

# JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

## Council Assessment Report

Panel Reference	PPS-2016HCC020
DA Number	DA 49565/2016
Local Government Area	Central Coast Council
Proposed Development	Mixed Use Development – Commercial and Shop Top Housing (2 Towers) Residential Flat Building (4 towers)
Street Address	Lots 1, 2, 3, 25 & 26 Sec A DP1591, Lots 4 & 5 DP15954, Lot 31 DP553523 and Lot 2A DP407164,  Nos 372, 374, 393, 395 & 397 Mann Street, Nos 35, 37 & 41A Dwyer Street and No 76 Hills Street, North Gosford
Applicant	Caine King - CKDS Architecture (note that the site owner Ken Schmidt has requested to be the applicant via email dated 12 July 2020)
Owner	K Schmidt
Date of DA Lodgement	31 March 2016
Number of Submissions	First round - 33 submissions, petition with 55 signatures  Second round - 15 submissions, petition with 122 signatures.  Third round - 25 submissions, petition with 121 signatures  Fourth (final) round - 18 submissions, petition with 121 signatures.
Recommendation	Refusal
Regional Development Criteria - Schedule 7 of the State Environment Planning Policy (State and Regional Development) 2011	Capital Investment Value > \$20M and lodged before 1 March 2018.

List of all relevant 4.15(1)(a) matters	<ul style="list-style-type: none"><li>• <i>Environmental Planning &amp; Assessment Act 1979</i> (EP&amp;A Act)</li><li>• <i>Local Government Act 1993</i> (LG Act)</li><li>• <i>Roads Act 1993</i> (Roads Act)</li><li>• <i>State Environmental Planning Policy (State and Regional Development) 2011</i> (SEPP State and Regional Development)</li><li>• <i>State Environmental Planning Policy No 55 - Remediation of Land</i> (SEPP 55)</li><li>• <i>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</i> (SEPP 65)</li><li>• <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP Coastal Management)</li><li>• <i>State Environmental Planning Policy No 71 - Coastal Protection</i></li><li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> (BASIX)</li><li>• <i>State Environmental Planning Policy (Gosford City Centre) 2018</i></li><li>• <i>Central Coast Regional Plan 2036</i></li><li>• <i>Draft Central Coast Local Environmental Plan 2018</i> (CCLEP)</li><li>• <i>Gosford Local Environmental Plan 2014</i> (GLEP 2014)</li><li>• <i>Gosford Development Control Plan 2013</i> (GDCP 2013)</li><li>• <i>Apartment Design Guide</i> (ADG)</li></ul>												
List all documents submitted with this report for the Panel's consideration	<p><b>Attachments:</b></p> <ol style="list-style-type: none"><li>1. Reasons for Refusal (attached as part of this report)</li><li>2. GDCP 2013 Compliance Table (attached as part of this report)</li><li>3. Amended Architectural Plans, Rev N dated 19/12/2019 prepared by CKDS Architecture (D13804764)</li><li>4. Landscape Plans, Rev H dated 05/02/2020, prepared by Xeriscapes (D13804692)</li><li>5. Transport for NSW response email dated 05/08/2020 (D14108251)</li><li>6. Sydney Trains Letter dated 26 August 2020 (D14167007)</li><li>7. Independent Design Review, Rev 2 dated 27/02/2020 prepared by Ken Dyer (D13903673)</li><li>8. Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 Variation Request (D14155447)</li></ol> <p><b>Supporting Documents:</b></p> <table><tr><th>Document</th><th>Prepared by</th><th>Date / Issue</th></tr><tr><td>RFI Response Letter Feb (2020) (D13804677)</td><td>CKDS Architecture</td><td>05/2/2020</td></tr><tr><td>Revised Waste Management Plan (D13804678)</td><td>Barker Ryan Stewart</td><td>5 19/12/2019</td></tr><tr><td>Traffic &amp; Parking Report (D13804681)</td><td>BJ Bradley &amp; Associates</td><td>06/01/2020</td></tr></table>	Document	Prepared by	Date / Issue	RFI Response Letter Feb (2020) (D13804677)	CKDS Architecture	05/2/2020	Revised Waste Management Plan (D13804678)	Barker Ryan Stewart	5 19/12/2019	Traffic & Parking Report (D13804681)	BJ Bradley & Associates	06/01/2020
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	Letter from Traffic Consultant (D13804683)	BJ Bradley & Associates	17/12/2019
	Cost Estimate (D13804691)	Muller Partnership	16/01/2020
	Statement of Environmental Effects	ADW Johnson	K 7/01/2020
	Civil Engineering Plans	Northrop	D- 2/05/2019 C- 7/02/2018
Report prepared by	E Murphy		
Report date	17 September 2020		

## Summary

The site is located on the northern extremity of the Gosford City Centre on the corner of Mann Street and Dwyer Street. The site comprises nine (9) lots located on the southern side of Dwyer Street and severed by Mann Street, being Nos 372, 374, 393, 395 & 397 Mann Street, Nos 35, 37 & 41A Dwyer Street and No 76 Hills Street.

The proposal is for a mixed use development and includes six towers, with two located on the eastern side of Mann Street (Towers 1 and 2), and the remaining four on the western side of Mann Street (Towers 3-6). The two main towers, Towers 2 and 3, which are sited on the eastern and western sides of Mann Street, are 16 storeys high and provide ground level commercial and retail uses with shop top housing residential units above. The remaining four towers are eight storeys and are all residential flat buildings. The total number of units proposed is 353, with 491.75m<sup>2</sup> of commercial / retail floor space.

The application was lodged on 31 March 2016 and therefore receives the benefit of Clause 8.9 of Gosford Local Environmental Plan 2014 (GLEP 2014). This clause allows a 30% bonus on the prescribed height and FSR specified for the relevant sites within the Gosford Central Business District.

The original application was lodged on 31 March 2016 and proposed variations to the maximum building height of 128% and variation to floor space ratio (FSR) of 36%. Amended plans received 6 March 2018 resulted in a compliant FSR and a 22% variation to the height controls. Amended plans lodged 20 November 2018 had a compliant FSR but still exceeded the building height control for all towers, by a maximum of 19%.

Both Councils internal architect and an externally appointed architect raised various design issues, the main one pertaining to the non-compliant setbacks to the southern boundaries, as required by the Apartment Design Guide (ADG). Further amended plans were received on 5 February 2020 in response to Council and issues raised by the Regional Planning Panel, as well as requests for information by Sydney Trains and RMS (now Transport for NSW).

The proposal has a compliant FSR but still exceeds the building height control for all towers, by a maximum of 19%. The plans received do not address the building separation issue, with variations of up to 51% to the southern boundary and 36% between towers on the site. The amended plans do not include an updated Design Verification or Apartment Design Guide

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assessment or any schedule of solar access, natural cross ventilation, unit areas, storage, balconies size etc., nor did the information include an updated BASIX certificate.

Given the setback concerns would require significant redesign, the applicant was advised on 25 May 2020 that no further work should be undertaken on the design of the development, or information submitted in relation to the application, prior to the Regional Planning Panel briefing on 16 June 2020.

Amended plans were provided on 12 June 2020. These plans, while not requested, were reviewed and subsequently forwarded to the Regional Planning Panel on 16 June 2020 and discussed during the briefing. The plans however still had significant design issues and importantly had not adequately addressed building separation to the southern boundary.

Having regard for the provisions of Clause 55 of the *Environmental Planning and Assessment Regulation 2000*, Council is of the opinion that the amendments should not be accepted as the amending documentation does not sufficiently address the fundamental design matters including building separation, and does not include the required documentation to enable a comprehensive assessment of the application including an updated Design Verification or Apartment Design Guide assessment, an updated BASIX certificate or an updated Acoustic Assessment to demonstrate the development will be able to mitigate noise and vibration impacts from the adjoining rail corridor.

As such, council has provided a recommendation (refer recommendation 1), that the request to amend the application is not supported. Accordingly, the following assessment is based on the amended architectural plans and documentation submitted 5 February 2020.

The application has been assessed having regard for the matters for consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and other relevant instruments, plans and policies. The application seeks a number of variations to Gosford Local Environmental Plan 2014 (GLEP 2014), Gosford Development Control Plan 2013 (GDGP 2013) and the Apartment Design Guide (AGD), the extent of which are not supported. The proposal will detract from the character of the area and result in a poor amenity outcome for both surrounding and future occupants of the site and area, particularly the adjoining R1 land to the north. In the context of revitalisation of the Gosford City Centre the non-compliance's will have significant impacts on, and unfairly prejudice, the development potential of sites to the south.

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## RECOMMENDATION

- A. That the Hunter and Central Coast Regional Planning Panel do not agree to the amendment of the application under clause 55 of the Environmental Planning and Assessment Regulation 2000, as detailed in amended plans and documentation submitted on 16 June 2020, for the reasons stated above.***
- B. That the Hunter and Central Coast Regional Planning Panel refuse Development Application DA 49565/2016 at Lots 1, 2, 3, 25 & 26 Sec A DP159, Lots 4 & 5 DP15954, Lot 31 DP553523 and Lot 2A DP407164, being No's 372, 374, 393, 395 & 397 Mann Street Nos 35, 37 & 41A Dwyer Street and 76 Hills Street, North Gosford for the proposed Mixed Use Development for the reasons detailed in the schedule attached to the report and having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act 1979 and other relevant issues.***
- C. The those who have made written submissions be notified of the Panel's decision.***
- D. The Public Authorities be notified of the Panel's decision.***

## Precis

<b>Delegation Level</b>	Regional Planning Panel
<b>Reason for Delegation Level</b>	Development over \$20 million
<b>Property Lot &amp; DP</b>	Lots 1, 2, 3, 25 & 26 Sec A DP1591, Lots 4 & 5 DP15954, Lot 31 DP553523 and Lot 2A DP407164
<b>Property Address</b>	Nos 372, 374, 393, 395 & 397 Mann Street, Nos 35, 37 & 41A Dwyer Street and No 76 Hills Street, North Gosford
<b>Site Area</b>	10,617.2m <sup>2</sup>
<b>Zoning</b>	B4 Mixed Use and R1 General Residential
<b>Proposal</b>	Mixed Use Development – Commercial and Shop Top Housing (2 Towers) Residential Flat Building (4 towers)
<b>Application Type</b>	Development Application
<b>Current Use</b>	Residential and Vacant
<b>Integrated Development</b>	No
<b>Application Lodged</b>	31 March 2016
<b>Applicant</b>	Caine King - CKDS Architecture (note that the site owner Ken Schmidt has requested to be the applicant via email dated 12 July 2020)
<b>Estimated Cost of Works</b>	\$134,640,000
<b>Advertised and Notified / Notified Only</b>	Exhibition periods: <ul style="list-style-type: none"> <li>• 15 April and 6 May 2016 and 20 May and 10 June 2016</li> <li>• 15 March and 9 April 2018</li> <li>• 19 December 2018 until 6 February 2019</li> <li>• 12 February to 4 March 2020</li> </ul>
<b>Submissions</b>	First round - 33 submissions, petition with 55 signatures  Second round - 15 submissions, petition with 122 signatures.  Third round - 25 submissions, petition with 121 signatures  Fourth (final) round - 18 submissions, petition with 121 signatures.
<b>Disclosure of Political Donations &amp; Gifts</b>	No
<b>Site Inspection</b>	15/04/2020
<b>Recommendation</b>	Refusal

## The Site and Surrounds

The site is located on the northern extremity of the Gosford City Centre on the corner of Mann Street and Dwyer Street which is identified as the "gateway" to the city centre under Gosford Development Control Plan 2013 (GDCP 2013).

The site comprises nine lots located on the southern side of Dwyer Street and severed by Mann Street. Four (4) lots are located on the western side of Mann Street, and five lots are located on the eastern side of Mann Street, being Nos 372, 374, 393, 395 & 397 Mann Street, Nos 35, 37 & 41A Dwyer Street and No 76 Hills Street, North Gosford.



Figure 1- Aerial View of the site

The lots are legally described as:

- Lots 1, 2, 3, 25 & 26 Sec A DP1591
- Lots 4 & 5 DP15954
- Lot 31 DP553523
- Lot 2A DP407164

The site has a total area of 10,617.2m<sup>2</sup>. The eastern side has an area of 3,567.7m<sup>2</sup> and the western side an area of 7,049.5m<sup>2</sup>. Existing development on the site consists of single residential dwellings, one commercial building on 372 Mann Street and vacant land (previously commercial / car yard) at 35 Dwyer Street.



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The site slopes down to the south west. To the west is the Newcastle-Sydney rail corridor, with Gosford railway station about 800m to the south. The site is zoned B4 Mixed Use and R1 General Residential under *Gosford Local Environmental Plan 2014* (GLEP 2014). The site and surrounds are shown in Figure 1.



**Figure 2- North eastern most lot – corner of Hills and Dwyer Street facing south**



**Figure 3- Northern elevation (eastern section) of site facing west along Dwyer Street**





**Figure 4- Corner of Dwyer Street and Mann Street, facing south west**



**Figure 5 - Facing south down Mann street to 'gateway' site/corner**

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## Background

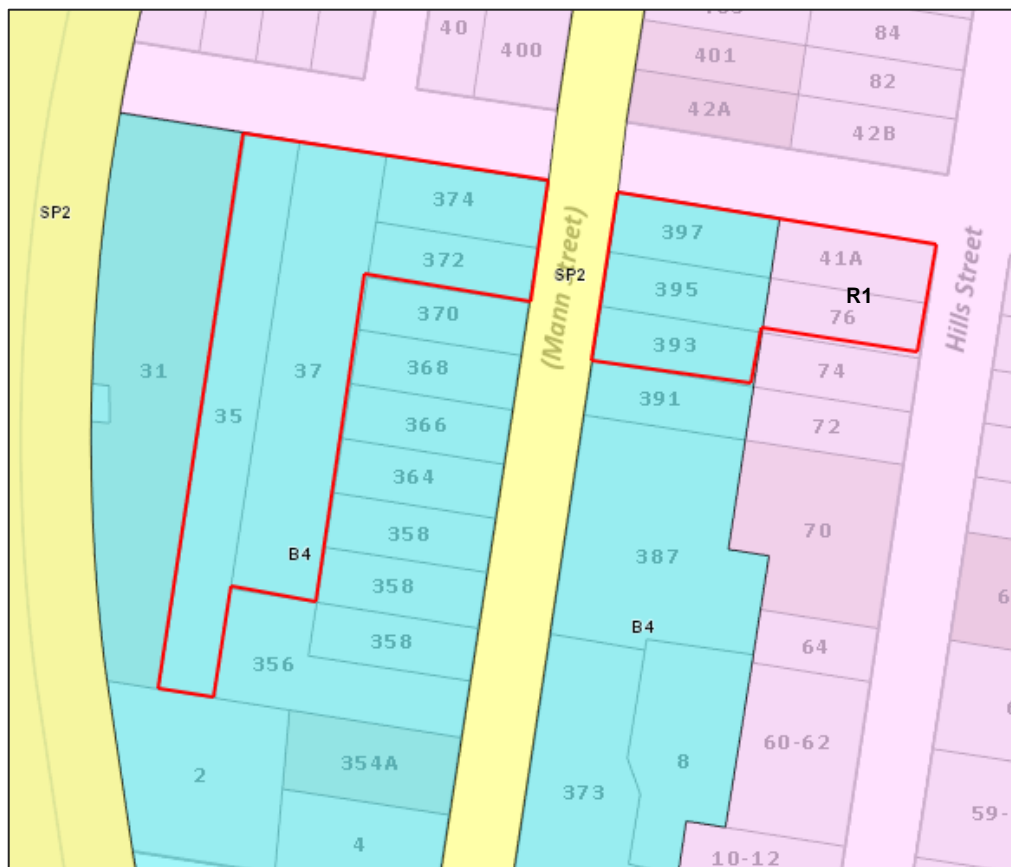
### *Planning Context*

The application was lodged on 31 March 2016 and therefore receives the benefit of clause 8.9 of the *Gosford Local Environmental Plan 2014* (GLEP 2014). This clause allows a 30% bonus on the prescribed height and FSR specified for the relevant sites within the Gosford Central Business District.

The following planning controls apply to the site under the GLEP 2014:

- Most of the site is zoned B4, apart from the easternmost 2 lots zoned R1 (See Figure 6).
- The maximum building height on the site under the GLEP is 36m and 18m or 46.8m and 23.4m including the 30% bonus provisions under Clause 8.9 (see Figure 7).
- The maximum FSR on the site under the GLEP is:
  - 2.5:1 for the westernmost lots or 3.25:1 including 30% bonus;
  - 4:1 for the lot on the corners of Mann Street or 5.2:1 including 30% bonus; and
  - 2.25:1 for the easternmost lots or 2.925:1 including 30% bonus (see Figure 8)

The same zoning and 'base' height and FSR controls apply under *State Environmental Planning Policy (Gosford City Centre) 2018*. It is noted that land zoned B3, B4 and B6 (but notably not R1) for a site of this size are able to exceed both the height and FSR controls subject to compliance with Clause 8.4 of this SEPP. This is not capped at 30% but does require review by a Design Review Panel and potential Architectural Design Competition.



