the Roads Authority.
- 5.5. 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.
- 5.6. Complete the internal engineering works within private property in accordance with the plans and details approved with the construction certificate.
- 5.7. 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.

5.8. Erect a 1.8 metre high fence along the length of the side and rear boundaries behind the building line.

5.9. Consolidate all lots into a single allotment under one Certificate of Title.

5.10. Construct, grade, drain, seal and line mark including directional arrows with impervious paving material the driveway, vehicle manoeuvring area and car parking spaces as shown on the approved plan, in accordance with *AS2890.1-2004: Parking facilities - Off-street parking.*

5.11. The street number is to be at least 100mm high and be clearly visible from the street frontage.

5.12. Provide certification to the Principal Certifying Authority that the requirements of the BASIX certificate listed as supporting documentation in this development consent have been complied with.

5.13 Completion of landscaping works.

6. ONGOING OPERATION

- 6.1. Maintain the on-site stormwater detention facility in accordance with the operation and maintenance plan.
- 6.2. Maintain the nutrient / pollution control facilities in accordance with the operation and maintenance plan.
- 6.3. Waste storage to be as indicated on Drawing No. ar-1204, dated 21 December 2015 by DEM Architects.
- 6.2. Waste vehicle manoeuvring to be as indicated in the Assessment of Traffic and Parking Implications Report, Reference 15283, (Revision B) dated December 2015 by Transport and Traffic Planning Associates.

6.3. Place the mobile green waste containers at a suitable location at the kerbside no earlier than the evening prior to the collection day and return to the approved waste storage enclosure as soon as possible after service, no later than the evening on collection day. The residents, caretaker, owners, Body Corporate are responsible for the placement and return of the mobile waste containers.

6.4. No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.

6.5. All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area or to motorists on nearby roads.

6.6 At the commencement of building works, and in perpetuity, the entire property shall be managed 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".

7. ADVICE

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

7.3. Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at <u>www.1100.com.au</u> 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. RIGHT OF APPEAL

- 9.1. 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.
- 9.2. To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.

Attachment 2 – Architectural and Landscape Plans











































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BURNED DEVENSE

Attachment 3 – Applicant's Clause 4.6 Submission

INGHAM PLANNING Pty Ltd

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

The proposal has a maximum height of 48.5m (NW corner of the lift overrun). This is 13.9m lower than the height control which applies to the western-most lot (No 12 Bent Street) when the bonus provisions of Clause 8.9 of the LEP is applied ie 48m + 30% = 62.4m. However, it is 17.3m higher than the 24m plus 30% control (31.2m) that applies to Nos 14-16 Bent Street.

A significant part of this height is attributable to the rooftop elements that sit above the main bulk of the building. In our view it could be argued that the rooftop element provides an 'architectural roof feature'. Such features are dealt with in Clause 5.6 of the LEP, which reads as follows:

5.6 Architectural roof features

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

(a) to permit variations to maximum building height standards for roof features of visual interest,

(b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard.

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

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that:

(a) the architectural roof feature:

(i) comprises a decorative element on the uppermost portion of a building, and

(ii) is not an advertising structure, and

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and

(iv) will cause minimal overshadowing, and

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

The roof elements are predominantly decorative add to the overall architectural quality of the building. Whilst not essential they would be of benefit even if there was no access to the rooftop communal space as they provide an appropriate crowning element to the building architecture. The lift and stairs are ancillary to providing the rooftop open space however these elements are not floor space and are not necessary as adequate communal open space is provided elsewhere in the development. The plant area is also not floor space and could be relocated. These elements are provided as the decorative elements are considered to be a good design outcome. They also do not result in any significant overshadowing as they are setback from the parapet of the building. Therefore it is considered that the 'architectural roof feature' criteria above are met by these elements.

Absent these elements the building height would be 44.3m (to the roof level). This is 18.1m below the maximum achievable on No 12 Bent Street and reduces the breach at Nos 14-16

to 13.1m. In any event this remains a breach and so a request to contravene this control must be made under Clause 4.6 of the LEP.

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

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

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

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

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

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

In regard to the issue here, it is considered that 1, 2 and 3 above are applicable to the various objectives of the height control contained in Clause 4.3 of the LEP.

