

ADW JOHNSON PTY LIMITED

ABN 62 129 445 398

Sydney
Level 35 One International Towers
100 Barangaroo Avenue
Sydney NSW 2000
02 8046 7411
sydney@adwjohnson.com.au

Central Coast
5 Pioneer Avenue
Tuggerah NSW 2259
02 4305 4300

coast@adwjohnson.com.au

Hunter Region
7/335 Hillsborough Road
Warners Bay NSW 2282
02 4978 5100

hunter@adwjohnson.com.au

Clause 4.6 Variation Height of Building

Residential Flat Building (353 units) & Commercial Premises (Staged)

Property:

Corner of Mann Street and Dwyer Street,
North Gosford

Applicant:

Ken Schmidt C/-CKDS

Date:

January 2020

Project Management • Town Planning • Engineering • Surveying
Visualisation • Economic Analysis • Social Impact • Urban Planning

www.adwjohnson.com.au

Document Control Sheet

Issue No.	Amendment	Date	Prepared By	Checked By
A	Draft to Client	31 st March 2016	AC	AC
B	Amended Draft to Client	18 th January 2018	SVD	AC
C	Amended Draft to Client	19 th January 2018	SVD	AC
D	Final to Client	24 th January 2018	SVD	AC
E	Amended Final to Client	28 th February 2018	SVD	SVD
F	2 nd Amended Final to Client	18 th October 2018	SVD	SVD
G	3 rd Amended Final to Client	20 th November 2018	SVD	SVD
H	4 th Amended Final to Client	12 th December 2019	SVD	SVD
I	5 th Amended Final to Client	19 th December 2019	AC	AC
J	6 th Amended Final to Client	7 th January 2020	SVD	SVD

Limitations Statement

This report has been prepared in accordance with and for the purposes outlined in the scope of services agreed between ADW Johnson Pty Ltd and the Client. It has been prepared based on the information supplied by the Client, as well as investigation undertaken by ADW Johnson and the sub-consultants engaged by the Client for the project.

Unless otherwise specified in this report, information and advice received from external parties during the course of this project was not independently verified. However, any such information was, in our opinion, deemed to be current and relevant prior to its use. Whilst all reasonable skill, diligence and care have been taken to provide accurate information and appropriate recommendations, it is not warranted or guaranteed and no responsibility or liability for any information, opinion or commentary contained herein or for any consequences of its use will be accepted by ADW Johnson or by any person involved in the preparation of this assessment and report.

This document is solely for the use of the authorised recipient. It is not to be used or copied (either in whole or in part) for any other purpose other than that for which it has been prepared. ADW Johnson accepts no responsibility to any third party who may use or rely on this document or the information contained herein.

The Client should be aware that this report does not guarantee the approval of any application by any Council, Government agency or any other regulatory authority.

Table of Contents

1.0	INTRODUCTION	1
2.0	BACKGROUND.....	3
3.0	DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION	5
3.1	WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?	5
3.2	WHAT IS THE ZONING OF TO THE LAND?.....	5
3.3	WHAT ARE THE OBJECTIVES OF THE ZONE?	5
3.4	WHAT IS THE DEVELOPMENT STANDARD BEING VARIED? E.G. FSR, HEIGHT, LOT SIZE?6	
3.5	IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL? GIVE DETAILS.	6
3.6	UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT?.....	6
3.7	WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?	7
3.8	WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?	8
3.9	WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE DEVELOPMENT APPLICATION?.....	8
3.10	WHAT IS THE PERCENTAGE VARIATION (BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT)?	11
4.0	ASSESSMENT OF THE PROPOSED VARIATION.....	12
4.1	CLAUSE 4.6	12
4.2	CASE LAW GUIDANCE.....	12
4.3	HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE? (CLAUSE 4.6(3)(A)).....	13
4.4	ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? (CLAUSE 4.6(3)(B))	23
4.5	IS THE DEVELOPMENT IN THE PUBLIC'S INTEREST? (CLAUSE 4.6(4)(A)(II)).....	24
4.6	MATTERS OF SIGNIFICANCE FOR STATE AND REGIONAL ENVIRONMENTAL PLANNING? (CLAUSE 4.6(5)(A))	24
4.7	THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD? (CLAUSE 4.6(5)(B))	24
4.8	HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?	25
4.9	IS THE VARIATION WELL FOUNDED?	25
5.0	RECENT CLAUSE 4.6 VARIATIONS.....	27
6.0	CONCLUSION.....	28

1.0 Introduction

The applicant seeks to construct a development comprising 353 residential units across six (6) towers on the corner of Mann and Dwyer Streets, North Gosford. The development will also include some retail and commercial floor space within the lower levels along Mann Street.