**Figure 6 - Zoning Map Extract**



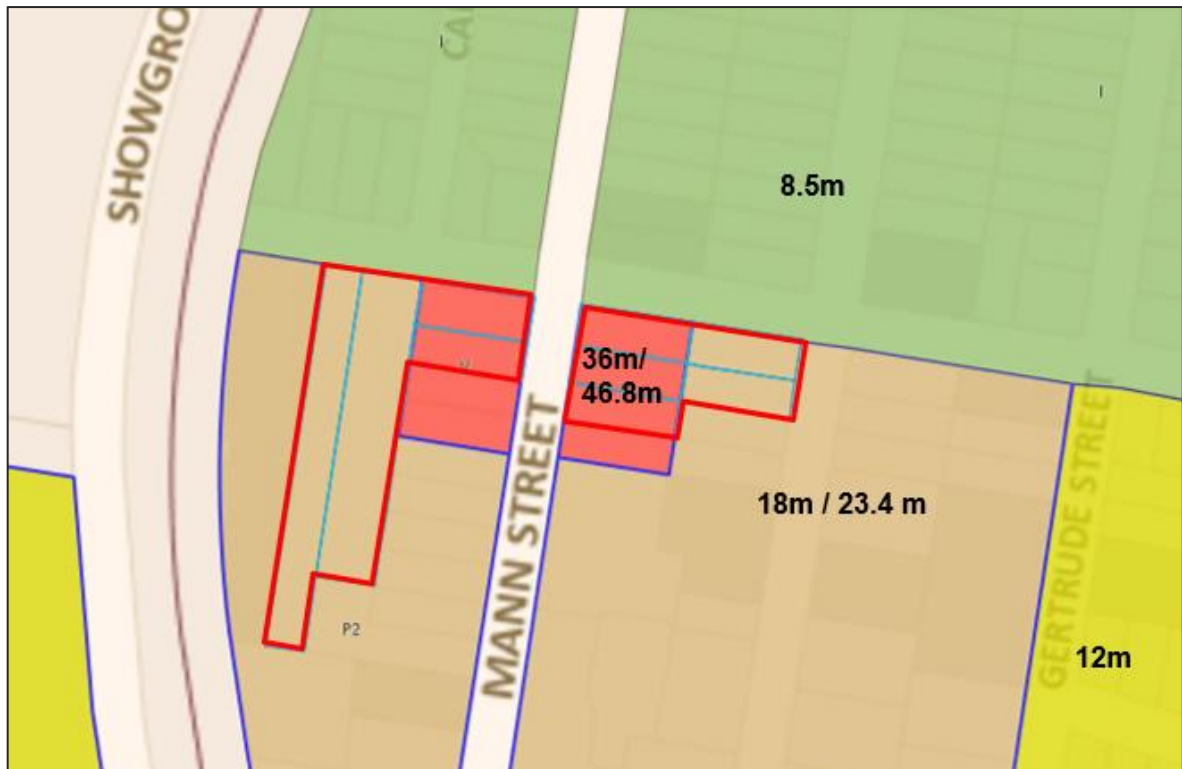


Figure 7 - Height of Buildings Map

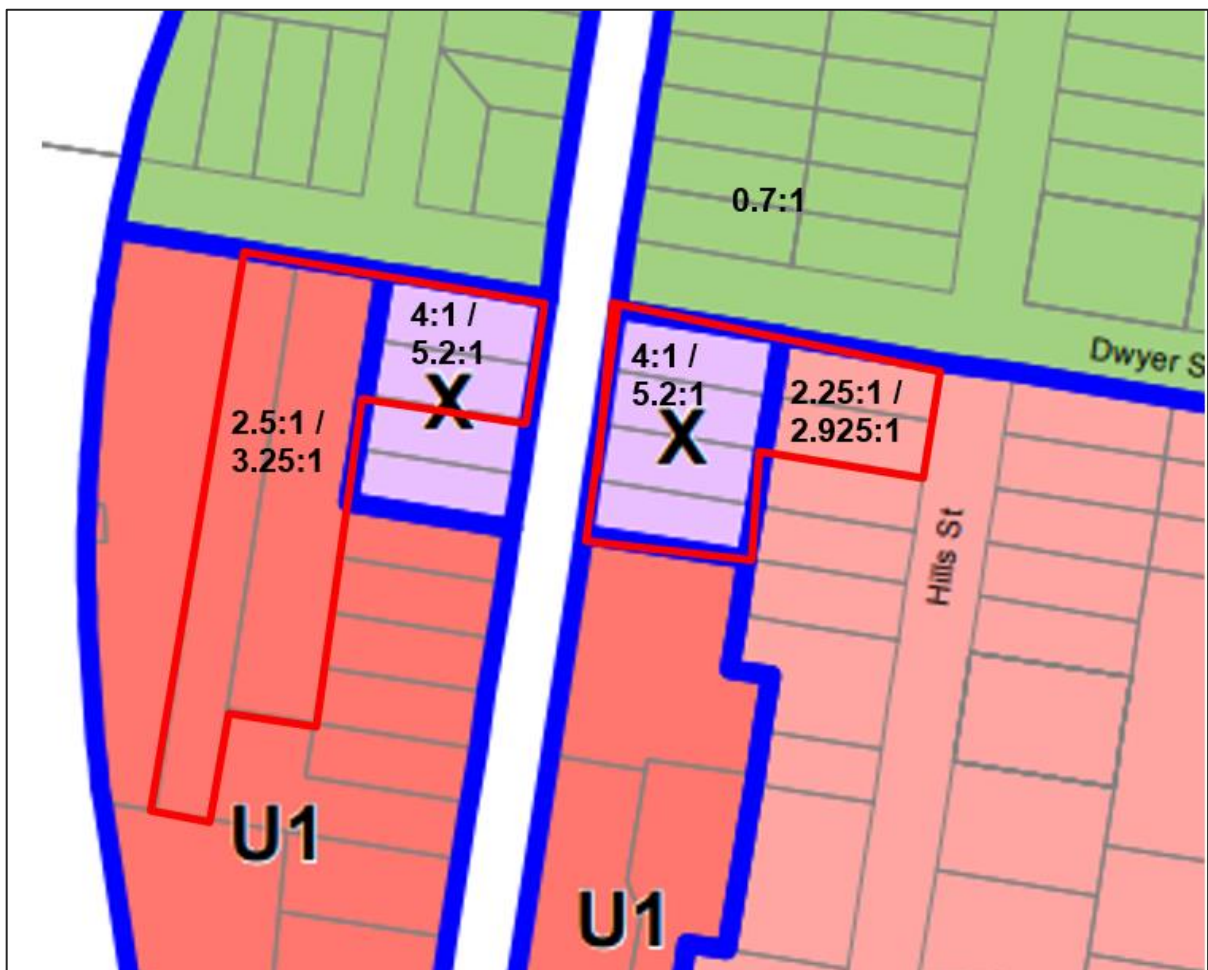


Figure 8- Floor Space Ratio Map

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## *Application History*

### Original Application March 2016

The original application was lodged on 31 March 2016 and sought approval for 6 towers consisting of 391 residential units, 811m<sup>2</sup> of commercial/retail floor space, and 458 car parking spaces.

The DA originally lodged proposed variations to the maximum building height of 128% and variation to floor space ratio (FSR) of 36% (refer to Figure 9).

The application was notified between 15 April 2016 and 6 May 2016 and 20 May 2016 and 10 June 2016 whereby 33 submissions, including a petition with 55 signatures, were received objecting to the proposal.



**Figure 9 -Render Northern Elevation (31 March 2016)**

### Amended Application March 2018

As a result of discussions with the applicant, amended plans were received by Council on 6 March 2018 which reduced the FSR to be compliant, and reduced the height of buildings (refer to Figure 10) that now represented a 22% variation to the height controls. The amended proposal, which comprised 400 units within five towers, was notified between 15 March 2018 and 9 April 2018 and 15 submissions were received objecting to the amended proposal, including a petition with 122 signatures.



**Figure 10 -Render Northern Elevation (March 2018)**

#### RPP briefing June 2018

On 28 June 2018, a briefing was given to the Hunter and Central Coast Regional Planning Panel (the Panel), where the following matters were discussed:

- *Gateway sites, one DA for both sites of Mann Street.*
- *Sydney trains concurrence – issues raised recently, to be resolved.*
- *Bonus 30% applied due to lodgement date – TBC with report.*
- *Objections - issues raised.*
- *FSR complies.*
- *Height variation – around 1-2 storeys.*
- *Street frontage height/setback non-compliance being considered.*
- *Balustrading greenery questionable – if proposing a “green building” need full details of landscaping, vegetation type, irrigation, details at 1:20 etc.*

#### Amended Application November 2018

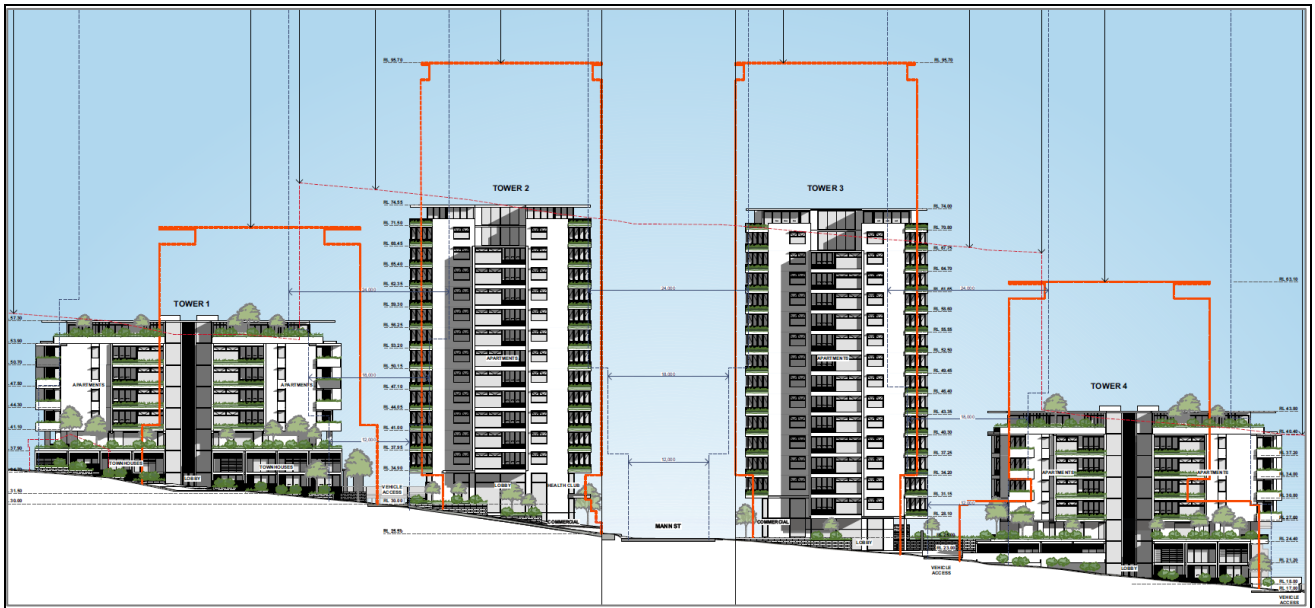
In response to the matters raised by the Panel, and in response to discussions with Council staff, amended plans were received on 20 November 2018 (refer to Figure 11, noting red line represents application as originally lodged).

The amended proposal resulted in six towers, with 373 residential units and 491.75m<sup>2</sup> of commercial/ retail floor space over the lower levels of the towers on Mann Street.

The amended design had a compliant FSR but still exceeded the building height control for all towers, by a maximum of 19% on Tower 4.

The amended application was notified from 19 December 2018 until 6 February 2019 and 25 submissions were received objecting to the amended proposal, including a petition with 121 signatures.





**Figure 11- Northern Elevation (20 November 2018)**

### RPP briefing March 2019

On 20 March 2019, a briefing was given to the Panel, where the following matters were discussed:

- *Height non-compliant*
- *FSR understood to comply*
- *30% bonus "saved", but the bonus no longer applies to surrounding sites so the scale transition may be more pronounced*
- *Relationship with surrounding land and likely future development very important*
- *Ground level setback provided and various modifications, including to height, made*
- *Ground floor – level of activation to be assessed – retail/commercial uses would seem appropriate*
- *Given the new City Centre SEPP, size of the site and importance as a Gateway to Gosford, the Council should formally request the Office of the Government Architect to review the proposal and provide advice, particularly regarding design excellence. If OGA is not willing, seek external urban design peer review*
- *Issues in submissions*
- *Referrals to come*

On 29 March 2019, the Department of Planning advised that the City of Gosford Design Advisory Panel would not review the subject DA or other DAs where it does not have an established role under the SEPP (Gosford City Centre). Council was also advised that the Government Architect NSW (GA) did not have the capacity/resources to review DAs beyond its current role and it was recommended that Council seek an independent review.

An independent review was requested under Council Urban Design Panel Process and comments were provided by Ken Dyer (Registered Architect) on 3 May 2019. The comments noted the following issues:

- *ADG building setbacks on elevations indicate non-compliance's, these non-compliances not adequately addressed in the documentation.*
- *No definitive area calculation provided for communal open spaces, and required solar access not demonstrated*
- *More detail may be required to ensure the deep soil planting over structures and the sustainability of planting on towers planter boxes.*

The issue of Building Separation under the Apartment Design Guide was also raised by Council's internal Architect requesting that the applicant provide fully compliant ADG setbacks on the amended proposals.

#### Amended Plans February 2020

In response to the matters raised by the Panel, requests for information by Sydney Trains and RMS (now Transport for NSW) and in response to further advice from Council staff, amended plans were received on 5 February 2020, refer to Figure 12.

The red dotted line on Figure 12 represents the application as originally lodged (128% variation to height control) and the solid red line indicates the maximum height control under the GLEP 2014 (including 30% bonus).

The development still exceeds the building height controls for all towers. The greatest variation is now seen within Tower 4 (19%).

These plans (February 2020) are the subject of this assessment.



**Figure 12 - Northern Elevation (February 2020) (red dotted line represents the application as originally lodged, solid red line indicates the maximum height control under the GLEP 2014 including 30% bonus)**

It is noted that the amended plans provided on 5 February 2020 did not include an updated Design Verification or Apartment Design Guide assessment or any schedule of solar access,

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natural cross ventilation, unit areas, storage, balconies size etc. In addition, an updated BASIX certificate did not accompany the amended plans.

Significant concerns remain regarding ADG compliance and setbacks, which would require a significant redesign to address. As such, the applicant was advised on 25 May 2020 that no further work should be undertaken on the application and that staff would be providing a briefing to the Hunter and Central Coast Regional Planning Panel on 16 June 2020 on the February 2020 plans.

Amended plans were submitted to council on 12 June 2020 for consideration prior to the Panel briefing on 16 June. These plans were forwarded to the Panel for their information. Staff reviewed the plans for discussion with the Panel on 16 June 2020.

#### RPP briefing June 2020

On 16 June 2020 a briefing was held with the Panel, where the following matters were discussed:

- *Exceedance of 30% height bonus is not adequately justified by referencing examples of other development in the city centre to the south approximately 1.5km away.*
- *The subject site is located at the very northern end of city and is defined as part of the 'City Centre'. The Panel noted that it does not have the city centre character, particularly having regard for surrounding development and zoning e.g. properties directly north are low scale single and two storey residential properties and are zoned R1 General Residential.*
- *Panel notes significant non compliances with ADG separation controls both between buildings and to the southern boundaries. It is unclear how design excellence has been addressed and achieved with these non-compliances.*
- *The proposed development must satisfy the design excellence provisions set out in Clause 8.5 of Gosford Local Environmental Plan 2014. The design of the development should have regard for existing and future development and the amenity of future occupants, particularly in relation to private open space and the public domain.*
- *It is noted that the February 2020 package of amended and additional information still had documentation missing (Design statement and ADG Assessment) as well as issues and errors on the plans.*
- *The Panel noted non-compliance with ADG building separation and queried the implications that this would have on adjoining sites and how surrounding development could be accommodated.*
- *Panel notes that the ADG requirement for solar access for non-metropolitan Sydney is 3 hours and the proposed development does not comply. However, to ensure consistency, it is recommended staff review other approvals in the city centre to see how this requirement has been applied. Additionally, staff should have regard for how internal building separation has been applied/varied in other city centre developments noting*

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*that this is on the city centre fringe and requires adequate building separation and transition to adjoining lower scale existing and future development.*

- *The Panel notes amended plans were provided Friday 12 June (5th set of plans). Staff had advised the applicant not to submit any additional information until such time as the Panel had been briefed on the proposed development. These plans have not been agreed to in accordance with Section 55 of the Environmental Planning and Assessment Regulation 2000, however, have been discussed with the Panel as a matter of courtesy to the applicant. In relation to the plans submitted on Friday the following is noted:*
  - *No changes to southern boundary setbacks have been made – this remains an issue.*
  - *Amendments to apartment layouts to address building separation between towers on the sites (introduction of blank walls) results in a reduction in the amenity of some units.*
  - *The proposed height of the development continues to exceed the bonus height provisions.*
- *The Panel acknowledges the length of time the application has been in council and the fact that they have been briefed on the fourth set of amended plans (submitted February 2020) and a fifth set (dated June 2020) that still provide several concerns for assessment staff.*
- *The Panel requires a determination on the matter whether it is on the fourth or fifth set of plans.*
- *Council's recommendation regarding acceptance or otherwise of the amended plans submitted on Friday 12 June 2020 should be addressed in any assessment report.*

Notwithstanding the issues identified with the February set of plans, issues were still identified with the amended plans submitted on 12 June 2020, particularly in relation to the design of development and the absence of information required for assessment of the application. In addition, the plans submitted in June would require re-notification and referral to the relevant internal and external bodies. Given the length of time the application has been in council, the number of opportunities provided to the applicant for the submission of amended information, and the fact that it has been requested to be reported to the Panel (based on the fourth or fifth set of plans), council has progressed the application to determination based on the fourth set of plans submitted in February 2020.

As such It is Council's recommendation that the request to amend the application is not supported having regard for the provisions of Clause 55 of the *Environmental Planning and Assessment Regulation 2000*. Accordingly, the following assessment is based on the amended architectural plans and documentation submitted 5 February 2020.

#### *Surrounding Development Approvals*

There are six recent development consents for similar developments in proximity of the site which have utilised the 30% bonus provisions for building height and FSR contained within Clause 8.9 of GLEP 2014, and a location map of each development is provided below. The



subject site is shown in red on the maps provided, with the surrounding approvals shown in blue.

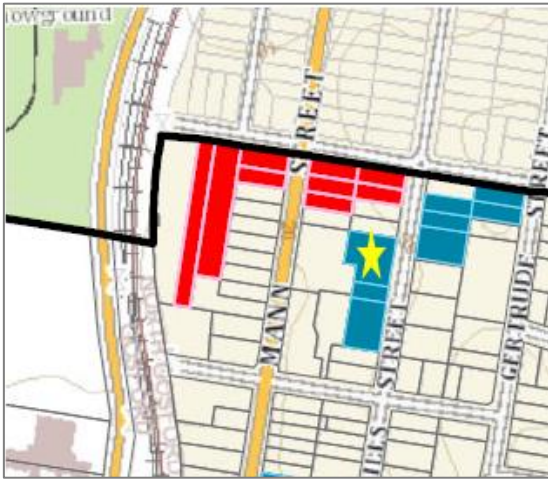


Figure 13: DA/46224/2014,66-70 Hills St North Gosford

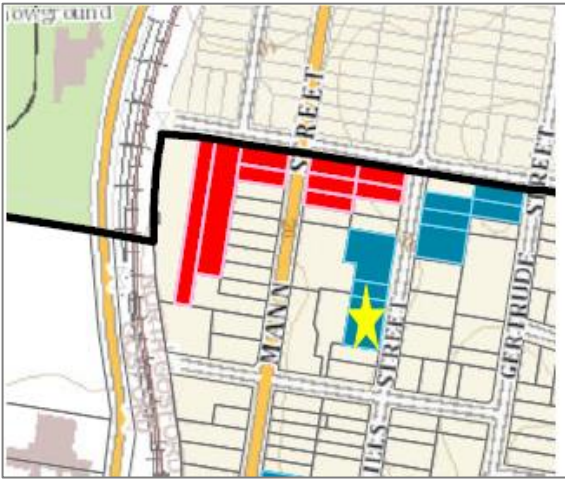


Figure 14: DA/49479/2016, 60-64 Hills St, North Gosford

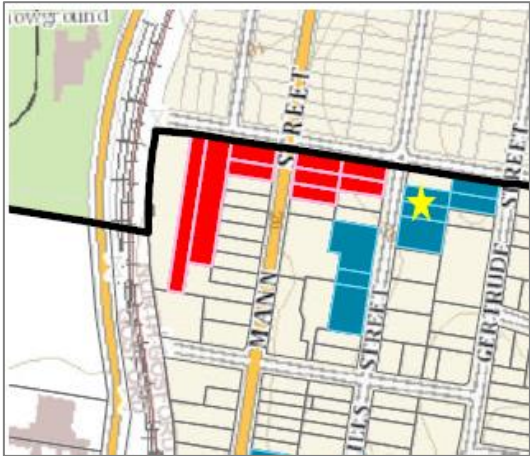


Figure 15: DA/49522/2016,73-75 Hills St, North Gosford

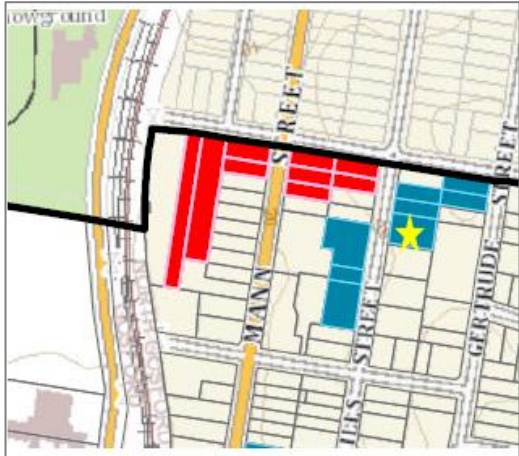


Figure 16: DA/46236/2014,69-71 Hills St, North Gosford

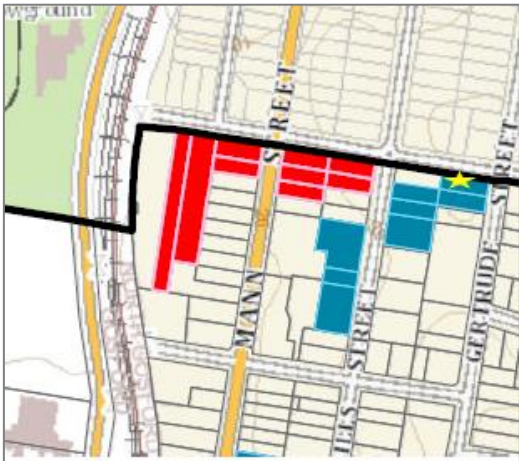


Figure 17: D/46267/2014,226 Gertrude St, North Gosford

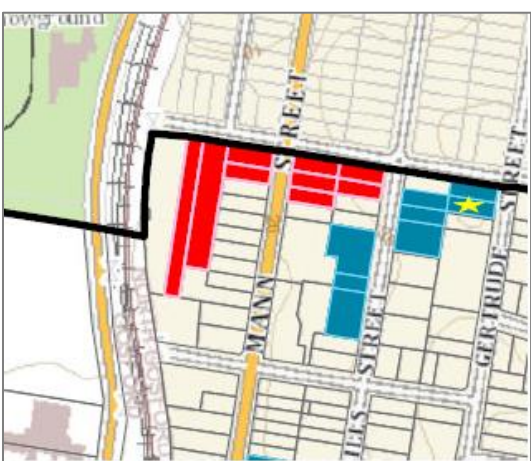


Figure 18: D/47713/2015,224 Gertrude St, North Gosford



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## **The Proposed Development**

The proposal is for a mixed use development and includes six towers, with two located on the eastern side of Mann Street (Towers 1 and 2), and the remaining four on the western side of Mann Street (Towers 3-6). The two main towers, Towers 2 and 3, which are sited on the eastern and western sides of Mann Street, are 16 storeys high and provide ground level commercial and retail uses with shop top housing above. The remaining four towers are eight storeys and are all residential flat buildings (refer Figures 19-26).