(a) to establish maximum height limits for buildings,

Comment – the variation will not alter the maximum height limits that apply more broadly across Gosford.

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

Comment – it is considered that the proposed building heights will result in a higher quality urban form than if compliance was enforced. In this regard as indicated in the following figure, the controls allow a higher building than proposed at the western end of the site. Due to the location of the split in the height limit relative to the development parcel, adherence to the height control would result in a building of split height.

As Council formulates the height controls without knowledge of how future development sites may be configured, where there is a complex and varied framework of height controls, it is not surprising that this results in sites being the subject of 2 height controls. This is a common occurrence in Gosford city centre. However it does not result in a good planning or urban design outcome. As can be seen in the following figure, compliance with the controls would necessitate a narrow tall element and a significantly lower, wider element. It is considered that a moderately scaled form with a single height represents a superior outcome in this circumstance.



Building height relative to height controls

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

Comment – based on the submitted shadow diagrams, it is clear that reducing the height to comply on part of the building would not make any material difference to shadowing impacts. It is noted that these impacts are acceptable and will not result in any dwelling receiving less than the 2 hours noted in SEPP 65.

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

Comment - the proposal represents a better outcome than complying height as it allows a more gentle transition between the two height zones on the site than would otherwise occur. In this regard rather than having a 62.4m building stepping down to a 31.2m

building (a difference of 30.9m), the transition will be more gradual ie stepping from 62.4m to the west, to 48.1m on the subject site and 31.2m to the east.

When the transition is considered having regard to the fact that the 30% bonus height may not apply to the surrounding properties, the proposal has even greater benefits than a complying scheme. In this regard the permitted height to west is 48m, to the east 24m and to the south 30m. The proposal has a max height of 48.5m. This is only marginally higher than the height permitted without the bonus on the western part of the site and the adjoining properties to the west. If the proposal was built to the maximum possible height (ie 62.4m with the bonus), the transition to the areas with lower building heights (ie 30 and 24m) would be far less appropriate as the difference between the built form would be significantly more pronounced.

(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,

Comment – the proposed distribution of building heights will have no different impact on views that would occur from a height compliant scheme. The principle of having higher buildings as ground level reduces is maintained.

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

Comment – as noted above the proposal will result in an appropriate balance in overshadowing in that in some cases will have greater impact and in other cases less impact. In any event there is no material difference to the impact on the public domain. If anything the outcome will be slightly better from the proposal as there are more public areas to the west which would be more greatly affected by having a higher building in the western part of the site. It will have no different impact on views as noted above.

Having regard to the above it is considered that the proposal satisfies (to varying degrees) the first three of the 'tests' 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

One of the objectives of Clause 4.6 is to allow better outcomes to be achieved. As detailed above, the proposed height of the buildings is considered to result in a superior planning outcome compared to the form that would result from a development which complied with the height controls.

Lack of impact

As noted in the above discussion, despite the non-compliance, the amenity of surrounding properties will be maintained to the extent that is considered acceptable for a complying development. In this regard there is potential for additional overshadowing on the properties to the south the impact would be similar for a complying development and in some cases potentially worse as the higher limit in the western part of the site is not being built to. It is also noted that the proposal has significantly less FSR than is permitted under the LEP controls. Therefore the overall outcome could be the same or worse than that resulting from the proposal.

As noted above, there would be some adverse outcomes from enforcing compliance, in particular overshadowing of the public domain to the south-west of the site and a poorer urban design outcome from having a 'stepped' building.

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

Clause (3)(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 B4 zoning the following comments are made:

To provide a mixture of compatible land uses.

The proposed residential use is compatible with the residential nature of this part of the town centre.

To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposal provides for residential density in accordance with the relevant controls and is a short distance to employment and recreational uses within the town centre.

To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities, social, education and health services and higher density residential development.

The proposal provides for higher density residential development in an appropriate location.

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

NA

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

The proposal will not have any adverse impacts on the public domain.

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

NA

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

The proposal will protect and enhance these qualities as its overall height is over 13m lower than that permitted and will result in a building form which will provide a superior height transition and urban design outcome than a complying development.

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 about 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 November 2016

Attachment 4- June Shadow Diagrams