The subject site is located within the Gosford City Centre Development Incentive Area where Clause 8.9 provides a 30% bonus floor space ratio (FSR) and height incentive for development applications lodged before 3rd April 2016 and not finally determined immediately before the commencement of Gosford Local Environmental Plan 2014 (LEP) (Amendment No 27). As the development was lodged before this date, it is able to access these incentives.

The proposal was originally lodged on 31st March 2016 for a development comprising six (6) towers. The development proposed up to a 128% variation to the maximum building height limit and a 36% variation to the maximum FSR limit. The development was subsequently amended in March 2018 to significantly reduce the FSR and heights proposed. The amended development complied with the FSR control and proposed a maximum height variation of 22%. Following an assessment of this amendment, further changes were requested by Council, resulting in a further minor reduction in height in November 2018 such that the maximum height variation proposed was 19%.

Since November 2018, numerous requests for information (RFI) were provided from Council which have resulted in further amendments. These have not impacted the building height to any noticeable extent, however nonetheless require an updated assessment pursuant to Clause 4.6.

As the development continues to exceed the building height requirement, the applicant seeks to use Clause 4.6 to enable Council to vary this development standard. This written request is therefore made pursuant to Clause 4.6 of Gosford LEP 2014, and justifies why compliance with Clause 8.9 – *Development Incentives* is unnecessary in the circumstances of the case, and demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

This request also explains how the proposed development will, despite exceeding the building height, be in the public interest given that it will continue to be consistent with the objectives of the Height of Buildings standard (Clause 4.3 and 8.9); the objectives of the Gosford City Centre provisions (Part 8) and the objectives of the B4 *Mixed Use Zone* and R1 *General Residential* zone in which the development is proposed to be situated.

Further to the above, despite the proposed building height variation, the overall development is under the total allowable gross floor area (GFA) by 6,975.46m². This illustrates that the development, despite its height, is not an over-development of the site by achieving the scale and intensity of development dictated by the applicable FSR control.

Taking the above into consideration, it is felt that contravention of the development standard raises no matter of significance for state or regional environmental planning and there is no public benefit in maintaining the development standard in this particular case.

To satisfy the requirements of Clause 4.6, and to give the Joint Regional Planning Panel (JRPP) and Council the confidence to support the proposed height variation, the following request has been prepared in accordance with the NSW Planning & Infrastructure Guideline *Varying development standards: A guide* and includes other information deemed necessary to make a considered assessment of the proposal.

2.0 Background

The current development application has been prepared as one of many applications for development within the Gosford City Centre which have either been approved or are under consideration, lodged prior to the LEP identified sunset date for the current CI 8.9 Development Incentives for the City Centre. One (1) common thread among the majority of these applications is the request to exceed the nominated maximum height and to a lesser extent the FSR provisions.

Of those proposals which have been approved, the “Waterside” development at the southern end of Mann Street accommodated the greatest increase in height in particular, with the highest of those three (3) towers being approved with a height variation of over 200%, or approximately 70m.

The Waterside development is mentioned in particular as it sits at the southern end of Mann Street; is the tallest building approved for construction within the City Centre; and shares a number of similarities with the subject site. These points are further discussed below.

The respective locations of Waterside and the subject proposal within the City Centre is considered to be of note, as the opportunity exists to provide a northern and southern “book end” effect for the City Centre. The subject site has been nominated for some time as the “Gateway” site, with a height and FSR aimed at reflecting that status. These controls however, were put in place prior to the current thinking within Gosford Council as evidenced by the “*Statement of Strategic Intent*” (SoSI), and well before the approval of the Waterside development.

The SoSI was prepared for Council as a response to the considerable interest sparked in the development of the City Centre as a result of the “Bonus Incentives” in the LEP. In reviewing the many applications lodged for development in the City Centre, it was noted that many of these designs were more reflective of newer trends in development and design within city centres. These designs typically involved building heights in excess of the LEP controls – even taking into account the 30% bonus provisions.

The height of the Waterside development in relation to the subject proposal is accordingly an important consideration, as in the period between the setting of the current controls and the approval of Waterside, there has been a remarkable maturation in the approach of Council to development within the City Centre. This change has acknowledged that the current controls are aimed at a type of development which is no longer considered to be the best outcome for a City Centre. The assumed type of development which informed these controls was a more traditional “residential flat building”, as opposed to the current raft of proposals seeking approval for more slender towers on a podium, which is more in line with the SoSI.