The eastern towers (Towers 1 and 2) and western towers (Towers 3-6) each share a common podium and basement car parking levels respectively, with vehicular access from Dwyer Street for the western towers and from Dwyer and Hills Streets for the eastern towers.

The total number of units proposed is 353, with 142 within the eastern towers (Towers 1 and 2) and 211 within the western towers (Towers 3-6). Towers 2 and 3 also accommodate 491.75m<sup>2</sup> of commercial / retail floor space over the lower levels and a 176.25m<sup>2</sup> health club.

Four basement levels of parking, plus one level at grade are proposed on the eastern site providing 192 car spaces and four basement levels of parking and one level of at grade are proposed on the western site providing 371 car spaces.

The proposal includes the removal of trees/vegetation and landscaping including swimming pool, BBQ and seating areas on both sites at ground level.

Staged construction is proposed as follows:

- Stage 1 – Towers 3 & 4 and basement for Towers 3 and 4, and partially under Tower 5
- Stage 2 – Towers 5 & 6 and remaining basement under Towers 5 and 6
- Stage 3 – Towers 1 & 2 and basement (See Figure 20)



### Figure 19-Proposed Site Layout Plan

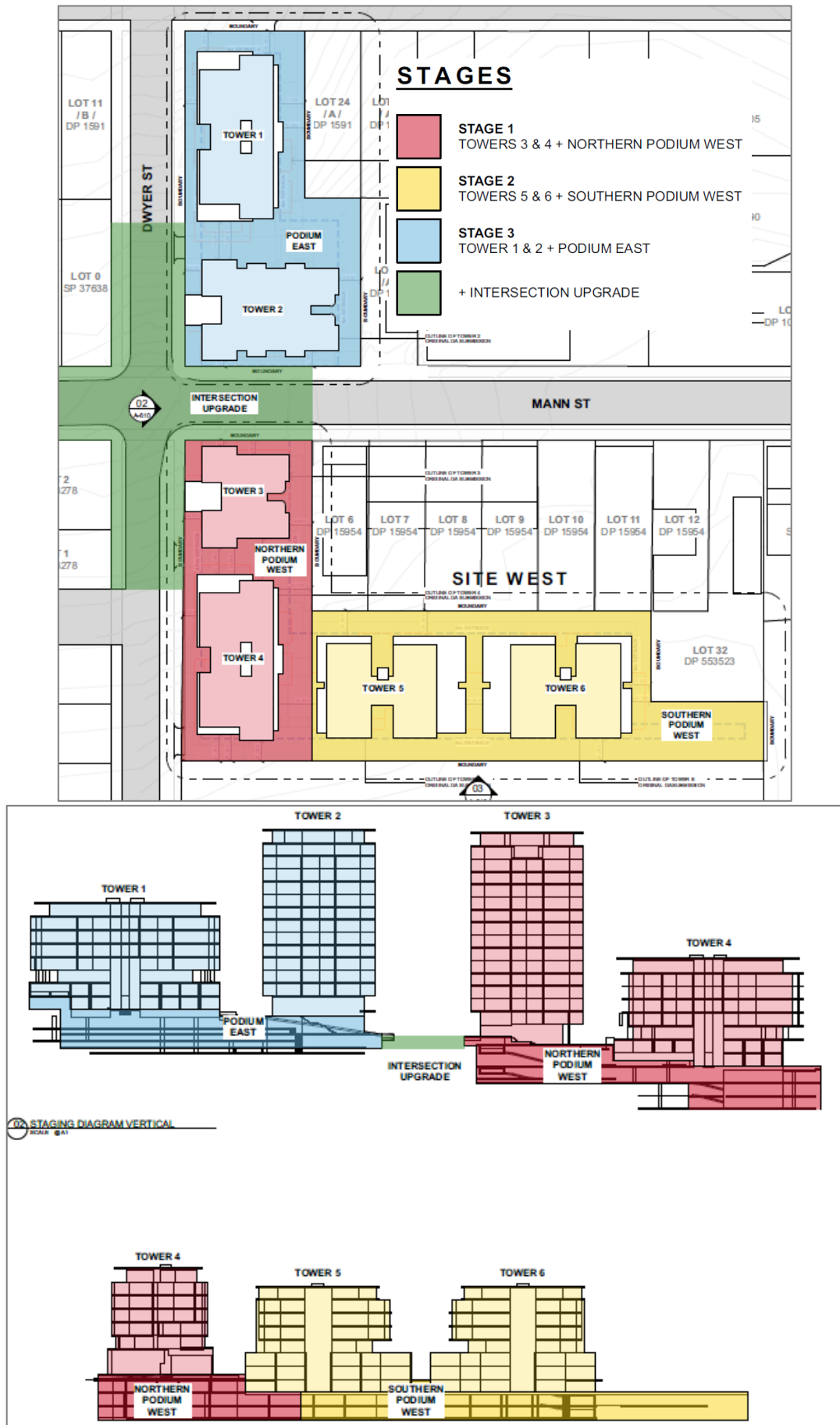
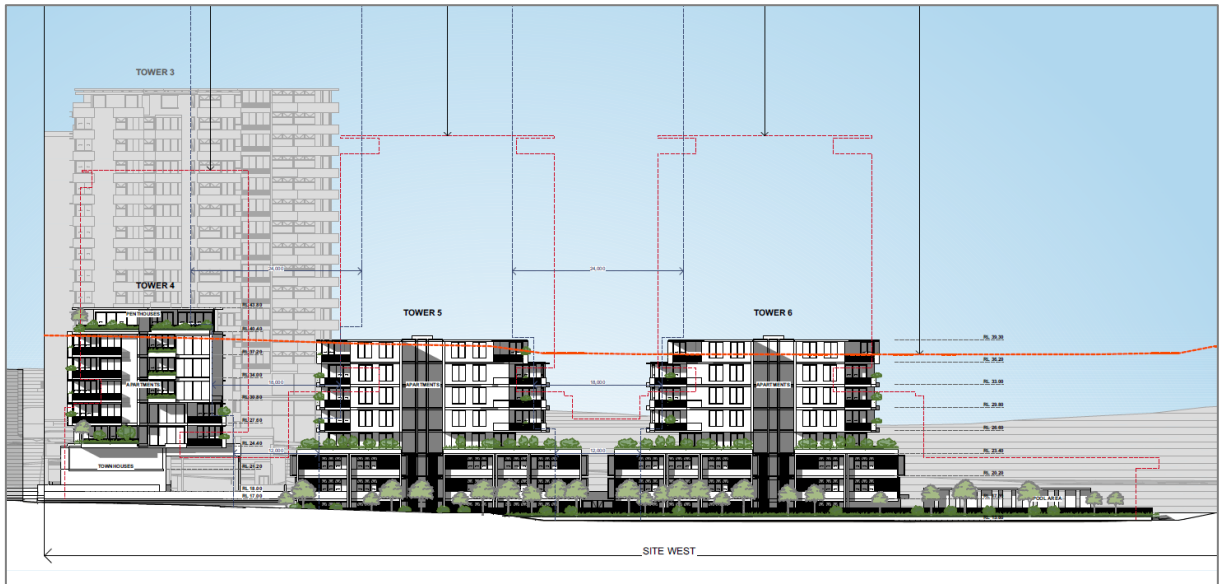


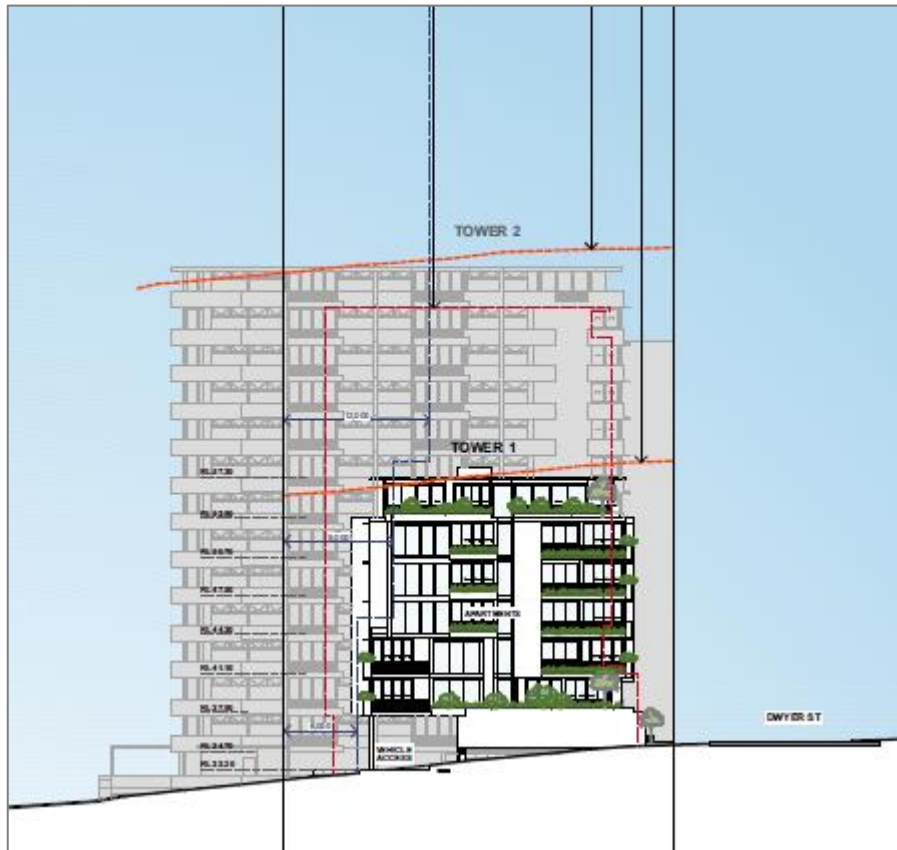
Figure 20-Staging Plans



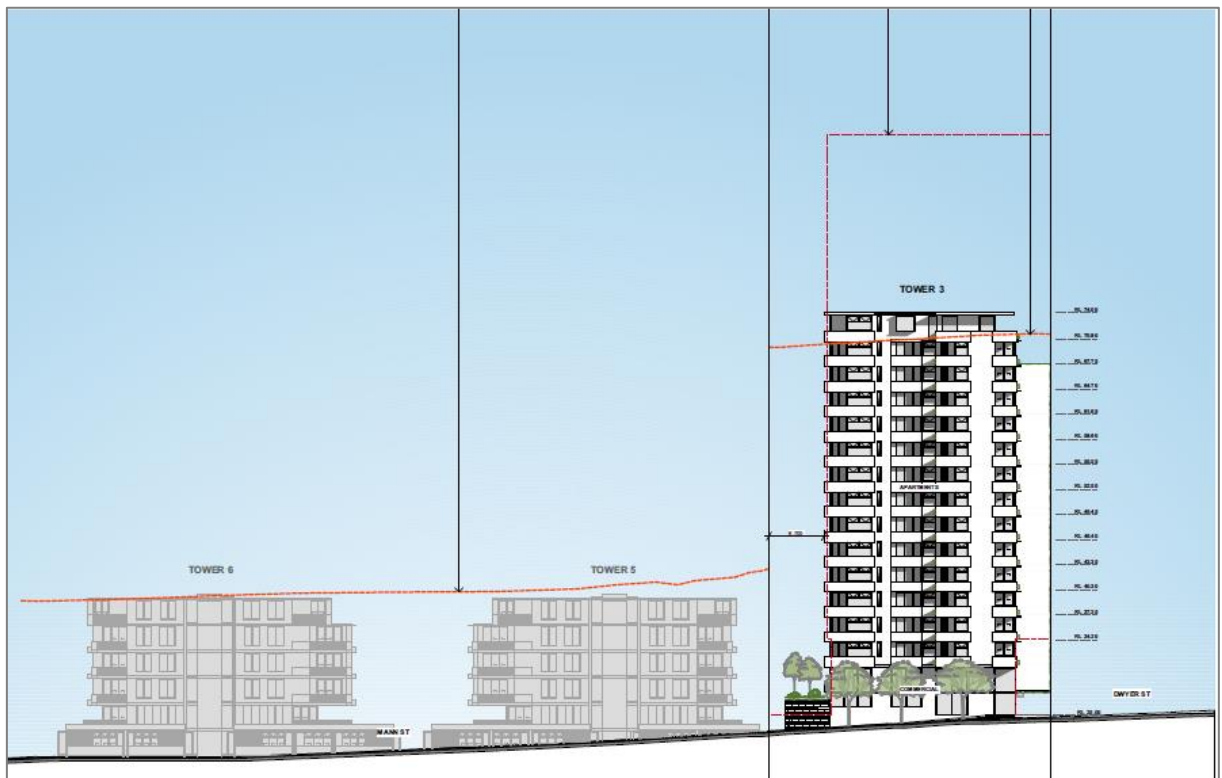
**Figure 21 - Northern Elevation (red dotted line represents the application as originally lodged, solid red line indicates the maximum height control under the GLEP 2014 including 30% bonus)**



**Figure 22- Western Elevation**



**Figure 23- Eastern, Hills Street, Elevation**



**Figure 24- Eastern, Mann Street, Elevation**





**Figure 25 -Axonometric view of proposal**



**Figure 26-External materials**

## Internal consultation

The amended package received on 5 February 2020, has been referred to and reviewed by the following experts in council, the majority of which are not satisfied with the level of information provided, as summarised below.

- Internal Architect – issues with building separation and design
- Environmental Health:
  - Acoustic & Vibration Report – not in line with Development Near Rail Corridors and Busy Roads- Interim Guidance, as required by SEPP Infrastructure. In addition, the report uses 2004 background noise levels, which, at the time of lodgement, was 12 years old and not representative of noise levels now. This information should have been updated.

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- Concept Soil and Water Management Plan detailing all cut and fill is required
  - Engineering – adequate swept paths and Road Safety Audit not provided
  - Engineering Traffic and Transport - appropriate levels of pedestrian movements have not been included, information on likely upgrading requirements for the Mann Street / Dwyer Street intersection have not been provided, modelling information is insufficient
  - Waste – adequate travel paths, waste room dimensions and an updated Waste Management Plan not provided
  - Water and Sewer – acceptable subject to conditions
  - Tree Assessment – acceptable subject to conditions

### **External Consultation**

The amended package received on 5 February 2020, was referred to the following State Government Agencies:

- Sydney Trains (concurrence required) – concurrence granted subject to a deferred commencement condition (see Attachment 6)
- Transport for NSW – who made the following comments (see Attachment 5):
  - There are no objections to the proposal in principle
  - TfNSW consider the addition of vehicle movement generated by the development would have a negative effect on the safe and efficient operation of the Mann Street / Dwyer Street intersection
  - Consideration would be given to traffic control signals at the Mann Street / Dwyer Street intersection pending updated traffic modelling.
- NSW Police – no objections

An independent review of the amended architectural plans received on 5 February 2020 was requested from an independent urban design consultant and comments were provided on 27 February 2020 (see Attachment 7). The comments raise issues with building separation, communal open space, landscaping and visual privacy.

### **Ecologically Sustainable Principles**

The proposal has been assessed having regard to ecologically sustainable development principles. Insufficient information has been provided to demonstrate that the proposal is consistent with the principles. The amended plans have not included an updated BASIX assessment or certificate and it is unclear how the proposed units perform in terms of basic amenity outcomes such as solar access and natural cross ventilation as no schedule has been provided.

### **Climate Change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the development 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.

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## Assessment

This application has been assessed having regard for the matters for consideration specified under section 4.15 of the EP&A Act, and other relevant instruments, plans and policies.

### **s. 4.15 (1)(a)(i) of the EP&A Act: Provisions of any environmental planning instruments/Plans/Policies**

#### **State Environmental Planning Policies (SEPP's)**

##### **State Environmental Planning Policy (Infrastructure) 2007**

###### **Clause 86 Excavation in, above, below or adjacent to rail corridor**

Clause 86 applies as the site, and excavation of the basement for Towers 5 and 6, is within 25m of the rail corridor to the west.

Council was advised that Sydney Trains, via Instruments of Delegation, has been delegated to act as the rail authority for the Newcastle & Central Coast Line heavy rail corridor and were the appropriate authority to process the concurrence for this development application.

Sydney Trains advised that the proposed development was assessed in accordance with the requirements of Clause 86(4) being:

- a) *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
  - i) *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
  - ii) *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- b) *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects*

On 26 August 2020 Sydney Trains granted its concurrence to the development, subject to Council imposing the following deferred commencement condition, as well as various operational conditions (see Attachment 6):

#### **Deferred Commencement Condition**

*This consent is not to operate until the Applicant satisfies the Council, within 24 months of the date of this consent, that it has obtained approval/certification from Sydney Trains as to the following matters and the approval/certification has been forwarded to the Council:*

- A1.** *The Applicant shall prepare and provide to Sydney Trains for review, comment and written endorsement the following final version items in compliance with relevant*

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ASA Standards (<https://www.transport.nsw.gov.au/industry/asset-standards-authority>):

1. *Geotechnical and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducted on the site closest to the rail corridor.*
2. *Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.*
3. *Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.*
4. *Detailed Survey Plan showing the relationship of the proposed development with respect to Sydney Trains easement and rail corridor land.*
5. *If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.*
6. *If required by Sydney Trains, a Monitoring Plan.*
7. *Civil (Stormwater and drainage) Plans and Hydrology Report including stormwater calculations confirming the post-development flow rate and velocity, entering the Council stormwater pipe within RailCorp land, is equal to or less than the pre-development flow rate and velocity up to and including during a 1 in 100 year event. The report is to confirm there is no requirement for or reliance on any works occurring to, or impact on, the existing pipe and infrastructure within RailCorp land.*

*Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.*

#### Clause 87 Impact of rail noise or vibration on non-rail development

Under Clause 87, the consent authority must consider whether any residential accommodation proposed on land in or adjacent to a rail corridor is likely to be adversely affected by rail noise or vibration and must consider any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

The consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,
- anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

The site is approximately 20m from the rail corridor at its closest point.



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The provisions of clause 87 have not been addressed in the amended Statement of Environmental Effects that was submitted in February 2020, nor has an updated Acoustic Assessment been provided with the amended package submitted 5 February 2020. Noise impacts from road and rail were assessed in the 2018 Acoustic Assessment. However, the Acoustic Assessment has not been prepared in accordance with the *NSW DoP NSW Department of Planning Development near rail corridors and busy roads- interim guidance* to demonstrate compliance with Clause 87 SEPP Infrastructure.

The Acoustic Report dated 19 January 2018 indicates noise levels at the façade are 13 dB(A) above the criteria at c.87(3) of the *SEPP (Infrastructure) 2007* (Table 12) and then states that “the future residential units proposed to be constructed on lots located in close proximity to the rail line will need to be assessed by a suitably qualified acoustician to ensure all properties are designed and constructed in accordance with the *NSW DoP Development near Rail Corridors and Busy Roads – Interim Guideline*”. Moreover, Section 6.3 of the Acoustic Assessment states that an additional acoustic report is required to demonstrate compliance with these requirements.

Section 6.4 of the Acoustic Report states “noise calculations were performed for the building to determine the required façade glazing to achieve compliance with the internal noise level for various internal spaces” and then further states that glazing will be required which will impose significant cost implications to the proposed development and “it is therefore not appropriate at this stage to specify the acoustic glazing requirements for the project in detail as the layout and extent of the glazed facades will need to be confirmed...”. The project specific noise levels are determined by clause 87(3) of the *SEPP (Infrastructure) 2007* and an acoustic report should indicate how compliance with clause 87(3) of the *SEPP (Infrastructure) 2007* can be achieved prior to development consent, that is, proposed mitigation measures to ensure the 13dB(A) exceedance is reduced to the criteria in clause 87(3) and discussion of the likely effectiveness.

In addition, the report relies on background data / baseline noise levels from 2004, which is not representative of the current background noise in this area. Appendix D of the *NSW DoP Development near Rail Corridors and Busy Roads – Interim Guideline* indicates future railway proposals should be considered. Section 6.3 Table 12 of the acoustic report has included train noise levels from a previous acoustic report for the proposal from 2004 and indicates further confirmation from the Rail Infrastructure Corporation (RIC) is required to confirm the number of train pass-bys. The NSW Government has indicated in the “A 20-Year Economic Vision for Regional NSW” that a future railway proposal for a fast rail network is being investigated for the Northern Corridor which includes the Central Coast. The Acoustic Report would need to consider future railway proposals in as part of the assessment.

The *NSW DoP Development near Rail Corridors and Busy Roads – Interim Guidelines Section 3.5* states if a consent authority is unsure about the likely impact it is best to obtain preliminary acoustic advice to determine whether the development can comply with clause 87. The Acoustic Report (dated 19 January 2018) is considered to be preliminary only as it has not adequately addressed the provisions of clause 87 or demonstrated whether compliance with clause 87 of *SEPP (Infrastructure) 2007* can be achieved for the proposed development. The *NSW DoP Development near Rail Corridors and Busy Roads – Interim Guidelines Figure 3.2* requires a vibration assessment to be prepared for sensitive buildings (residential accommodation included) that are within 60m of a rail corridor. This has not been undertaken.

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The application has not adequately addressed Clause 87 of *State Environmental Planning Policy (Infrastructure) 2007* as it has not adequately addressed the impacts of rail noise or vibration in accordance with the relevant guideline and the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the LAeq levels are not exceeded.

Clause 104 Traffic-generating development

Clause 104 Traffic-generating development applies as the proposed development is considered a traffic generating development within schedule 3 as it involves more than 75 dwellings and the site is within 90m of a connection to a classified road (Pacific Highway also known as Mann Street). It also contains more than 200 parking spaces.

Clause 104 requires the consent authority to take into consideration any submission by RMS (now Transport for NSW) as well as the accessibility of the site, including the efficiency of movement of people and any potential traffic safety, road congestion or parking implications of the development.

As required, the application (as amended) was referred to Transport for NSW (formerly RMS). Transport for NSW did not object to the proposal in principle. However, they considered the additional vehicle movement generated by the development would have a negative effect on the safe and efficient operation of the Mann Street / Dwyer Street intersection. Transport for NSW commented that consideration would be given to traffic control signals at the Mann Street / Dwyer Street intersection, pending updated traffic modelling.

A revised Traffic Assessment Report dated 17/12/19 was submitted with the amended package provided on 5 February 2020 and the amendments included traffic signals at the intersection of Mann Street and Dwyer Street that sought to address the operation of that intersection.

Although an updated concept layout for the Traffic Signals and further modelling was provided by the applicant's Traffic Consultants on 23 June 2020 it has not been assessed or referred to Transport for NSW (TfNSW) as council has recommended the consent authority, not accept the amended plans/additional information received in June 2020 as per Recommendation 1 of the report.

Councils Traffic and Transport Engineer has provided the following comments:

- Based on the TfNSW advice, traffic signals are the preferred intersection treatment for the Dwyer Street / Mann Street intersection. TfNSW advised that traffic signals would provide pedestrian access across each leg of the intersection to the two bus stops.
- For a traffic signal option, an increase in pedestrian movements using the pedestrian phases across Mann Street and Dwyer Street intersection could increase traffic congestion, particularly in a ten-year time frame. The Traffic Assessment Report Sidra analysis results are not supported as appropriate levels of pedestrian movements have not been included in a revised analysis.

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- The Summary of the Traffic Assessment Report has advised "*Several movements on each leg of Dwyer Street currently experience undesirably high average delays, poor levels of service and adverse safety risks which would otherwise deteriorate further by 2029 PM Peak*". Council has not been provided with any information on what the likely upgrading requirements are for the Mann Street / Dwyer Street intersection in 2029 in the February 2020 amended information package.

The application has not adequately addressed the provisions of Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007* as insufficient information has been provided to adequately demonstrate that road congestion and efficiency and pedestrian movements will be satisfactory upon development of the land.

State Environmental Planning Policy (Coastal Management) 2018 and State Environmental Planning Policy No 71 - Coastal Protection

At the time of lodgements Clause 1.9(2)A of Gosford Local Environmental Plan 2014 details that *State Environmental Planning Policy No 71 - Coastal Protection* does not apply to land within the Gosford City. The provision of Clause 1.9(2)A have since been repealed.

*State Environmental Planning Policy (Coastal Management) 2018* (SEPP Coastal Management) came into effect on 3 April 2018. The savings and transitional provisions contained within *State Environmental Planning Policy (Coastal Management) 2018* states the *State Environment Planning Policy No 71 Coastal Protection* provisions continue to apply if a Development Application is lodged but not finally determined prior to the commencement of SEPP Coastal Management.

It is noted that the site does not fall within the mapped areas under *State Environmental Planning Policy (Coastal Management) 2018*.

The provisions of SEPP 71 do not apply to the proposed development and no further assessment is required.

**State Environmental Planning Policy 55-Remediation of Land (SEPP 55)**

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated when determining a Development Application. The proposed development involves ground disturbance through the excavation of the site to accommodate basement carparking and the construction of footings for the proposed new buildings.

Contamination and SEPP 55 has not been addressed or considered in the application as amended (or as originally submitted).

Clause 7(2) of SEPP 55 requires a preliminary contamination investigation to be undertaken for any land as specified by Clause 7(4), being:

- (4) *The land concerned is—*
  - (a) *land that is within an investigation area,*

- 
- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*
- (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The land is not in an investigation area. Previous and current land uses at most lots are residential, excluding 35 Dwyer Street which is currently used as a tile storage facility (and previously as a car sales yard and motor vehicle showroom). The previous non-residential uses of tile storage, car sales and motor vehicle showrooms are not identified as activities or uses that may cause contamination in Table 1 of the 'Managing Land Contamination Planning Guidelines SEPP 55—Remediation of Land' or 'Draft Contaminated Land Planning Guidelines'. As such, a preliminary contamination investigation is not deemed necessary and it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP 55.

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

The application as amended is not supported by a BASIX certificate and has not demonstrated how the proposal will meet the NSW government's requirements for sustainability.

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

The proposal is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). SEPP 65 provides that in determining an application for a residential flat development, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles and the Apartment Design Guide (ADG).

The amended package received on 5 February 2020, was not accompanied by a Design Verification Statement or a report addressing the Design Quality Principles and Objectives of the Apartment Design Guide (ADG) (Parts 3 and 4). No tables, schedules or figures detailing compliance with the Apartment Design guide was provided.

An independent review was requested under Council Urban Design Panel Process and comments were provided by the independent urban consultant on 27 February 2020. This review noted the following issues:

- *Building Separation - Representation of SEPP building setbacks on elevations indicate non-compliances. These non-compliances not adequately addressed in the*



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*documentation especially the SEPP 65 compliance report. Need to demonstrate that the amenity is not adversely affected by confirming how the physical design achieve compliance with the objectives.*

- *Communal Open Space - No definitive area calculation provided in revised documentation. (delineation of private courtyard and common space). Shadow diagrams don't support Criteria No.2 (sunlight)– further detail required.*
- *Visual Privacy - Representation of SEPP building setbacks on elevations indicate noncompliance's, especially between Tower 1 & 2 and Tower 3 & 4. These non-compliances not adequately addressed in the documentation. Need to demonstrate that the amenity is not adversely affected. No additional documents provided.*
- *Planting on Structures - More detail may be required to ensure the deep soil planting over structures and the sustainability of planting on towers planter boxes.*

The proposed development has been assessed by Council's Architect who raised the following issues:

- Significant non-compliant setbacks will result in increased overshadowing, visual and acoustic privacy conflicts and reduced development potential to the adjoining site. Detrimental impacts resulting from non-compliance are not supported.
- New developments should respond to the existing and likely future context by complying with all controls in the ADG.
- Approximately 1-2 of the top floors of the buildings exceed the height control. This adds to overshadowing and visual bulk and scale.
- Tower 1 - the rear of the townhouses continues to be located under a 7 metre overhang overlooking the driveway resulting in poor natural lighting and outlook. It is accepted that living areas face the north and have complying solar access. It is recommended to amend the design of townhouses to eliminate the large overhangs and permit dining areas to open to a pleasant outdoor area rather than parking and common driveway.
- For Tower 2 and 3, the GDCP 2013 requires ground floor retail be located on the street boundary to contribute to an active street front with a 3 to 4 storey podium above to provide a pedestrian scale street front. The current application proposes reversing this by setting back the commercial levels of Towers 2 and 3 by 4 metres on both the Mann and Dwyer Street boundaries with the upper levels located on the boundary. This is supported in this instance because both streets have steep and narrow footpath reserves with both sides of the Mann Street footpath reserve being occupied by cast iron water mains that would severely restrict the use of street trees. The proposed setbacks will create a larger usable public space on this prominent corner and allow a deep soil zone for significant trees to permit the full realisation of the "tree lined avenue" shown in the earlier photo montages. Mature trees provide shading and enhance the public spaces, visually and physically separate pedestrian areas from the road and disguise the scale resulting from the non-complying height and it is essential that the planting scheme is fully implemented.

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The proposed development has not demonstrated that adequate regard has been given to the following design quality principles contained within State Environmental Planning Policy No. 65 with respect to Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 4: Sustainability, Principle 5: Landscape, and Principle 6: Amenity.

### **1. Context and Neighbourhood Character**

It is acknowledged that the site is identified as the northern gateway to the Gosford City Centre and subject to a transition in character and revitalisation from a low density residential area to a higher density, mixed use, precinct. However, the non-compliance with both the building height control and the building separation controls result in an undesirable character of large and crowded towers, which will not respond to the low scale residential to the north or create a desirable future character for the Gosford City Centre to the south. In the context of revitalisation of the Gosford City Centre the non-compliance's with the southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south.

### **2. Built Form and Scale**

The non-compliance with both the building height and building separation controls result in an undesirable built form outcome of crowded towers, which will not respond to the low scale residential to the north or create a desirable future character for the Gosford City Centre to the south. The visual and acoustic privacy impacts of the building separation non-compliances have not been adequately justified.

### **3. Density**

Density complies in terms of compliance with the of Floor Space Ratio development standard of GLEP 2014. However, the non-complying setbacks and inadequate landscaping indicate the application is an overdevelopment of the site. Insufficient information has been provided to demonstrate that a good design has been achieved to provide a high level of amenity for residents and each apartment.

### **4. Sustainability**

An updated BASIX certificate has not been supplied with the amended package to demonstrate compliance with mandatory minimum sustainability standards. Insufficient information has been provided to demonstrate that a good design has been achieved to provide a high level of amenity for residents in term of solar cess and natural cross ventilation.

In addition, a development of this size and significance is an opportunity to encourage and demonstrate sustainable design and could include but is not limited to providing solar and wind power generation and storage, storm and grey water recycling and a high level of passive solar design. A commitment to sustainability has not been demonstrated.

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## **5. Landscape**

The location of the two landscaped communal open spaces areas are at ground level, to the south of Towers 2 and Towers 6. It has not been demonstrated that these areas received the required levels of solar access to create good landscape amenity outcomes.

Limited details have been provided regarding planting over and under structures (particularly on Tower 1), with no sections detailing planter depths. The practicality and long-term sustainability of planting over structures has not been established.

The landscape drawings identify deep soil planting at 18.2% of the site while the and SEE states 15.4%. No calculations or diagrams detailing what areas have been included in these percentages or dimensions of the spaces have been provided. As such it has not been demonstrated that good landscape design has been achieved in terms of providing consolidated deep soil landscape areas for the site

## **6. Amenity**

Insufficient information has been provided to demonstrate that adequate amenity has been achieved with particular regards to solar access, natural cross ventilation, visual privacy and acoustic impacts.

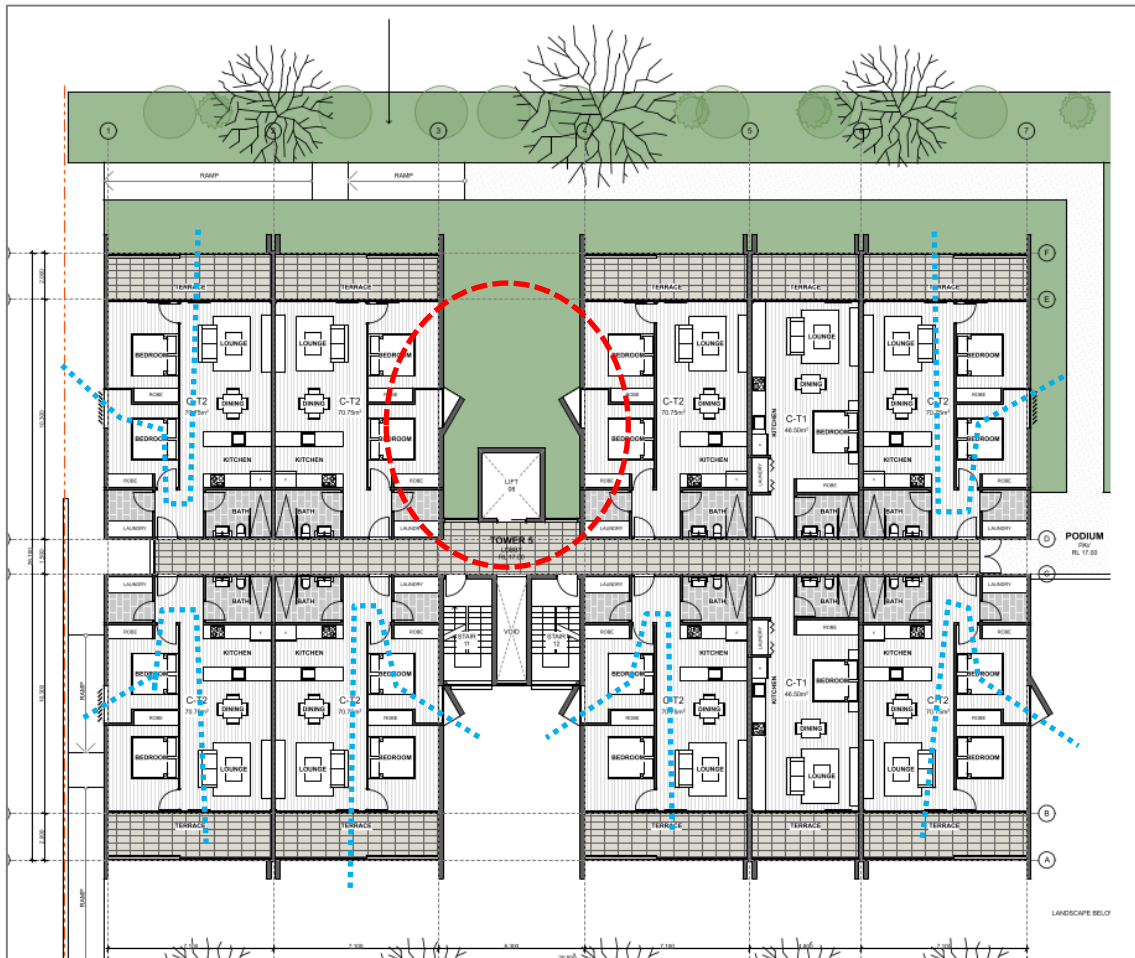
Inadequate building separation result in both visual and acoustic privacy impacts, which have not been adequately addressed or justified by the applicant. Significant non compliances with setback control are detailed in the ADG compliance table below.

No figures or calculations have been provided to demonstrate how units achieve solar access.

No figures or calculations of natural cross ventilation have been provided, while it appears that Towers 1-4 wold achieved a good level of naturally cross ventilation, Towers 5 and 6 appear to achieve poor levels of natural cross ventilation. It is noted that even the 'corner' units on the lower levels of Towers 5 and 6 have only small angled widows on the side elevation that face the same direction as the primary windows, thereby not creating a pressure differential for cross ventilation (refer Figure 27). In addition to this the location of communal open space and bedroom windows within Towers 5 and 6 result in a poor visual and acoustic privacy amenity outcome (refer Figure 27).

Both main communal open spaces areas are located to the south of buildings and are unlikely to achieve required solar access or good amenity outcomes and some balconies are identified as being undersized.

The rear of the townhouses within Tower 1 are located under a 7m overhang, overlooking the driveway resulting in poor natural lighting and outlook.



**Figure 27- Inappropriate areas of Communal Open space to Towers 5 and 6, and instances of 'corner units' not achieving natural cross ventilation, given small windows size, path of travel and as windows face in same general direction**

The proposal is generally acceptable with regards to Principle 7: Safety, Principle 8: Housing Diversity and Social Interaction, Principle 9: Aesthetics.

Insufficient information has been provided to allow for a detailed assessment of the proposal against SEPP 65 in regard to meeting the following objectives of Apartment Design Guide: Objectives: 3E-1 Deep Soil Zone, 4A-1 Solar and Daylight Access, 4O Landscape Design, 4P Planting on Structures and 4V Water.

The proposal has not provided adequate justification for significant non-compliances with certain design criteria of the Apartment Design Guide and demonstrated how the following objectives of the Apartment Design Guide are achieved in light of these non-compliances: 3D-1 Communal Open Space, 3F-1 Visual Privacy, 4B-3 Natural Ventilation, 4E-1 Balconies, 4H Acoustic Privacy and 4J Noise and Pollution.

A detailed assessment of the proposal of against the ADG is provided below.