These podium based developments offer the ability to achieve a human scaled development when viewed from the street, while still achieving far greater heights for the towers which are set back further on the podium.

It is therefore considered that the strict application of the current height control would result in a development on this site which would not achieve the intended “Gateway”. Complying with the height controls by producing sawn off towers would be detrimental to the architectural outcome and gateway concept.

The application of the current controls would result in a missed opportunity, with reduced sense of arrival in the City Centre, as the higher buildings will all be concentrated at the southern end of Mann Street.

The similarities between the Waterside site and the subject site are also considered as relevant within the context of this submission. Each site comprised a substantial amount of land within the City Centre, with frontages to more than one (1) street. Waterside comprised an overall area of 8,546m² contained within four (4) lots, with frontage to three (3) streets. The subject site contains a total area of 10,617m² contained within nine (9) lots, and with frontage to three (3) streets. Importantly, the subject site straddles Mann Street, thereby providing a unique opportunity to fully realise the “Gateway” potential.

The size and nature of the site (straddling Mann Street) are key factors in the consideration of the application of the current height and FSR controls. The size of the consolidated parcel means that the site is able to be effectively master planned, as opposed to separate proposals for each lot, where separate consideration would be required for issues such as access, open space, parking, waste collection, setbacks, and overshadowing. Each of these are issues which typically inform many development controls – including height and FSR – however, with the site being developed as one (1), the opportunity exists to explore alternate options.

Part of the subject site has been identified as the “Gateway” to the City Centre. This is reflected in the LEP height and FSR controls which allow for buildings either side of Mann Street to a greater height than the surrounding properties. The total site however, extends beyond the “Gateway” portion of the site, thus providing the opportunity to not only control the development of the “Gateway” portion, but also control the adjoining sites, thereby ensuring an appropriate degree of scale is achieved.

A major observation which is worth noting, is that despite the extent of the variation being sought for the height of the buildings, the associated FSR is achieved throughout, and in fact, the total GFA for the development is less than the allowable GFA by 6,975.46m². This points to the fact that the scale and intensity of the development is appropriate and not an “over development” of the site.

In summary, the proponent recognises that due to the size and location of the site, it represents an opportunity for Gosford to achieve the long planned for “Gateway” to the City Centre. Beyond this, the more recent approach by Council in relation to height controls within the City Centre have changed the relative proportions between this site and others within the City Centre – with the most relevant being the Waterside development, which forms the southern book end to Mann Street. The strict application of the current height control then, would reduce the overall impact of the planned for “Gateway” through sawn off towers. This would be contrary to Council's intention for this site.

In light of the background outlined above, the applicant seeks to use Clause 4.6 to enable Council to vary the height development standard depicted under Clause 4.3(2) and 8.9 of the Gosford LEP 2014.

3.0 Description of the Planning Instrument, Development Standard and Proposed Variation

3.1 WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?

The proposed development and subject land is required to comply with Gosford Local Environmental Plan 2014.

3.2 WHAT IS THE ZONING OF TO THE LAND?

The subject site is split zoned, with majority being within the B4 Mixed Use zone, and the two (2) lots facing Hills Street being zoned R1 General Residential.

3.3 WHAT ARE THE OBJECTIVES OF THE ZONE?

The objectives within the B4 Mixed Use Zone are as follows:

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

The objectives of 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.*

3.4 WHAT IS THE DEVELOPMENT STANDARD BEING VARIED? E.G. FSR, HEIGHT, LOT SIZE?

Council's Height of Building Map shows a maximum height for buildings on the subject site as being 36m for the lots at the corner of Mann Street and Dwyer Street, and 18m for the remainder of the site (see Figure 1). Given the location of the site within the Gosford City Centre however, it is afforded a 30% bonus pursuant to the provisions of Clause 8.9 which brings the maximum height up to 46.8m and 23.4m respectively. This Clause 4.6 request is therefore submitted in relation to Clause 8.9(3)(a).