Design Criteria	Required	Proposed	Compliance
<b>3D-1 Communal Open Space</b>	Minimum communal open space area 25% of the site	<p>A diagram showing areas included in COS calculation not provided.</p> <p>The landscape plans give the total soft landscaping area as 2,657sqm, which is 25% of the total site area. But all soft landscaping is not COS.</p> <p>There is approx. 500sqm COS on the eastern site 'pool area' and approx. 770sqm provided on the western site 'pool area'. This equates to approx. 12% of the total site area.</p> <p>Further areas identified as communal open space to the front and rear of Towers 5 and 6, while providing additional usable COS, also locate COS directly adjacent to bedroom windows, which is not acknowledged on the landscape plans and is inappropriate from a visual and acoustic privacy perspective. The areas are also located in building indents that would not provide pleasant or usable space (See Figure 27).</p>	Not demonstrated
	50% direct sunlight to principal usable part for min 2 hrs between 9am and 3pm mid-winter	Solar Access calculation not provided, both main communal open spaces areas are located to the south of buildings and are very unlikely to achieve required solar access.	Not demonstrated
<b>3E-1 Deep Soil Zone</b>	<p>Minimum <b>7%</b> of the site, with minimum dimension 6m for a site greater than 1,500sqm</p> <p>On some sites, it may be possible to provide a greater area for deep soil zones. Sites greater than 1500sqm 15% should be achieved, if possible.</p>	<p>Landscape drawings show deep soil planting at 18.2% and SEE states 15.4%. No diagrams showing calculation areas and dimensions have been provided.</p> <p>Only 2 areas of deep soil that meet the 6m dimension requirement have been identified: 240sqm on the eastern boundary of Tower 1 and 136sqm to the south of the pool area and Tower 6. This equates to only 3.4% of the site.</p>	Not demonstrated
<b>3F-1 Visual Privacy</b>	<p>Separation from boundaries (habitable rooms and balconies):</p> <p>6m (up to 12m / 4 storeys in height)  9m (up to 25m / 5-8 storeys in height)  12m (over 25m / 9+ in height)</p>	<p>Southern boundary</p> <ul style="list-style-type: none"> <li>• Tower 1 - 9m required, 8.25m provided - 8% variation</li> <li>• Tower 2 - 12m required, 5.9m provided - 51% Variation</li> <li>• Tower 3 - 12m required, 6.5m provided - 46% variation.</li> </ul>	No

Design Criteria	Required	Proposed	Compliance
		<ul style="list-style-type: none"> <li>• Tower 4 – 9m required, 10m provided - complies</li> <li>• Tower 6 - 9m required, 7.9m provided – 12% variation</li> </ul> <p>Eastern boundary</p> <ul style="list-style-type: none"> <li>• Towers 5 and 6 - 9m required, 9m provided - complies</li> </ul> <p>Separation between towers;</p> <ul style="list-style-type: none"> <li>• Tower 1&amp;2 – 18m required – 14.9m provided - 17% variation</li> <li>• Towers 2&amp;3 (across Mann Street) – 24m required – 23m provided – 4% variation</li> <li>• Tower 3&amp;4– 18m required – 11.6m provided - 36% variation</li> <li>• Towers 4&amp;5 – 18m required 14.4m provided - 20% variation</li> <li>• Towers 5&amp;6 – 18m required 19.8m provided – complies</li> </ul>	
<b>3J-1 Bicycle and Car Parking</b>	Minimum parking provided in accordance with the RMS Parking Guide for Metropolitan Sub-Regional Centres or the car parking requirements prescribed by the relevant council, whichever is the less	<p>RMS requirements:</p> <ul style="list-style-type: none"> <li>• 0.6 spaces per 1 bed unit (73 units) - 44 spaces)</li> <li>• 0.9 spaces per 2 bed unit (210 units - 189 spaces)</li> <li>• 1.40 spaces per 3-bed unit (70 units – 98 spaces)</li> <li>• Visitor parking - 1 space per 5 units (71 spaces)</li> <li>• <b>402 resident spaces required</b></li> </ul> <p>GLEP 2014 requirements:</p> <ul style="list-style-type: none"> <li>• 1 space for every 75sqm of GFA for commercial</li> <li>• 1 space for every 40sqm of the GFA for retail</li> <li>• <b>Worst case 17 spaces required</b></li> </ul> <p>563 car spaces proposed, including 10 accessible car spaces.</p> <p>Resident vehicle parking is provided in excess of RMS and GLEP 2014 requirements.</p>	Yes

Design Criteria	Required	Proposed	Compliance
	Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	Several areas for cycle parking are provided, with a total of 148 spaces.	Yes
<b>4A-1 Solar and Daylight Access</b>	Living rooms and private open space of at least 70% of apartments receive a minimum of 3hr sun between 9am and 3pm mid-winter	No Figures or calculations provided  2018 Design Verification/ADG report states 70% units receive solar access for 2 hours.  As the site is not Metropolitan Sydney so 3 hours is required.	Not demonstrated
	Maximum of 15% of apartments receive no direct sun between 9am and 3pm mid-winter	No Figures or calculations provided	Not demonstrated
<b>4B-3 Natural Ventilation</b>	Min 60% of apartments cross ventilated in the first 9 storeys of the building	No figures or calculations provided.  Tower 1 – all levels 49 units, 29/49 units – 63%  Tower 2 (first 9 storeys – 7 levels of residential – 7 unit per floor, 4 corner units naturally cross ventilated per floor) – 28/49 units - 57%  Tower 3 (first 9 storeys – 8 storeys residential, 3 units on lower floor, 4 units on next 7 levels) - 31/38 units - 81%  Tower 4 – all levels 43 units, 29/43 units – 67%  Towers 5&6 – The unit count on the architectural plans detail 50 units in Tower 5 and 49 units in tower 6 (99 total)  The floor plans provided (A314 – A318) detail unit within Tower 5 only, stating that Tower 6 is mirrored and similar.  There is no floorplan provided for Townhouse level 3 and only 40 units (out of 50) are detailed. Of those 40 units, 10 appear to be clearly naturally cross ventilated - 25%.  It is noted even the 'corner' units on the lower levels have only small angled windows on the side elevation that face the same direction as the primary windows, thereby	Towers 1-4 – generally compliant  Tower 5 or 6 – not compliant and insufficient information provided.

Design Criteria	Required	Proposed	Compliance
		not creating a pressure differential for cross ventilation – see Figure 27.	
<b>4C-1 Ceiling Heights</b>	Minimum 2.7m	Complies.	Yes
<b>4D-1 Apartment Size</b>	Studio: 35sqm 1 bedroom: 50sqm 2 bedroom: 70sqm 3 bedroom: 90sqm  (5sqm per additional bathroom)	Complies	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	All habitable rooms have a window within the external wall.	Yes
<b>4D-2 Room depths</b>	Habitable room depths and maximum 8m depth for open plan layouts.	Some units, such as A-3A in Tower 2 are 9m to the back of the kitchen. The noncompliance is relatively minor the units will not be unreasonably impacted in that adequate daylight and outlook is provided.	No, however no objection is made in this instance.
<b>4D – 3 Layout</b>	Bedroom and living room sizes – 9 & 10sqm bedrooms with min 3m width, 3.6m-4m width living rooms	Generally complies	Yes
<b>4E-1 Balconies</b>	1 bedroom: 8sqm, min 2m depth 2 bedroom: 10sqm, min 2m depth 3 bedroom: 12sqm, min 2.4m depth	Some balconies have been identified as under sized <ul style="list-style-type: none"> <li>Unit A3A in Tower 2 (plan A-304) - 3 bed unit balcony is 10sqm – 12sqm required units</li> <li>Unit A2A on (plan A-307) – 2 bed unit balcony is 7sqm, 10sqm required</li> </ul>	No, insufficient details or justification provided.
	Podium/ground level private open space minimum 15sqm, minimum depth 3m	The terraces to the ground floor units within tower 5 and 6 are undersized in both area (9-13sqm) and depth (2m)	No
<b>4F-1 Common Circulation</b>	Maximum of 8 apartments off a circulation core (although design guidance allows up to 12 apartments)	Generally compliant except for Towers 5 and 6 which have 10 units of a lift core on the lower levels, however acceptable given the split tower design allowing for light into the corridor.	No – but acceptable
<b>4G-1 Storage</b>	1 bedroom: 6m <sup>3</sup> 2 bedroom: 8m <sup>3</sup> 3 bedroom: 10m <sup>3</sup>	Few units show dedicated storage area. However the units are generally capable of compliance.	Capable of compliance



<b>Design Criteria</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
	Note: Minimum 50% within unit		
<b>4H Acoustic Privacy</b>	Noise transfer is limited through the siting of the buildings and building layout	Some poor interfaces exist, particularly between common open space and bedrooms on the ground floor of towers 5 and 6. Non-compliant building separation will also result in poor acoustic privacy outcomes. Impacts from the railway have not been adequately addressed.	No
<b>4J Noise and Pollution</b>	The impact of external noise transfer and pollution are minimised through the siting and layout of the building.	Impacts from the railway have not been adequately addressed.	No
<b>4K Apartment Mix</b>	A range of apartment types are provided to cater for different household types, and distributed throughout the building.	Studio and 1 Bedroom: 21% 2 Bedroom: 59% 3 Bedroom: 20%	Yes
<b>4L Ground Floor Apartments</b>	Maximise street frontage activation and amenity.	A reasonable level of street activation is achieved.	Yes
<b>4M Facades</b>	Provide visual interest whilst respecting the character of the area.	Generally complies	Yes
<b>4N Roof Design</b>	Roof features are incorporated in the roof design, response to the street and provide sustainability features.	The roof design is acceptable but does not incorporate any sustainability features	No
<b>4O Landscape Design</b>	Landscape design is viable, sustainable, contributes to the streetscape and amenity.	Insufficient information has been provided to demonstrate this.	Insufficient information
<b>4P Planting on Structures</b>	Appropriate soil depths are provided	Insufficient information has been provided to demonstrate this.	Insufficient information
<b>4V Water</b>	Water Management and Conservation is achieved.	An update BASIX certificate has not been provided to demonstrate this.	Insufficient information
<b>4W Waste</b>	Waste storage facilities are provided to minimise impacts on the streetscape, building entry an amenity of residents.	Complies	Yes

**Table 1 – Apartment Design Guide Compliance Table**

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### **State Environmental Planning Policy (State and Regional Development) 2011**

The aims of *State Environmental Planning Policy (State and Regional Development) 2011* are to identify development that is State significant development, State significant infrastructure and critical State significant infrastructure or regionally significant development and to confer functions on the relevant state or regional planning panels to determine development applications. The categories of regionally significant development are identified in schedule 7 of the SEPP.

Amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act) came into force on 1 March 2018 and resulted in amendments to this SEPP. The threshold for general development has changed; development that has a capital investment value (CIV) of more than \$30 million is now considered regionally significant development.

The proposed development has a capital investment value of \$134,640,000 and is identified as regional development for the purposes of this SEPP. The Hunter and Central Coast Regional Planning Panel is therefore the determining authority for this application.

### **State Environmental Planning Policy (Gosford City Centre) 2018**

This SEPP applies to land within the Gosford City Centre including the subject site. However, this application was lodged in 2016, before the commencement of this Policy on 12 October 2018. In accordance with the savings provisions under Clause 1.8A, the application must be determined as if this Policy had not commenced.

It is noted that same zoning and 'base' height and FSR controls apply under *State Environmental Planning Policy (Gosford City Centre) 2018*. It is noted that land zoned B3, B4 and B6 (but notably not R1) for a site of this size are able to exceed both the height and FSR controls subject to compliance with Clause 8.4 of the SEPP. This is not capped at 30% but does require review by a Design Review Panel and potential Architectural Design Competition.

## **Local Environmental Plans**

### **Gosford Local Environmental Plan 2014 (GLEP 2014)**

#### **Zoning and Permissibility**

The majority of the site is zoned B4 Mixed Use, apart from the easternmost 2 lots zoned R1 General Residential (see Figure 6- Zoning Map Extract).

The proposed development is a mixed use development and is most appropriately defined as:

***residential flat building*** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

***shop top housing*** means one or more dwellings located above ground floor retail premises or business premises.

***commercial premises*** means any of the following:

- 
- (a) business premises,*
  - (b) office premises,*
  - (c) retail premises.*

Residential flat buildings and shop top housing are permitted in both the B4 Mixed Use and R1 General Residential zones and the proposed commercial use is confined to and permissible within the B4 Mixed Use zone.

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 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.*

The proposed development has proposed a mix of uses in an accessible location. However, the proposal has not adequately demonstrated that noise and vibration impacts can be effectively ameliorated so that the proposed residential use is compatible with the adjacent rail corridor.

The objectives for the R1 General Residential zone are:

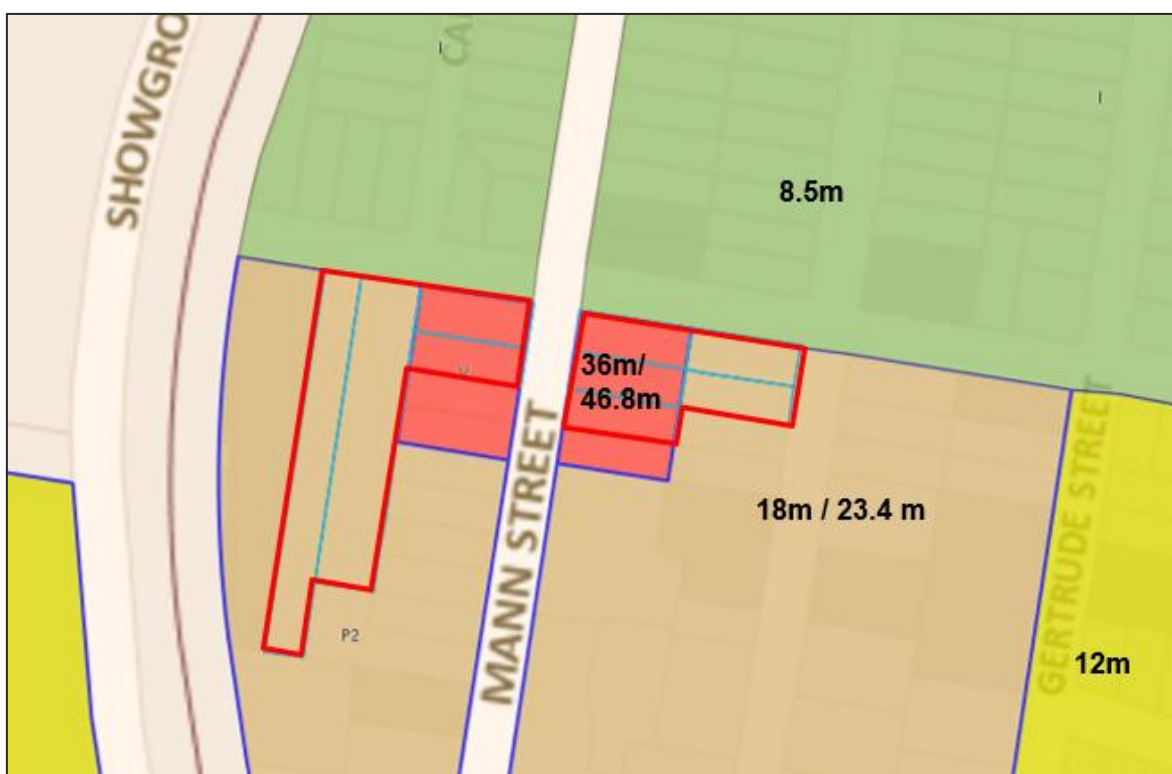
- To provide for the housing needs of the community.*
- To provide for a variety of housing types and densities.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To ensure that development is compatible with the desired future character of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

The proposed development has proposed a mix of housing types. However, the proposal has not demonstrated that it is compatible with the desired future character of the zone, with particular regard to height and inadequate boundary and building setbacks, or that the design meets 'best practice' given the concerns relating to acoustic impacts, visual and acoustic privacy, natural ventilation, solar access, sustainable design and landscaping.

### Clause 4.3 Height of Buildings

The provisions of clause 4.3 establish a maximum height limit for buildings. The applicable height control indicated on the GLEP Height of Buildings map is 36m for the lots fronting Mann Street and 18m for the remaining lots.

To promote development within Gosford and surrounds, GLEP 2014 was amended in April 2015 (Amendment 12) to extend the 30% bonus height and floor space provisions under Clause 8.9 (Development Incentives). In relation to building height, Clause 8.9(3)(a) establishes a maximum height of 46.8m for the lots fronting Mann Street and 23.4m for the remaining lots as shown below in Figure 28 on the Height of Building Map.



**Figure 28: Height of building map**

The maximum building height of each tower is included in Table 2 below:

<b>Tower</b>	<b>Maximum Building Height (Including 30% bonus)</b>	<b>Maximum Proposed Height</b>	<b>Variation</b>
1	23.4m	27.8m	4.4m / 19%
2	46.8m	50.05m	3.25m / 7%
3	46.8m	53.5m	7.05m / 15%
4	23.4m	26.85m	3.45m / 15%
5	23.4m	24.8m	1.4m / 6%
6	23.4m	25.05m	1.65m / 7%

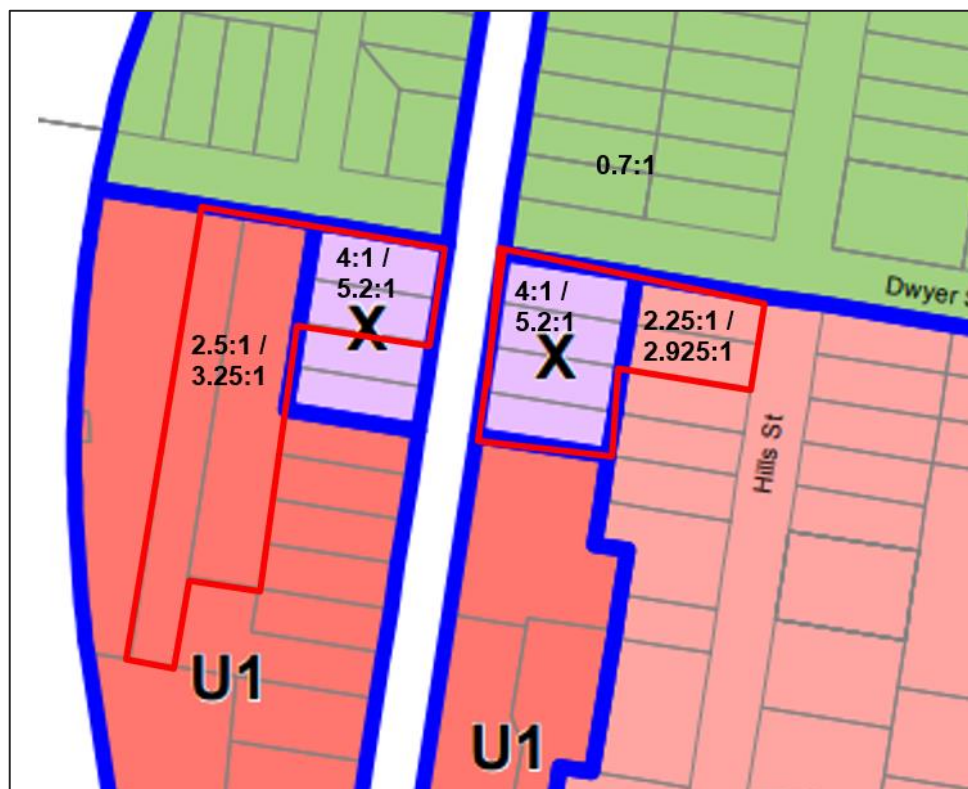
**Table 2: Maximum Building Height of each tower**

A variation request having regard to Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 has been provided and is contained within Attachment 8.



#### Clause 4.4 Floor Space Ratio

The maximum FSR on the site under the GLEP is 2.5:1 for the westernmost lots, 4:1 for the lot on the corners of Mann Street and 2.25:1 for the easternmost lots. With the 30% bonus allowable under Clause 8.9 (Development Incentives) the subject site has a maximum FSR of 3.25:1, 5.2:1 and 2.925:1 respectively (refer Figure 29 below).



**Figure 29: FSR map**

The proposed FSR is compliant as outlined in Table 3 below. It is noted that the Gross Floor Area allowable, including the 30% bonus is 41,108sqm. 34,133sqm of GFA is proposed.

Lot	Base FSR	FSR including 30% bonus	Proposed FSR
25&26	2.25:1	2.925:1	2.88:1
1-3	4:1	5.2:1	4.9:1
4&5	4:1	5.2:1	4.82:1
31 & 32a	2.5:1	3.25:1	2.22:1

**Table 3: Floor Space Ratio summary**

#### 4.6 Exceptions to Development Standards

In April 2015 the GLEP 2014 was amended to promote development within Gosford and surrounds, via Amendment 12. This amendment sought to extend the 30% bonus height and floor space provisions under Clause 8.9 (Development Incentives). The subject development application seeks to invoke these provisions as they relate to the maximum building height. The proposal seeks to exceed the building height, above the 30% bonus allowable as detailed in Table 2 above.

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A Clause 4.6 (Exceptions to Development Standards) variation for the non-compliance associated with building height (Clause 8.9 (3)(a) of GLEP 2014) was provided by the applicant and is included at Attachment 8.

In accordance with Clause 4.6(4), development consent must not be 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).

Subclause 3 provides:

*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.*

The Clause 4.6 request submitted by the applicant states how strict compliance with the development standards is unreasonable or unnecessary and how there are sufficient environmental planning grounds to justify the contravention.