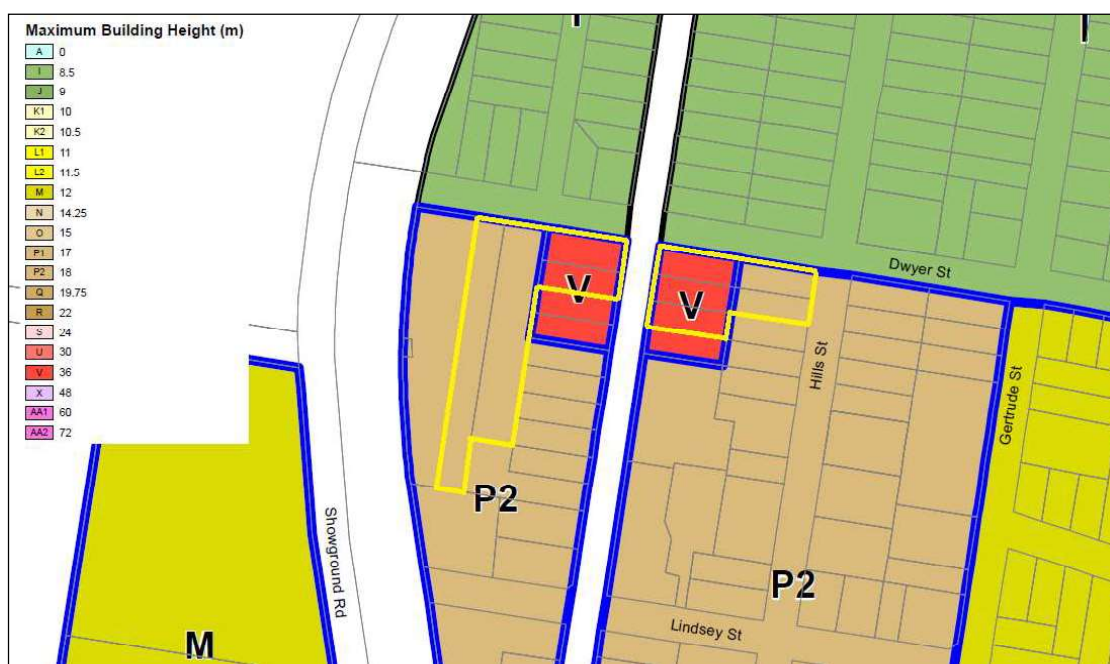


Figure 1: Height of Buildings Map (Source: Gosford LEP Maps)

3.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL? GIVE DETAILS.

No, the maximum building height development standard is a numerical control.

3.6 UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Clause 4.3 of the LEP provides:

4.3(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

Note. Clauses 4.3A, 4.6, 5.6, 7.7 and 8.9 provide exceptions to the maximum height shown for the relevant land on the [Height of Buildings Map](#) in certain circumstances.

The subject site is shown on Council's Height of Building Map as having a maximum building height of 36m for the lots at the corner of Mann and Dwyer Streets, and 18m for the remainder.

Given the location of the site within the Gosford City Centre however, the provisions of Clause 8.9 – *Development Incentives* become applicable which add a further 30% to this height as follows:

8.9(3) Development consent may be granted for the erection of a building on land to which this clause applies if the building:

- (a) will not exceed the maximum height shown for the land on the [Height of Buildings Map](#) by more than 30%, and

Taking the above into consideration, the proposal seeks to vary the maximum bonus height provisions provided for under Clause 8.9(3)(a).

3.7 WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?

The objective behind Clause 8.9 is as follows:

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

It is also pertinent to investigate the objectives behind Clause 4.3 which states:

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.*

Finally, it is relevant to assess the proposed variation against the objectives of Part 8 of the LEP which include:

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

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

How the proposed development addresses all of the above is discussed in further detail below.

3.8 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

The numeric value of the maximum building height provided for under Clause 8.9(3)(a) is outlined below:

- Lots 25 & 26: 23.4m;
- Lots 1, 2, 3, 4 & 5: 46.8m;
- Lots 31 & 2A: 23.4m.

In this regard, building height is defined within the LEP as the “vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like”.

3.9 WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE DEVELOPMENT APPLICATION?

The following table highlights the proposed height variations and includes a “best” and “worst” case scenario based on the varying existing ground levels.

<i>Tower</i>	<i>Allowable Height</i>	<i>Best Case</i>	<i>% Variation</i>	<i>Worst Case</i>	<i>% Variation</i>
1 <i>Lots 25 & 26</i>	23.4m	22.3m (-1.1m)	No variation (-4%)	27.8m (+4.4m)	+19%
1 <i>Lots 1 & 2</i>	46.8m	26.6m (-20.2m)	No variation (-44%)	28.3m (-18.5m)	No variation (-40%)
2	46.8m	45.05m (-1.75m)	No variation (-4%)	50.05m (+3.25m)	+7%
3	46.8m	49.4m (+2.6m)	+6%	53.5m (+7.05m)	+15%
4 <i>Lots 4 & 5</i>	46.8m	23.05m (-23.75m)	No variation (-51%)	24.5m (-22.3m)	No variation (-48%)
4 <i>Lots 31 & 2A</i>	23.4m	23.6m (+0.2m)	1%	26.85m (+3.45m)	+15%
5	23.4m	22.15m (-1.25m)	No variation (-5%)	24.8 (+1.4m)	+6%
6	23.4m	23.75m (+0.35m)	+1%	25.05m (+1.65m)	+7%

Figures 2 to 7 illustrate the above.