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

The applicant's statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard, being Clause 8.9 Development Incentives of the GLEP 2014. The applicant's written statement also includes assessment against Clause 4.3 Height of Buildings and Part 8 – Additional Local Provisions – Gosford City Centre of the GLEP 2014. The objectives of Clause 8.9 and Clause 4.3 and the applicant's justification are provided below:

#### Applicant's submission

##### **8.9 Development incentives**

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

The applicant states that:

- *In allowing for the proposal to be built to the additional height proposed, the incentive for development will be maintained.*

- 
- *This incentive is particularly relevant in light of the results of the current Urban Feasibility Model which has been carried out for the City Centre as part of the Council review of Cl 8.9(2). This modelling found that the base line LEP provides potential for 16,474 additional dwellings within the City Centre – of which, only 19% are feasible to develop.*
  - *The application of the Development Incentives increases the total potential new dwellings to 20,266 – of which only 23% are feasible to develop. In other words, the current planning controls (including the Development Incentive of 30% height bonus), still result in 76% of potential developments being unfeasible.*
  - *Based on these observations, it is considered that the objectives of Cl 8.9 are more readily able to be satisfied through the approval of developments which can demonstrate a higher degree of feasibility, which translates to additional height.*
  - *In light of the above, it is considered that the proposed variation in no way hinders the attainment of this objective, as it acts to further encourage investment and development within the City Centre. Accordingly, the application of the numeric controls specified within this clause is unwarranted in this case, given that the objectives of the clause will still be attained.*

#### **4.3 Height of Buildings**

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

- (a) to establish maximum height limits for buildings,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity,*
- (e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
- (f) to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

The applicant states that:

- *It is noted from a review of the Height of Building Maps that heights between 8.5m and 72m are catered for within the LEP. Based on this, it is assumed that a building of up to 72m in height is deemed as being capable of offering high quality building form.*
- *... it is contended that high quality urban form is not only derived height. Rather, it includes many other considerations which would take precedence over height including architectural merit, building material quality, public / private space interactions and transitions, and the design of the building relative to the surrounding context. As outlined within the SoSI, a more nuanced consideration is required. This involves consideration of the scale of the building to the precinct, to the site, and the scale of the building itself. Such considerations are able to facilitate appropriately located and scaled taller buildings while still achieving all of the overall objectives outlined within the LEP.*

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- *The design currently provides two slimline towers of equal height which create an ideal bookend to the City Centre. Complying with the height control in this instance would result in sawn off towers which would give an adverse architectural outcome and would be detrimental to the gateway concept.*
  - *Taking the above into consideration, it is considered that the development standard in question is not appropriate in this case.*
  - *The site is to the south of the majority of adjoining R1 zoned land, thereby not impacting on their exposure to sun and skylight.*
  - *The extent of shadow cast is similar to a development of compliant height.*
  - *It is worth noting that numerous developments within the City Centre have been approved with similar or greater height variations which result in a degree of overshadowing. In this regard, a 75 unit, eight (8) storey development was recently approved at 60-64 Hills Street, five (5) properties to the south of the site, where a variation of 27.4% was supported to the height and where lots to the south within the R1 zone were impacted by overshadowing. In addition to this, a 50 unit, eight (8) story development was approved at 73-75 Hills Street, opposite the site, with a 4% height variation; again also impacting on solar access.*
  - *Council has recognised the transforming nature of the City Centre, particularly through the amalgamation of sites and increase of building heights.*
  - *Whilst solar access to some individual dwellings along Hills Street will inevitably be impacted, this will be reduced when these sites are also amalgamated and redeveloped (i.e. through the removal of 1m setbacks seen in dwellings to 6m-12m setbacks required under SEPP 65).*
  - *The subject site has been specifically nominated by Council as one which is intended to accommodate additional height, commensurate with its "Gateway" status along Mann Street. As outlined previously in the "Background" section of this submission, the creation of this "Gateway" status and the relevant height and FSR controls pre dated the more recent approach by Council in regard to built form and height within the City Centre. This new approach has seen approvals for a number of sites with height and FSR well beyond these controls. Accordingly, in order for the subject site to satisfactorily achieve its intended "Gateway" status, additional height in particular is deemed as appropriate for Towers 2 and 3.*
  - *Of particular note is the Waterside approval at the southern end of Mann Street, which acts as a southern book end for the City Centre, and has approved heights well in excess of the controls. Without some degree of additional height, the planned "Gateway" site will not achieve its northern book end status, meaning that there will be no defining point for the northern end of the City Centre at all. Such defining statements within a CBD of a centre such as Gosford are considered to be integral to the readability of the City Centre.*
  - *The site is sufficiently large enough in itself that the stipulated transitions are still able to be accommodated internally. This is seen through the four (4) lower towers at each end of the site being considerably lower than the two (2) central towers either side of Mann Street. This*

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*is supported within the SoSI which suggests locating taller towers along Mann Street, with surrounding streets decreasing in height.*

- *Despite the proposed height variation, the development is considerably under the allowable GFA which suggests that it continues to be of an appropriate land use intensity.*
- *The proposal does not represent any loss of view within the relevant corridor.*
- *The proposal is not in an area where there is potential for overshadowing of any public space.*

#### Comment

The applicant's Clause 4.6 request places an emphasis on developments that have been approved with a variation to the height control, particularly the "Waterside" development, as well as the focus of the site being a 'gateway'.

The 'Waterside' development is located at the southern end of Mann Street, bounded by Mann Street, Baker Street and Georgiana Terrace, approximately 1.5km to the south of the subject site. The site is quite different contextually to the subject site, being close to the centre of the Gosford City Centre, in an established mixed use commercial area, near the Gosford City Council Administration Building, the Central Coast Leagues Club and Central Coast Stadium.

The 'Waterside' Development Application (D/47046/2015) was approved by the Hunter & Central Coast Joint Regional Planning Panel on 3 December 2015. The Panel had regard to a gateway determination for a planning proposal issued by the Department of Planning and Environment and the commencement of its exhibition which required consideration of the draft environmental planning instrument.

The planning proposal included:

- a bonus of 150,000m<sup>2</sup> floor space across the B3 zone on sites which have 40m or greater frontage, and an area of 2800m<sup>2</sup> or greater.
- Restricted heights to RL 99m AHD.

It is noted the approved Waterside towers had RL's of 111m and 99m, excluding architectural roof features. The application was considered *"consistent with the aims of the planning proposal except for the height of towers 1 and 2 which exceed RL 99m AHD. However, the site is well in excess of the minimum 2800m<sup>2</sup> required, and the stepping down of towers 2 and 3 from Mann Street is consistent with aims of the planning proposal."*

Given the above planning and physical context, an exceedance of height on the Waterside site is not relevant to the proposed exceedance of height on the subject site.

The other applications referred to by the applicant, 60-64 Hills Street (DA/49479/2016) and 73-75 Hills Street (DA/49522/2016), were assessed on merit by the consent authority at the time and whilst variations may have been approved, both developments were able to satisfy the consent authority that the written request had adequately addressed the matters required to be demonstrated in 4.6(3).



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By contrast, Towers 2 and 3 of the proposed development have a 51% and 46% building separation variation for the top 8 storeys. While an updated Design Verification or Apartment Design Guide assessment was not provided with the application with the amended plans it is noted that the Amended Design Verification Statement and ADG schedule of compliance from 2018 states the following in regard to building separation *"All buildings are set back approx. 6m from neighbouring property boundaries. Above 25m height, 9m separation is not achieved however adjacent properties are all low-scale and do not exceed 25m"*.

The applicants statement also recognises that additional height may be appropriate where there are increased setbacks, as well as the development potential of sites to the south - *"Whilst solar access to some individual dwellings along Hills Street will inevitably be impacted, this will be reduced when these sites are also amalgamated and redeveloped (i.e. through the removal of 1m setbacks seen in dwellings to 6m-12m setbacks required under SEPP 65)." As discussed above, the proposal includes significant non-compliances with the building separation - in particular Tower 2 where 12m is required and only 5.9m has been provided and Tower 3 where 12m is required and only 6.5m is provided. The issue of height and design cannot be considered in isolation from the building setbacks and it is unfair to expect the sites to the south to provide 6-12m setbacks when this is not provided on the subject site.*

The applicant's statement focuses on the taller 'gateway' Towers 2 and 3 but does not adequately address the significant exceedance of the smaller towers, particularly Tower 1, with the greatest exceedance of 4.4m / 19% and Tower 4, with a 3.45m / 15% exceedance.

While the site it is recognised as a 'gateway' site, it must be noted that the site is on the very edge of the City Centre and has a dramatic drop in building height to the land to the north, to 8.5m which is zoned R1 General Residential and is not subject to the same planning controls as this site. Given the site context, the proposed development does not require a height above the 30% bonus to create an appropriate 'gateway'.

It is considered that the applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

#### Applicant's submission

The applicant states:

- *It is considered that sufficient planning grounds exist to support the proposed height variation. This assertion is based on the arguments outlined above, which demonstrate that the aims of the standard will still be achieved; these being to avoid overshadowing to public open space areas; ensure adequate solar access to adjoining sites; and to ensure building heights are appropriate to the site and do not impact on significant views.*
- *Other matters to be noted in this context include:*
  - *The proposal more concisely achieves with the objectives of the zone and the Gosford City Centre objectives of Part 8, than would a development of compliant building height;*

- 
- *The proposal remains consistent with the objectives of the height standard (Clause 8.9 and 4.3), despite its non-compliance;*
  - *Non-compliance with the standard does not contribute to adverse environmental, social or economic impacts but rather fosters a superior design, and one which takes advantage of the opportunities presented by such a large site within the CBD;*
  - *The scale and form of the proposed development is in line Council's SoSI;*
  - *The design of the slimline towers facing Mann Street, along with the landscaped boulevards creates the ultimate gateway entry into the City Centre. Reducing the height would reduce this design element.*
  - *The additional height facilitates the delivery of a standard of development consistent with Council's vision for the city centre without exceeding the maximum gross floor area.*

#### Comment

The applicant's written Clause 4.6 request has some merit and context given the site's location in the Gosford City Centre. However, it does not adequately justify why it is unreasonable or unnecessary for *any* of the towers to comply with the building height control. Moreover, the request has not provided sufficient environmental planning grounds for the departures of all towers. By focusing on the taller Towers 2 and 3 being the 'gateway', it has failed to provide any reasons or circumstances for the remaining 4 tower exceedances. It has also failed to address how the height intersects with the building separation non-compliances and how a 'better' outcome has been achieved.

It is considered the written request has not adequately addressed or satisfied the matters required to be demonstrated in subclause (3) for the proposed variation to the building height development standards.

In accordance with Clause 4.6(4)(a)(ii), the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

In order to demonstrate if the proposal has merit, consideration of the proposed building height non-compliance has been provided regarding the objectives of the control contained within Clause 4.3(1) of GLEP 2014:

*a) to establish maximum height limits for buildings*

The maximum height limit for buildings has been identified for this property.

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

In this instance, it is considered that the additional building height proposed does detract from the attainment of providing quality urban form in accordance with the character of the zone. The design includes various non-compliances with regard to building separation and height, which will result in crowded towers that can be viewed from the public domain. The proposal will have poor amenity outcomes both within and external

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to the development and unreasonable impacts on the development potential of sites to the south.

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

The building height, in conjunction with the non-compliant setbacks, will result in unreasonable impacts on potential future development to the south particularly with regard to daylight and solar access.

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

The desired height transition from higher buildings in the city core, to lower buildings at the periphery of the incentive area, is not appropriately addressed by the proposal with all 6 towers exceeding the building height control, including the 30% bonus height provisions.

- e) *to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area*

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

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

The proposal does not cause overshadowing to public open space areas or inhibit views to natural topographic features.

The Clause 4.6 variation request submitted by the applicant also provides assessment of the proposal against the zone objectives. As detailed under the heading Zoning and Permissibility above, it is considered the applicant has not adequately demonstrated consistency with the objectives of the B4 Mixed Use zone or R1 General Residential zone having regard for whether the proposed development will be compatible with the existing and desired future character of the area; achieves best practice in the design of dwellings; or achieves a reasonable level of amenity.

- *The concurrence of the Secretary has been obtained.*

Planning Circular PS 18-003 issued 21 February 2018 states the concurrence of the Director-General may be assumed when Joint Regional Planning Panels consider exceptions to development standards under Clause 4.6 of GLEP (Exceptions to Development Standards) 2014 for regionally significant development.

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

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

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- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
  - *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*

The Clause 4.6 request submitted by the applicant does not adequately address the relevant objectives under GLEP 2014. The proposal does not meet the objectives of the development standard, Clause 8.9 Development Incentives or Clause 4.3 Height of Buildings, nor is it considered to meet the objectives of the B4 Mixed use or R1 General Residential zones. The variation is therefore not considered to be in the public interest. The written request is unfounded and is not recommended for support.

### **7.1 Acid sulfate soils**

The site is mapped as containing Class 5 acid sulfate soils (ASS) and is located approximately 250m from Class 3 acid sulfate soils. The development is unlikely to lower the water table below 1 metre AHD with no works being undertaken below 5 metres AHD, therefore no further information is required.

### **7.2 – Flood Planning**

A small portion of the western side of the site is flood affected. The isolated area does not link to any other flood affected areas and as such, the site is not flood prone in the sense that it would be inundated by rising flood waters, rather, it may be subject to ponding. The construction of the proposal, along with appropriate stormwater management, would remove this localised ponding and would therefore satisfy the objectives of Clause 7.2 and would result in a development that satisfied the provisions of clause 7.2(3) in that the development would be compatible with the flood hazard of the land, would not likely significantly affect flood behaviour, is capable of incorporating appropriate measures to manage the risk of flood, would not adversely affect the environment or result in unsustainable social and economic costs to the community.

## **PART 8 – Additional Local Provisions – Gosford City Centre**

### **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,*

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- g. to help create a mixed use place, with activity during the day and throughout the evening, so that Gosford City Centre is safe, attractive and efficient for, and inclusive of, its local population and visitors alike,*
  - h. to enhance the Gosford waterfront,*
  - i. to provide direct, convenient and safe pedestrian links between Gosford City Centre and the Gosford waterfront.*

The proposal does not comply with the objectives of Part 8 – Additional Local Provisions – Gosford City Centre of the GLEP 2014. In the context of revitalisation of the Gosford City Centre the proposal's non-compliance's with the southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south and it is not considered to exhibit design excellence.

#### **8.4 Minimum building street frontage**

This clause requires developments to have a minimum street frontage of 24m. All street frontages of the subject site are in excess of 24m.

#### **8.5 Design Excellence**

The provisions of Clause 8.5 of GLEP 2014 require the consent authority to consider that the development exhibits design excellence. Consideration of the proposal against the matters attributed to design excellence, having regard to Clause 8.5(3) of GLEP 2014 is provided below:

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

It is considered the proposed design does not achieve the amenity, built form and scale appropriate to the B4 and R1 zone objectives and those of the City Centre given the height and setback non-compliances as detailed within the report.

The design incorporates a range of materials and detailing which provide for appropriate articulation and design variation.

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

The design and appearance of the buildings is considered to define and positively contribute to the public domain and streetscape.

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

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

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



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The proposed development does not overshadow these areas.

*e) Any relevant requirements of applicable development control plans*

GDCP 2013 has been considered within this Assessment Report.

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

- i. the suitability of the land for development,*
- ii. existing and proposed uses and use mix,*
- iii. heritage issues and streetscape constraints,*
- iv. the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- v. bulk, massing and modulation of buildings,*
- vi. street frontage heights,*
- vii. environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- viii. the achievement of the principles of ecologically sustainable development, with particular emphasis on water saving and recycling,*
- ix. pedestrian, cycle, vehicular and service access, circulation and requirements,*
- x. the impact on, and any proposed improvements to, the public domain.*

In principle the development is consistent with the zoning and the Gosford City Centre locality and is considered suitable for the site.

The site is underutilised at present, comprising largely older style single dwellings. The proposed mixed use will allow for residential units which will contribute to housing choice for the locality. The proposal also includes flexible commercial tenancies that could support a range of uses, including cafes/restaurants and retail at street level, which is a positive outcome for the site and streets.

The development is considered contribute positively to streetscape through improved activation, built form and materials.

The proposal includes six towers, the two tall Towers, 2 and 3, require a 12m setback to the southern boundary under the Apartment Design Guide, setbacks of 5.9m and 6.5m are proposed, representing a 54% and 46% variation. Further to this there are several non-compliances of required building separation between building on the subject site:

- Tower 1&2 - 18m required, 14.9m provided - 17% variation
- Towers 2&3 (across Mann Street) - 24m required, 23m provided - 4% variation
- Tower 3&4 - 18m required, 11.6m provided - 36% variation
- Towers 4&5 - 18m required, 14.4m provided - 20% Variation

The significant non-compliances with building separation create an unacceptable relationship with potential future towers to the south, as well between the proposed tower on the site. The

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lack of appropriate setbacks results in unacceptable visual and acoustic privacy impacts as well as an undesirable built form outcome of crowded towers.

The setbacks and massing of the development to the street frontages are appropriate having regard to the desired character of the Gosford City Centre. The building presents well to the street with the commercial space providing for an active street frontage to Mann and Dwyer Street.

The towers architecturally present two to three storeys street frontage podiums, which is in line with the desired future character of the street. It is noted that the GDCP 2013 requires ground floor retail be located on the street boundary to contribute to an active street front with a 3 to 4 storey podium above to provide a pedestrian scale street front. The current application proposes reversing this by setting back the commercial levels of Towers 2 and 3 by 4 metres on both the Mann and Dwyer Street boundaries with parts of the upper levels located on the boundary. This is supported in this instance because both streets have steep and narrow footpath reserves with both sides of the Mann Street footpath reserve being occupied by cast iron water mains that would severely restrict the use of street trees. The proposed setbacks will create a larger usable public space on this prominent corner and allow a deep soil zone for significant trees to allow for the creation of a "tree lined avenue".

However, the design has not demonstrated that it incorporates elements in response to environmental matters, such as solar access, natural cross ventilation, water recycling and other sustainable design features as a schedule of compliance with the Apartment Design Guide and an amended BASIX certificate has not been provided with the information submitted in February 2020.

The proposal improves the public domain and pedestrian experience along the street frontages and provides appropriate vehicle access and servicing within the site.

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) identifies areas where the proposed development does not achieve design excellence with particular regard to Clause 8.5 (f) (iv) , (vii) and (viii) of the GLEP 2014.

## **8.6 Car Parking**

The total floor area of all parts of the building to be used for 'commercial activities' is 492sqm. Further, the health club is 176sqm. While the proposal states that the proposed health will be for residents only, this figure has also been included as potential commercial floorspace.

This Clause requires:

- One car parking space is provided for every 75 square metres of the gross floor area of the building that is to be used for commercial activities, and
- One car parking space is provided for every 40 square metres of the gross floor area of the building that is to be used for the purpose of retail premises.

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Based on a worst-case scenario where all the commercial space was used for retail purposes, a maximum of 17 commercial car parking spaces would be required. The application proposes seven allocated commercial car parking spaces (based on commercial rather than retail rates). However, given the required resident spaces of 402 are well exceeded with the provision of 563 car parking spaces, compliance with the commercial car parking requirement could be achieved.

#### **Clause 8.9 Development incentives**

The objective of this clause is to provide incentives for development on land in the Gosford City Centre. This clause applies to land identified as being within Gosford City Centre on the Development Incentives Map. At the time that this development application was lodged with Council, Clause 8.9 was applicable and allowed for a 30% bonus provision for both building height and FSR.

Compliance with the height and FSR are discussed under the headings Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio above.

#### **s. 4.15(1)(a)(ii) of the EP&A Act: Draft Environmental Planning Instruments:**

##### **Draft Central Coast Local Environmental Plan 2018**

The Draft Central Coast Local Environment Plan applies to the wider Central Coast Local Government Area, however does not apply to this land as it is covered by State Environmental Planning Policy (Gosford City Centre) 2018.

#### **s. 4.15(1)(a)(iii) of the EP&A Act: Provisions of any development control plan**

##### **Gosford Development Control Plan 2013 (GDCP 2013)**

Gosford Development Control Plan 2013 (GDCP 2013) provides objectives, design criteria and design guidance on how development proposals can achieve good design and planning practice.

An assessment of the proposals against the GDCP 2013 is provided at Attachment 2.

The proposal provides some acceptable variations to GDCP 2013 controls in Sections 4.1.2.2 Building to street alignment and street setback and 4.1.2.3 Street Frontage Height. For Towers 2 and 3, the GDCP 2013 requires ground floor retail be located on the street boundary to contribute to an active street front with a 3 to 4 storey podium above to provide a pedestrian scale street front. This application reverses this arrangement by this by setting back the commercial levels of Towers 2 and 3 both the Mann and Dwyer Street boundaries with the upper levels located on the boundary. This is supported by Councils internal Architect with no objection raised by the externally appointed Architect. This variation allows for a larger usable public space on the corner and allow a deep soil zone for tree plantings.