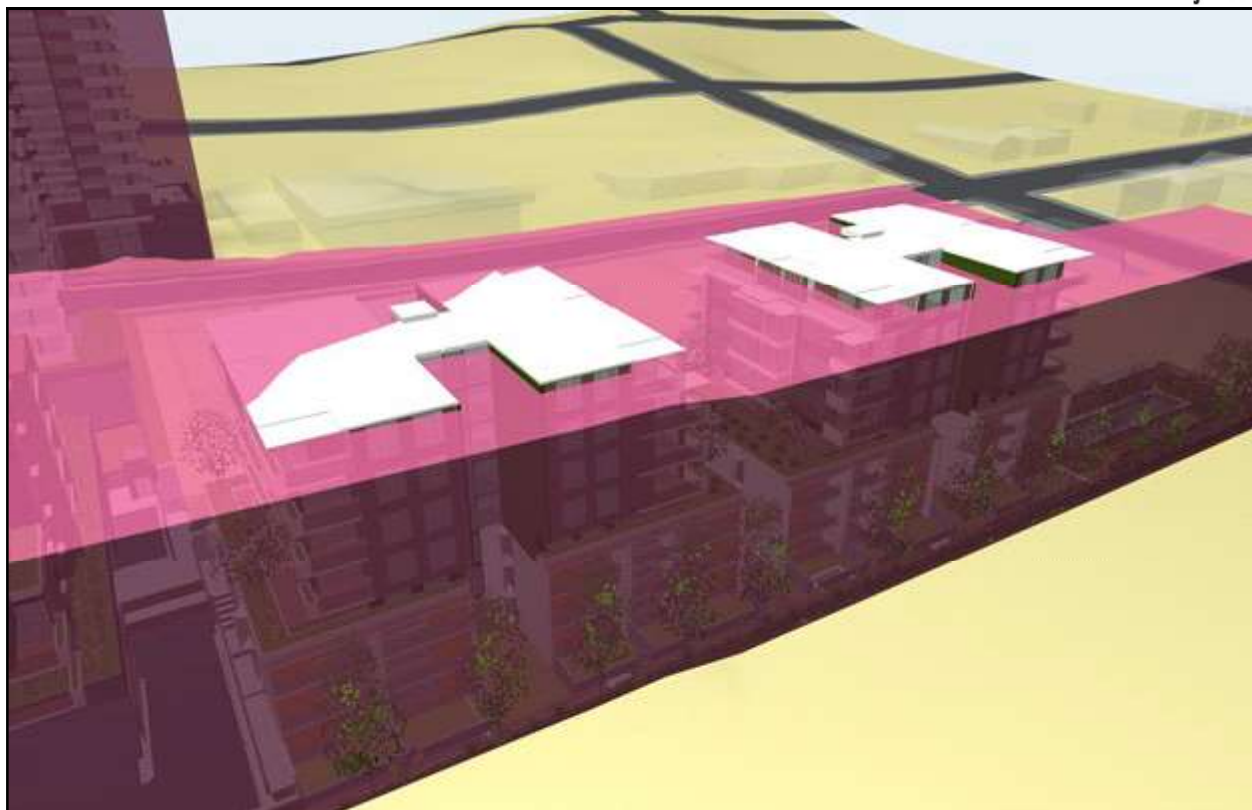


Figure 2: Towers 5 & 6, Western elevation



Figure 3: Towers 5 & 6, Eastern Elevation



Figure 4: Tower 4, Northern Elevation



Figure 5: Towers 2 & 3, Northern Elevation



Figure 6: Towers 2 & 3, Northern Elevation



Figure 7: Tower 1, Northern Elevation

3.10 WHAT IS THE PERCENTAGE VARIATION (BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT)?

Refer to tables above.