However, the proposal does not adequately address the following sections of the GDCP 2013:

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- 4.1.1.4 City Centre Character - the proposed development fails to provide adequate transition to the R1 Residential zone to the north and non-compliances with height and setback controls create an undesirable future character.
  - 4.1.2.7 Deep Soil Zones, 4.1.2.8 Landscape Design and 4.1.2.9 Planting on Structures - insufficient landscape detail provided.
  - 4.1.3.10 Corner Treatments - the provision of a splayed corner to complement the gateway site has not been provided.
  - 4.1.3.11 Public Artwork - no details regarding the provision of public art have been provided.
  - 4.1.4.3 Vehicle Footpath Crossings and Vehicular Driveways and Manoeuvring - insufficient details have been provided to satisfy waste servicing of the development.
  - 4.1.5.2 Energy Efficiency and Conservation, 4.1.5.3 Water Conservation - an updated BASIX Certificate has not been provided with the amended plans. Recycled water irrigation is not included in the design.
  - 4.1.5.6 Waste and Recycling - Insufficient information has been provided to demonstrate appropriate resident travel paths to waste rooms or adequately sized commercial waste storage areas or that the waste truck can access the site.
  - 4.1.5.7 Noise and Vibration - insufficient information has been provided regarding the impact of noise and vibration on future occupiers of the development.
  - 6.3 Erosion and Sediment Control - The plan does not provide locations for material stockpiles, diversion of clean and dirty water, and staging of construction works in association with construction stages.

**s. 4.15(1)(b) of the EP&A Act: Likely Impacts of the Development including the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Context and Setting and the Built Environment

It is acknowledged that the site is identified as the northern gateway to the Gosford City Centre and subject to a transition in character and revitalisation from a low density residential area to a higher density, mixed use, precinct. However, the proposal has not demonstrated that it will be in harmony with the adjoining R1 land to the north or that a development proposing heights and building setbacks, as proposed, that do not comply with the planning controls or objectives of those planning controls, will result in a development that is compatible with existing and

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future developments, particularly as the development will present as an accumulation of large crowded towers.

In the context of revitalisation of the Gosford City Centre the non-compliance's with the southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south.

The proposal has not had adequate regard to its location next to the rail corridor and has failed to address how the development will respond to the noise and vibration associated with its location.

#### Amenity and Design Excellence

The proposal has not demonstrated that it provides an acceptable degree of amenity to its future occupants, or that the design represents best practice in the design of multi dwelling housing given the proposal has not demonstrated a high level of amenity is achieved with regard to acoustic impacts, visual and acoustic privacy, natural ventilation, solar access, sustainable design and landscaping.

The visual and acoustic privacy impacts of the height and building separation non-compliances have not been adequately justified. The proposal also places unreasonable constraints on the ability of surrounding sites, particularly to the south, to achieve acceptable amenity outcomes. An updated BASIX certificate has not been supplied with the amended package to demonstrate compliance with mandatory minimum sustainability standards.

#### Access, transport and traffic

A revised Traffic Assessment Report dated 17/12/19 was submitted with the amended package provided on 5 February 2020 and the amendments included traffic signals at the intersection of Mann Street and Dwyer Street that sought to address the operation of that intersection.

Transport for NSW (formerly RMS) did not object to the proposal in principle. However, they considered the additional vehicle movement generated by the development would have a negative effect on the safe and efficient operation of the Mann Street / Dwyer Street intersection. Transport for NSW commented that consideration would be given to traffic control signals at the Mann Street / Dwyer Street intersection, pending updated traffic modelling.

As previously discussed in the report (under SEPP Infrastructure), Councils Traffic and Transport Engineer has not supported the SIDRA analysis as appropriate levels of pedestrian movements have not been included in a revised analysis and insufficient information has been provided to identify the likely upgrading requirements for the Mann and Dwyer Street intersection.

Councils Senior Development Design Engineer also found the amended package had insufficient information regarding access and manoeuvring on site and road safety as follows:



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- The swept paths shown on the architectural plan drawing sheets A-105 and A-205 are inadequate for the purposes of demonstrating that the waste collection vehicle can service the development. Truck turning swept paths for the waste collection vehicle are required.
  - An independent Road Safety Audit, prepared in accordance with AustRoads 'Guide to Road Safety Part 6 – Road Safety Audit 2009', and RMS 'Guidelines for road safety audit practices 2011' would be required to ensure that there are safe pathways for pedestrians, particularly to and from bus stops, crossing the intersection/s and pedestrian movements around the proposed development.

Insufficient information has been provided to adequately demonstrate that the accessibility, road congestions, efficiency and movement of people and safety of the site and surrounding road networks are satisfactory.

### Stormwater and Drainage

While no updated report was provided with the amended package, the Concept Stormwater Management Report dated 29 January 2018 was reviewed and found to be acceptable subject to standard details that would ordinarily be required at Construction Certificate stage.

An appropriate level of on-site detention is proposed for both the eastern and western portions of the site as well as appropriate stormwater quality improvement devices. In accordance with the GDCP 2013 on-site detention is to limit post development flows from the proposed development site to less than or equal to pre-development flows for all storm events up to and including the 100 year ARI storm event.

Overland flow paths within the site will be provided within the new pavement and podium areas to direct surface runoff in large storm events to the street frontages of the eastern site and the drainage easement in the south-west corner of the western site.

The applicant has stated that the proposed development will block an existing overland flow path for an interallotment drainage line along the eastern boundary of western site. It is proposed that an overland flow path will be implemented to intercept and convey 50% of the 1% AEP storm event from the inlet pit to the easement outlet in the south-west corner of the site. The concept design is considered satisfactory but would be subject to more detailed assessment at the Construction Certificate stage. Stormwater is considered to have been sufficiently addressed.

### Erosion and Sediment Control

A Concept Soil and Water Management Plan has been reviewed by Councils Environmental Officer. The Plan indicates one sediment basin (Type D) for the eastern portion of the development and one sediment basin (Type D) for the western portion of the development. The Plan includes maintenance for the sediment basins including discharge limits after flocculation. However, the Plan does not provide locations for material stockpiles, diversion of clean and dirty water, and staging of construction works in association with construction stages (i.e. Stage 1 – 3) and therefore has not adequately addressed the potential impacts of erosion and sediment on the surrounding environment.

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### Contamination, Acids Sulphate Soils and Geotechnical Conditions

The land is considered suitable for the proposed use and is not considered to be contaminated having regard for the provisions of SEPP 55. In addition, it is considered the proposed works will not impact on Acid Sulfate Soils.

A Geotechnical Report has been provided and externally peer reviewed and found to be acceptable.

### Utilities - Water and Sewer

The application was referred to Council's Water Assessment Team who advised that water and sewer services are available for connection on site. Council's Water Assessment Team noted the following:

- Council's 100mm CICL water mains are located in the Dwyer Street, Mann Street and Hills Street road reserve directly fronting the development site. Dependent upon required works for the new access crossover the main may be impacted.
- A Council sewer main is located within the development site. The applicant is required to relocate the sewer main to maintain the serviceability to upstream customer due to the proposed underground car park. Any works affecting the sewer main shall comply with Council Building Over/Adjacent to Sewer Main Guidelines.

Details would be provided at the detailed design stage. Overall water and sewer are considered to have been sufficiently addressed.

### Heritage

The site is not located in the vicinity of any heritage items. There are no known aboriginal heritage items present on the site.

### Waste

Council's Waste Management Assessment Officer has reviewed the application and Waste Management Plan prepped by Barker Ryan Stewart, as amended, and determined that insufficient information had been provided to fully assess the application or demonstrate that waste is adequately managed. The following issues were identified:

- East Towers 1 & 2 - Revised plans would be required to indicate all resident travel paths to the Tower 1 residential waste room. All travel paths must be within the development and not exceed maximum 30.0m. Clarification is required particularly in relation to Townhouses.
- West Towers 3, 4, 5 & 6 - Revised plans would be required to relocate entry to Waste Room – Towers 3 and 4 to provide for direct roll out of bulk waste bins to the Waste Truck Servicing Area/Loading Area to minimise roll out distance and resident travel distance. The revised plans to indicate all resident travel paths to the Tower 4

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residential waste room. All travel paths must be within the development. Clarification is required in relation to Townhouses.

- The resident travel path from the lift lobby – Tower 3 requires residents to cross a ramp access. Suitable measures including convex mirrors, prominent signage etc would be required to alert vehicles exiting via the ramp and to provide a level of safety to residents when accessing the Tower 3 and 4 – Residential waste storage room.
- All residential waste storage rooms to be clearly identified “Residential Waste Storage Room – Tower etc”. Door openings to bulk waste bin waste storage enclosures/bulk waste bin holding areas to indicate roller doors with a minimum 1500mm wide opening.
- Commercial waste storage enclosures appear undersized and provide no future use capability for uses including food premises etc. Consideration is required particularly in relation to Proposed Commercial Waste Storage for the Eastern Tower.
- Submission of a revised signed and dated Waste Management Plan in accordance with Chapter 7.2 – Waste Management of Gosford DCP 2013 and Central Coast Local Environment Plan 2014 (GLEP2014) – A Guide for Applicants on Supporting Requirements, for all site preparation, construction, use of premises and on-going management of waste would be required.
- A site inspection noted significant volumes of asbestos cement cladding on multiple existing buildings over the development site. Reference and an estimated volume for asbestos cement is required.
- Submission of truck turning swept paths for waste collection vehicle generated using CAD software are required. The swept path needs to show the path of the vehicle and shall include the 300mm offset envelope around the vehicle. The swept path is to be plotted from the approach lane in the street, through the building to the waste collection areas and back to the street. (NB the swept paths shown on the architectural plan drawing sheets A-105 and A-205 are inadequate for the purposes of demonstrating that the waste collection vehicle can service the development).

### Noise and Vibration

The site is approximately 20m from the rail corridor at its closest point.

An updated Acoustic Assessment was not provided in the amended package submitted 5 February 2020, however noise impacts from road and rail were assessed in the 2018 Acoustic Assessment. As previously discussed, the Acoustic Assessment has not been prepared in accordance with the NSW DoP *NSW Department of Planning Development near rail corridors and busy roads- interim guidance* to demonstrate compliance with Clause 87 of the SEPP Infrastructure.

The Acoustic Report dated 19 January 2018 indicates noise levels at the façade are 13 dB(A) above the criteria specified in Clause 87(3) of SEPP Infrastructure and then states that “*the future residential units proposed to be constructed on lots located in close proximity to the rail*

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*line will need to be assessed by a suitably qualified acoustician to ensure all properties are designed and constructed in accordance with the NSW DoP Development near Rail Corridors and Busy Roads – Interim Guideline”.*

Section 6.3 of the Acoustic Assessment states that an additional acoustic report is required to demonstrate compliance with these requirements and Section 6.4 states that *“it is therefore not appropriate at this stage to specify the acoustic glazing requirements for the project in detail as the layout and extent of the glazed facades will need to be confirmed...”*

In addition, this report relies on background data / baseline noise levels from 2004, which is not representative of the current background noise in this area. Despite the recommendations of the report submitted in January 2018, no further acoustic assessment has been submitted.

Councils Environmental Health Officer has reviewed the Acoustic Report (dated 19 January 2018) and considers it to be preliminary in nature and has not demonstrated that compliance with the provisions of clause 87(3) of SEPP Infrastructure can be achieved. Moreover, consent cannot be granted to the development unless the consent authority is satisfied that appropriate measures will be taken to ensure that the LAeq levels are not exceeded.

A Rail Vibration Assessment has not been provided in accordance with the provisions of Clause 87 of SEPP (Infrastructure) 2007 and the NSW DoP Development near Rail Corridors and Busy Roads – Interim Guidelines. Figure 3.2 of the Interim Guidelines requires a vibration assessment for sensitive buildings that are within 60m of the rail corridor and this has not been provided.

The application has not adequately addressed the impacts of rail noise or vibration in accordance with the relevant guideline.

#### Social and economic impacts

The proposed development would generate short term economic stimulus through the construction of the development. The additional local employment opportunities created as a result of the proposal would support local business and services in the immediate locality and patronage of business within the city core and fringes. The progressive improvement of properties along Mann Street will encourage walkability, activation and patronage of business within the city core and fringes. The increased local population will also support local business and services.

The proposal is considered to meet the aims of the Central Coast Regional Plan 2036 and would facilitate economic development that will lead to additional local employment opportunities on the Central Coast and reduce the percentage of employed persons who travel outside the region each day for work.

However, in the context of revitalisation of the Gosford City Centre the non-compliance's with the height and southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south. These non-compliances will impact negatively on the amenity for residents of the proposed development and negatively impact neighbours.

Whilst additional dwellings are necessary on the Central Coast, the application has not provided sufficient information to demonstrate that the site has appropriately responded to the site constraints or how the development provides a high level of amenity for its occupants. The proposal has therefore not demonstrated the immediate and long-term social benefits of the proposal.

#### **s. 4.15 (1)(c) of the EP&A Act: Suitability of the Site for the Development**

The site is zoned B4 Mixed Use and R1 General Residential which permits a range of uses. The site is suitable for the proposal in principle. However, the proposal has not adequately addressed or demonstrated how the site will mitigate the noise and vibration impacts from the adjacent rail corridor. Insufficient information has been provided to demonstrate that the site is suitable for this type of development.

#### **s. 4.15 (1)(d) of the EP&A Act: Any Submission Made in Accordance with This Act or Regulations**

Section 4.15 (1)(d) of the EP&A Act requires consideration of any submissions received during notification of the proposal.

The proposal was formally advertised and notified in accordance with GDCP 2013 Chapter 7.3.2 Notification of Development Proposals for the following periods:

- 15 April and 6 May 2016 and 20 May and 10 June 2016 - 33 submissions, petition with 55 signatures
- 15 March and 9 April 2018 - 15 submissions, petition with 122 signatures.
- 19 December 2018 until 6 February 2019 - 25 submissions, petition with 121 signatures
- 12 February to 4 March 2020 - 18 submissions, petition with 121 signatures.

The issues have been addressed in the assessment of the application pursuant to the heads of consideration contained within section 4.15 of the *Environmental Planning and Assessment Act 1979* and as set out in the table below.

Summary of Submissions	Response
<p>Inconsistency with the objects of the <i>Environmental Planning and Assessment Act 1979</i>, particularly:</p> <p><i>(c) to promote the orderly and economic use and development of land,</i></p> <p><i>(g) to promote good design and amenity of the built environment,</i></p> <p>As a result of:</p> <ul style="list-style-type: none"> <li>• Excessive height, bulk and scale</li> <li>• Various amenity impacts including overshadowing, privacy, noise, loss of views as well as poor internal amenity</li> <li>• Disregard for almost all LEP and DCP controls</li> <li>• Sterilization of adjoining land</li> </ul>	<p>Agreed. Good design and amenity has not been adequately addressed as discussed throughout the assessment report and as reflected in the reasons for refusal particularly reason No.13.</p>

Summary of Submissions	Response
<ul style="list-style-type: none"> <li>Streetscape and character impacts</li> </ul>	
<p>Unacceptable non-compliance with GLEP 2014, Clause 4.3 Height of Buildings</p> <p>Excessive height – non-compliance on every tower</p> <p>Overshadowing and amenity impacts, bulk and scale, character and streetscape.</p>	<p>Agreed. Concern is raised throughout the report in relation to height, solar access and amenity impacts. This concern is reflected in reason for refusal No.9.</p>
<p>Appropriate calculation of FSR not provided – cannot be fully assessed. Excess car parking not included in GFA/FSR calculation. Ground floor service room not included in GFA.</p> <p>Overdevelopment and does not address character of the area.</p> <p>Numerical compliance with FSR is not an 'as of right' outcome, and that numerous factors inter-relate to establish the acceptable scale and size of the development including height, setbacks, building separation, deep soil zones etc, all of which require a variation to some extent under the amended scheme.</p>	<p>FSR calculation diagrams have been provided (A-604-605). It is noted that there are some errors, with ground floor service/waste rooms being excluded where they need to be included, but these areas are minor and do not result in a non-compliance with the numerical controls</p> <p>Definition of gross area specifically excludes car parking to meet any requirements of the consent authority. The applicant has met the minimum requirements and provided additional spaces, which is considered satisfactory in this instance as they appropriately meet the needs of the development.</p> <p>While the proposal does comply with FSR controls, the other non-compliances do indicate the proposal is an overdevelopment of the site.</p>
<p>Design Excellence is not achieved due to various and significant non-compliances.</p>	<p>Agreed and this has been discussed in the assessment report and reflected in reason for refusal No.11.</p>
<p>The revised Clause 4.6 variation is considered poorly-founded and is not based on sufficient planning principles.</p> <p>The argument that revitalisation can only be made with a development of the size and scale proposed is unsupported and may even prove in contrast to the goal of revitalisation as the development potential of surrounding sites are reduced as they must respond to the constraints imposed upon them from the proposal.</p> <p>The strategic intent for the Gosford City Centre should still aim to provide balanced growth across multiple sites, rather than within a single overdevelopment that sterilizes surrounding land.</p> <p>Comparison to "Waterside" development is not appropriate, use of Statement of Strategic Intent (SoSI) to justify current design is inappropriate.</p>	<p>Agreed and this has been discussed in the assessment report and reflected in reason for refusal No.9.</p>



Summary of Submissions	Response
There are additional non-compliances that exacerbate the variations sought under the Clause 4.6. As such, the implications cannot be considered in isolation.	
Non -compliance with SEPP 65 principle and the ADG No revised SEPP 65 Compliance Statement	Agreed and this has been discussed in the assessment report and reflected in reasons for refusal No's 4, 5 and 6.
Updated BASIX report has not been provided. Sustainability not adequately addressed in proposal. The proposal will result in an increased demand on water and sewer and water reuse has not been sufficiently addressed.	Agreed. Refer to discussion in assessment report and reasons for refusal No's 3, 4 and 5, 11 and 12.
Non-compliance with GDCP 2014	Agreed. Refer to discussion in assessment report and reason for refusal No.12.
<i>State Environmental Planning Policy (Gosford City Centre) 2018</i> has been gazetted and does not reflect the scale of development that is proposed	This issue has been discussed under the heading 'State Environmental Planning Policy (Gosford City Centre) 2018'
Clause 55 of the <i>Environmental Planning and Assessment Regulation 2000</i> facilitates the amendment or variation of a development application prior to determination, it is considered the large-scale changes represent a new/original application rather than the amendment to the original application.	This concern is noted; however, it was considered that the amendments were acceptable and within the jurisdiction of the provisions of clause 55.
Traffic and road safety, pedestrian safety Traffic report out of date Lack of car parking	Noted. Refer to discussion in the assessment report and reason for refusal No. 2.  The application as amended provides over and above the car parking requirements. 419 are required and 563 spaces are proposed.
Photomontage is inadequate and misleading (shows green park like space instead of surrounding buildings) and no physical or 3d model has been provided.	Noted and agreed.
Not enough commercial space	There is no minimum or maximum limit for commercial floorspace required in the B4 mixed use zone. This is considered on merit.
Safety and crime	NSW Police provided no objection to the proposal and the proposal is generally consistent with the principles of Crime Prevention through Environmental Design.
Bulk Collection issues – rubbish left in street	Bulk waste areas are provided within each tower and on-site collection is proposed. However, insufficient information has been provided on waste arrangements as discussed within the body of the report and reason for refusal No. 12.
Development potential of surrounding land not considered – will restrict redevelopment of surrounding land.	Agreed. Refer to discussion within assessment report and reasons for refusal No. 10.

Summary of Submissions	Response
Disruption during construction, loss of business	The construction of any development will result in disruptions, noise etc. during the construction phase and this is managed via conditions of consent imposed during the construction works phase which seek to assist in the mitigation of construction impacts.
Geotechnical stability - excavation	A Geotechnical Report has been provided and externally peer reviewed and found to be acceptable.
Concern with the interface with 31 Dwyer Street to the east – appears that a large podium is proposed to be constructed in close proximity to – or abutting – the boundary.	The buildings are setback 6m from this boundary.
Stormwater and Flooding	The application as amended has addressed previous concerns in relation to flooding and stormwater management. Councils Senior Development Engineer is now satisfied with the proposal in this regard.
Difficult to navigate and determine which documents are still active and which documents are no longer relevant to the application, information has not been updated – reports are out of date.	Noted and agreed.
The ongoing amendments appear to be a strategy to try and outlast and fatigue continued community objection to the Proposal. There have been persistent non-compliance's o building height, bulk and scale, setbacks, character, solar access, visual privacy, Apartment Design Guide requirements, unit mix, and inconsistency with relevant objectives.	The non-compliance with planning controls have been discussed throughout the report.
<p>Poor public amenity outcomes – VPA for open spaces and other infrastructure would be appropriate given the large scale of the development.</p> <p>Sufficient infrastructure does not exist and tax payers money should not be used for road and other upgrades required for the development</p>	If the development were to be approved, it would be subject to developer contributions under the Gosford City Centre Special Infrastructure Contribution levy and Section 7.12 contributions which would contribute to planned future open space and infrastructure requirements. There is no requirement for the developer to enter into a Planning Agreement.
Loss of property value	While the amenity impacts of the proposal are noted and considered unacceptable as detailed in the assessment report, loss of property value is not a relevant planning consideration and there is no evidence to substantiate this claim.

**Table 4 - Summary of public submissions**

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## **Submissions from Public Authorities**

The application was referred to the following State Government Agencies:

- Transport for NSW
- Sydney Trains

Comments received from each are summarised and addressed below:

### Transport for NSW

The application was referred to the Transport for NSW (TfNSW) for assessment and comment. Correspondence from TfNSW was received on 5 August 2020 (see Attachment 5) and made the following comments:

- There are no objections to the proposal in principle
- TfNSW consider the addition of vehicle movement generated by the development would have a negative effect on the safe and efficient operation of the Mann Street / Dwyer Street intersection,
- Consideration would be given to traffic control signals at the Mann Street / Dwyer Street intersection pending updated traffic modelling.

### Sydney Trains

Council was advised that Sydney Trains, via Instruments of Delegation, has been delegated to act as the rail authority for the Newcastle & Central Coast Line heavy rail corridor and to process the concurrence for this development application.

On 26 August 2020 Sydney Trains granted its concurrence to the development, subject to Council imposing a deferred commencement condition, as well as various operation conditions (see Attachment 6).

## **s. 4.15 (1)(e) of the EP&A Act: The Public Interest**

### Central Coast Regional Plan 2036

The Central Coast Regional Plan 2036 provides a 20-year framework and guiding strategic planning document aimed at facilitating effective growth and services for the people of the region. It outlines a vision for the Central Coast to 2036; the challenges faced, and the goals and directions to follow to address these challenges and achieve the vision.

It aims amongst other measures, to build a strong economy capable of generating jobs, providing greater housing choice, essential infrastructure and protecting the natural environment.

The proposal has been assessed having regard to the relevant goals and directions set out within the Central Coast Regional Plan 2036 and has not demonstrated that the proposal provides for the housing needs of the community with sufficient regard to good design and amenity and unfairly prejudices the sites to the south from achieving good design and amenity.

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Given the above and for the reasons identified in the assessment report, the proposed development is not considered to be in the public interest.

## **Other Matters for Consideration**

### Development Contribution Plan

The *Gosford City Centre Special Infrastructure Contribution Determination* came into effect on 12 October 2018. A Special Infrastructure Contribution levy of two per cent on the cost of development is required for new development within the Gosford City Centre. This applies to development located on residential and business zoned land that has a cost of development of \$1 million and over.

Section 7.12 contributions for the Gosford City Centre also apply with a contribution levy of 1%.

### Planning Agreements

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

## **Conclusion**

This application has been assessed having regard for the matters for consideration under the Section 4.15 of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies.

The proposal as not adequately demonstrated the proposed residential use is compatible with the site with particular regard to the noise and vibration impacts of the adjacent rail corridor in accordance with Clause 87 of *State Environmental Planning Policy (Infrastructure) 2007*.

Insufficient information has been provided to adequately demonstrate that the accessibility, road congestion, efficiency and of movement of people and safety of the site and surrounding road networks are satisfactory in accordance with Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007*.

The proposed development has not demonstrated that adequate regard has been given to the design quality principles contained within *State Environmental Planning Policy No. 65* or with the objectives and design criteria of the Apartment Design Guide.

The proposal has not demonstrated that it is consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The proposal has not demonstrated that it is compatible with the desired future character of the area, with particular regard to height, building separation and setbacks, or that the design represents 'best practice' given the proposal has not demonstrated a high level of amenity is achieved in relation to acoustic impacts, visual and acoustic privacy, natural ventilation, solar access, sustainable design and landscaping.

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The non-compliance with building height and building separation controls result in an undesirable built form outcome of crowded towers, which will not respond to the low scale residential to the north or create a desirable future character for the Gosford City Centre to the south. The visual and acoustic privacy impacts of the building separation non-compliances have not been adequately justified. In the context of revitalisation of the Gosford City Centre the non-compliance's with the southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south.

The proposal is not considered to be consistent with the objective of the B4 Mixed Use or R1 General Residential Zone or achieve design excellence as required by Clause 8.5 of Gosford LEP 2014.

Accordingly, the application is recommended for refusal pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

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## **Attachments**

1. Reasons for Refusal
2. GDCP 2013 Compliance Table
3. Architectural Plans, Rev N dated 19/12/2019 prepared by CKDS Architecture (D13804764)
4. Landscape Plans, Rev H dated 05/02/2020, prepared by Xeriscapes (D13804692)
5. Transport for NSW response email dated 05/08/2020 (D14108251)
6. Sydney Trains Letter dated 26 August 2020 (D14167007)
7. Independent Design Review, Rev 2 dated 27/02/2020 prepared by Ken Dyer (D13903673)
8. Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 Variation Request, (D14155447)

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## ATTACHMENT 1

### Reasons for Refusal

1. The application has not adequately addressed Clause 87 of *State Environmental Planning Policy (Infrastructure) 2007* therefore the impacts of rail noise or vibration are unknown.
2. The application has not adequately addressed Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007* as insufficient information has been provided to satisfy the consent authority in relation to accessibility, road congestion, efficiency and of movement of people and safety of the site and the surrounding road network.
3. The proposal has not demonstrated that it is consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.
4. The proposed development has not demonstrated that adequate regard has been given to the following design quality principles contained within *State Environmental Planning Policy No. 65* with respect to Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 4: Sustainability, Principle 5: Landscape, and Principle 6: Amenity.
5. Insufficient information has been provided to allow for a detailed assessment of the proposal against SEPP 65 in regard to meeting the following objectives of the Apartment Design Guide: Objectives: 3E-1 Deep Soil Zone, 4A-1 Solar and Daylight Access, 4O Landscape Design, 4P Planting on Structures and 4V Water.
6. The proposal has not provided adequate justification for significant non-compliances with certain design criteria of the Apartment Design Guide nor has it been demonstrated how the following objectives of the Apartment Design Guide are achieved in light of these non-compliances: 3D-1 Communal Open Space, 3F-1 Visual Privacy, 4B-3 Natural Ventilation, 4E-1 Balconies, 4H Acoustic Privacy and 4J Noise and Pollution.
7. The proposal has not adequately demonstrated the proposed residential use is compatible with the site with particular regard to the noise and vibration impacts of the adjacent rail corridor and therefore does not meet the objectives of the B4 Mixed Use zone that requires compatible land uses and activities.
8. The proposal has not demonstrated that it is compatible with the desired future character of the zone, with particular regard to height and inadequate boundary and building setbacks, or that the design represents best practice in the design of multi dwelling housing given the proposal has not demonstrated a high level of amenity is achieved in relation to acoustic impacts, visual and acoustic privacy, natural ventilation, solar access, sustainable design and landscaping. Therefore, the proposed development does not meet the objectives of the R1 General Residential zone.
9. The Clause 4.6 written request does not adequately address the provisions of Clause 4.6(3) to demonstrate that the building height development standard is unreasonable



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or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to deviate from the standard.

10. The proposal does not comply with the objectives of Part 8 – Additional Local Provisions – Gosford City Centre of GLEP 2014, in the context of revitalisation of the Gosford City Centre as the proposal's non-compliance's with the southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south and does not exhibit design excellence.
11. The proposal does not achieve design excellence with regard to Clause 8.5 (f) (iv), (vii) and (viii) of the GLEP 2014.
12. The proposal does not adequately address the following sections of GDCP 2013:  
4.1.1.4 City Centre Character, 4.1.2.8 Landscape Design, 4.1.2.9 Planting on Structures, 4.1.3.10 Corner Treatments, 4.1.3.11 Public Artwork, 4.1.4.3 Vehicle Footpath Crossings and Vehicular Driveways and Manoeuvring, 4.1.4.5 Site Facilities, 4.1.5.3 Water Conservation, 4.1.5.6 Waste and Recycling, 4.1.5.7 Noise and Vibration, 4.1.6.2 Housing Choice & Mix and 6.3 Erosion and Sediment Control.
13. The site is not suitable for the proposed development having regard for the provisions of Section 4.15(1)(c) and (g) of the *Environmental Planning and Assessment Act 1979*.
14. The proposal is not in the public interest.

## ATTACHMENT 2

GDCP 2013 Compliance Table

Development Control	Required	Proposed	Compliance
<b>4.1.1.4 City Centre Character</b>	<p>The site is located within the Mixed Use (City Edge) and General Residential character areas.</p> <p>The Mixed Use Zone at the city edge complements the commercial core but also allows for residential units thereby providing for a walkable city for residents to work in.</p> <p>It is intended that new development within General Residential zone will consist of medium to high density with heights allowing for 5 to 7 storeys.</p>	The proposal is not reflective of the desired future character of the area by virtue of the height and setback non-compliances detailed in this assessment report.	No
<b>4.1.2.2 Building to street alignment and street setback</b>	<p>0m setback to corners of Mann and Dwyer Streets</p> <p>2m - 2.5m setback to remainder of Dwyer and Hills Street.</p>	<p>0m - 4.7m to corners of Mann and Dwyer Streets.</p> <p>3.85-5.5m to remainder of Dwyer and Hills Street.</p>	No - but acceptable design response
<b>4.1.2.3 Street Frontage Height</b>	12-16m to corners of Mann and Dwyer Streets	6-9m	No - but acceptable design response
<b>4.1.2.4 Building Depth &amp; Bulk</b>	<p>Mixed use (Towers 2-6): Maximum floor plate size up to a 750sqm max above 16m, maximum building depth (excluding balconies) – 24m</p> <p>Residential (Tower 1): Maximum floor plate size up to a 500sqm max above 12m, maximum building depth (excluding balconies) – 18m</p>	<ul style="list-style-type: none"> <li>Max floorplate approximately 659sqm</li> <li>Max building depth – 22.1m</li> <li>Max floorplate approximately 601sqm</li> <li>Max building depth – 22m</li> </ul>	No – Tower 1 only, variations considered acceptable
<b>4.1.2.5 Setbacks</b>	The GDCP 2013 setback controls are generally in line with but also is superseded by	Discussed under the SEP 65 and Apartment Design Guide headings of this Assessment Report	No

<b>Development Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
	the SEPP 65 and ADG setback requirements		
<b>4.1.2.6 Mixed Use Buildings</b>	Minimum floor to ceiling heights of 4.4m for commercial tenancies and 2.7m for residential uses.	Complies	Yes
<b>4.1.2.7 Site Cover</b>	75%	50%	Yes
<b>4.1.2.7 Deep Soil Zones</b>	15% min.  Min. Dimension 6m	Landscape drawings show deep soil planting at 18.2% and SEE states 15.4%. No diagrams showing calculation areas and dimensions have been provided.  Only 2 areas of deep soil that meet the 6m dimension requirement have been identified: 240sqm on the eastern boundary of Tower 1 and 136sqm to the south of the pool area and Tower 6. This equates to only 3.4% of the site.	No
<b>4.1.2.8 Landscape Design</b>	Landscaped areas are to be irrigated with recycled water.  A long-term landscape concept plan must be provided for all landscaped areas, in particular the deep soil landscape zone.	Recycled water irrigation is not included in the design, applicant states this can be conditioned.  A landscape plan was submitted with the development application however lacks details, particularly in regard to planting on structures and any irrigation.	No
<b>4.1.2.9 Planting on Structures</b>	Constraints on the location of car parking structures due to water table conditions may mean that open spaces and courtyards might need to be provided over parking structures.	A landscape plan was submitted with the development application however lacks details, particularly in regard to planting on structures, with no sections or depths provided.	No
<b>4.1.2.10 View Corridors</b>	Protect significant view corridors	The site is not located in any identified view corridor.	Yes
<b>4.1.3.3 Active Street Frontages and Address</b>	Active street frontage required to Mann and Dwyer Streets.	Complies	Yes
<b>4.1.3.5 CPTED Principles</b>	Address Safer by Design and CPTED principles	Passive surveillance is provided by unit and balconies, as well as commercial uses and large windows facing over Mann Street. Ground	Yes

Development Control	Required	Proposed	Compliance
		level commercial uses will increase activity and ownership of the area.	
<b>4.1.3.7 Vehicle Access</b>	<p>No new vehicle access point permitted form Mann Street</p> <p>Where practicable, adjoining buildings are to share or amalgamate vehicle access points.</p> <p>Max. 2.7m width (or up to 5.4m wide for safety reasons)</p>	<p>No Access point form Mann Street.</p> <p>One access point from Hills Street and one access point from Dwyer street. The site amalgamates nine (9) allotments and reduces the access points by five (5).</p> <p>Double lane access point proposed.</p>	Yes
<b>4.1.3.9 Building Exteriors</b>	Various controls, similar to clause 8.5 of GLEP.	Details of materials and colours are provided in the plans within the development application documentation and are generally supported by Council staff.	Yes
<b>4.1.3.10 Corner Treatments</b>	<p>Corner sites to use architectural emphasis and use of distinguishing architectural features and materials to adjacent buildings,</p> <p>The use of a consistent 'short splay' corner treatment on corners designated as 'Gateway' sites. A primary entrance door to the building is to be placed at the splayed section of the corner.</p>	The architecture does not adequately address the corner location and does not include or address the splay requirement.	No
<b>4.1.3.11 Public Artworks</b>	Public art plan for required.	None provided.	No
<b>4.1.4.2 Pedestrian Access and Mobility</b>	<p>Building Entry Points - Clearly visible from street</p> <p>Design for disabled persons</p> <p>Barrier free access to not less than 20% of dwellings</p> <p>At least 1 main pedestrian entrance with convenient barrier frees access to ground floor</p> <p>Continuous access paths of travel from all public roads</p> <p>Access paths of durable materials (slip resistant</p>	Considered acceptable and would be capable of compliance subject to conditions.	Capable of compliance

Development Control	Required	Proposed	Compliance
	materials, tactile surfaces and contrasting colours)		
<b>4.1.4.3 Vehicle Footpath Crossings and Vehicular Driveways and Manoeuvring</b>	Located 6m min. from the perpendicular of any intersection	Generally acceptable however insufficient information has been provided to demonstrate waste collection vehicle manoeuvring (swept paths)	Insufficient information
	Minimum driveway setback 1.5m from side boundary		
	Enter and leave in forward direction		
	Compliance with Council's standard Vehicle Entrance Design & subject to Roads Act approval		
	Compliance with AS2890.1		
	Use semi-pervious materials for driveways open car spaces		
<b>4.1.4.4 On-Site Parking</b>	402 resident spaces and 17 commercial spaces.	563 car spaces proposed	Yes.
<b>4.1.4.5 Site Facilities</b>	Mail boxes in one location, integrated into a wall, similar building materials and secure and of sufficient size	Capable of complying.	Capable of compliance
	Locate ancillary structures (e.g. satellite dish and air conditioning units) away from street. Integrated into roof scape design. One master antenna per residential apartment buildings.		
	Size, location and handling procedures for all waste to satisfaction of Council's Waste & Emergency Staff	Insufficient information has been provided to demonstrate appropriate resident travel paths to waste rooms or adequately sized commercial waste storage areas.	Inadequate information
	Waste storage not to impact on neighbours in terms of noise, and be screened from the public and neighbouring properties		
	Waste storage area well lit, easily accessible and on level grade, free of obstructions		
	Waste storage area behind main building setback and facade		
<b>4.1.4.5 Fire &amp; Emergency Vehicles</b>	Compliance with Fire Brigades Code of Practice – Building Construction – NSWFB Vehicle Requirements	Considered acceptable.	Yes

<b>Development Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
<b>4.1.5.2 Energy Efficiency and Conservation</b>	Compliance with BASIX	An updated BASIX Certificate has not been provided with the amended plans	No
<b>4.1.5.3 Water Conservation</b>	Efficient best practice management of water resources	An updated BASIX Certificate has not been provided with the amended plans. Recycled water irrigation is not included in the design.	No
<b>4.1.5.4 Reflectivity</b>	Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.	It is considered glare could be dealt with via a condition to ensure it would not pose a problem to surrounding road users.	Capable of compliance
<b>4.1.5.5 Wind Mitigation</b>	Wind Effects Report for buildings over 14m	A Wind Tunnel Test was provided as part of the application.	Yes
<b>4.1.5.6 Waste and Recycling</b>	All development is to provide for storage of waste bins on-site in an area of sufficient size to accommodate waste generated by the development. Must be easily accessible to occupants	Commercial waste storage enclosures appear undersized. resident travel paths to waste rooms not adequately detailed.	Insufficient Information.
<b>4.1.5.7 Noise and Vibration</b>	Effective management of noise and vibration in a city centre environment	The Acoustic Assessment provided does not adequately address rail noise and vibration impacts	No
<b>4.1.6.2 Housing Choice &amp; Mix</b>	1 bed units 10% min to max 25%	The proposed development generates the following unit mix: <ul style="list-style-type: none"> <li>• Studio and 1 Bedroom: 21%</li> <li>• 2 Bedroom: 59%</li> <li>• 3 Bedroom: 20%</li> </ul>	Yes
	2 Bed not more than 75%		
	15% of dwellings (for sites with slope less 20%) capable of adaption for disabled or elderly residents = 53 accessible dwellings	Not detailed but considered capable of compliance.	Capable of compliance
	Where possible provide adaptable dwellings on the ground level	Capable of compliance	Capable of compliance
	Application to be accompanied by an Access Consultant report	Updated Access report not provided with amended plans	No
	Car parking to adaptable dwelling to comply with AS	Capable of compliance	Capable of compliance

<b>Development Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
<b>4.1.6.3 Storage</b>	7.5m <sup>3</sup> for 1 bed units 10m <sup>3</sup> for 2 bed units 12.5m <sup>3</sup> for 3 bed plus  Min 50% of required storage areas within dwelling	Storage volumes not detailed on plans, however considered capable of compliance.	Capable of compliance.
<b>6.3 Erosion and Sediment Control</b>	Plans required	The Plan does not provide locations for material stockpiles, diversion of clean and dirty water, and staging of construction works in association with construction stages.	Insufficient Information.
<b>6.4 Geotechnical Requirement</b>	Investigations	A Geotechnical Report has been provided and externally peer reviewed (by Cardno) and found to be acceptable.	Yes, via condition.
<b>6.7 Water Cycle Management</b>	Minimise the impact of the development on the natural predevelopment water cycle.	Council's Development Engineer has reviewed the development water cycle management report and raised no objection.	Capable of compliance.



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**ATTACHMENT 3**

Architectural Plans, Rev N dated 19/12/2019 prepared by CKDS Architecture (D13804764)

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## **ATTACHMENT 4**

Landscape Plans, Rev H dated 05/02/2020, prepared by Xeriscapes (D13804692)

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**ATTACHMENT 5**

Transport for NSW response email dated 05/08/2020 (D14108251)

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**ATTACHMENT 6**

Sydney Trains Letter dated 26 August 2020 (D14167007)

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## **ATTACHMENT 7**

Independent Design Review, Rev 2 dated 27/02/2020 prepared by Ken Dyer (D13903673)

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**ATTACHMENT 8**

Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 Variation Request, (D14155447)