4.0 Assessment of the Proposed Variation

4.1 CLAUSE 4.6

Clause 4.6 of Gosford LEP 2014 states the following:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

4.2 CASE LAW GUIDANCE

Assistance on the approach to justifying a development standard variation has been established in the following defining decisions of the NSW Land and Environment Court:

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

- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
- Moskovich v Waverley Council [2016] NSWLEC 1015; and
- Zhang and Anor v Council of the City of Ryde [2016] NSWLEC 1179.

In accordance with the statutory requirements of Clause 4.6, and as guided by the above case law, this Clause 4.6 request:

1. Identifies the development standard to be varied (Section 3.4);
2. Identifies the extent of the variation sought (Section 3.9)
3. Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances (Section 4.3);
4. Demonstrates that there are sufficient environmental planning grounds to justify the variation (Section 4.4);
5. Demonstrates such that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B4 and R1 Zone (Sections 4.3 & 4.5); and
6. Provides an assessment of the matters the Secretary is required to consider before granting concurrence (Sections 4.6 & 4.7) namely:
 - a. whether the contravention of the development standard raises any matter of significance for State or regional environmental planning;
 - b. the public benefit of maintaining the development standard; and
 - c. any other matters required to be taken into consideration by the Secretary before granting concurrence.

Accordingly, development consent can be granted to the proposal despite the proposed deviation of the development standard because, pursuant to Clause 4.6(4)(a), the consent authority can be satisfied that:

- This written request has reasonably addressed the matters required to be demonstrated by Clause 4.6(3); and
- 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.

4.3 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE? (CLAUSE 4.6(3)(A))

In the circumstances of this case, strict numerical compliance is unreasonable or unnecessary because the proposal and the varied building height are consistent with the objective of Clause 8.9 as demonstrated below:

Clause 8.9
Objective/Comment
<i>(1) The objective of this clause is to provide incentives for development on land in Gosford City Centre.</i>
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 CI 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 CI 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.

As discussed above, it is also relevant to assess the building height variation against the objectives of Clause 4.3. Again, it is considered that in the circumstances of this case, strict numerical compliance is unreasonable or unnecessary because the proposal and the varied building height is still consistent with these objectives as demonstrated below:

Clause 4.3
Objective/Comment
<i>(a) to establish maximum height limits for buildings,</i>
This objective is considered more of an introductory statement, however it is understood that one of the aims of the height controls in Gosford has traditionally been to preserve the vegetated ridge line which provides a back drop to the City when viewed from certain key points.
The height controls for the City Centre were initially put in place in an era when the built form which was typical of the day was significantly less refined than that which is proposed, not only as part of this application, but for others within the City Centre. Designs at that time were typically more box shaped – with the result being that were they to be constructed too high, they would potentially block out large portions of the views to the ridge line (amongst other impacts which come about as a result of bulky development).
The current proposal however, is able to take advantage of the large size of the site, by ensuring that the buildings are thoughtfully sited upon the property, ensuring minimal visual impact for a development of this scale. Furthermore, the maximum RL of the development is 74.55, significantly lower than the ridgeline which is generally accepted at being around RL 99.
It is also worth noting that the site itself is not within the view corridors as identified within the City Centre DCP, meaning that the sensitivity of the site from a visual impact viewpoint is considerably less than others within the City Centre.
<i>(b) to permit building heights that encourage high quality urban form,</i>
This objective is also considered as more of an introductory statement, however appears to be based on an underlying assumption that only buildings of a specific height are capable of offering a high quality urban form.
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.
When the 30% bonus is applied to that figure, it takes the height of a building which is capable of offering high quality building form up to 93.6m. In the case of the subject

proposal, the heights being pursued are significantly lower than this figure ranging from 22m to 53.8m.

Further to the above, 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.

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.

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

In considering this objective, it is worth noting the location of the site relative to the adjoining uses. The site is to the south of the majority of adjoining R1 zoned land, thereby not impacting on their exposure to sun and skylight.

There are two (2) R1 zoned lots within the site – which are to the north of other R1 land. In this regard, whilst the development (Tower 1 in this instance) will overshadow these lots, the extent of shadow cast is similar to a development of compliant height, with some areas slightly more and some areas slightly less (see Shadow Diagrams within Architectural Plans). In the previous amendment to the proposal, the set back from Tower 1 to the southern boundary has also been increased to reduce this impact further.

The remainder of the adjoining sites are all within the B4 zone, and support a range of commercial uses. As with the R1 zoned land, this analysis demonstrates that the additional height proposed represents a similar shadow cast. It is also worth noting that for some portions of the building, particularly Tower 4, the proposed height is significantly below the allowable height of 46.8m and therefore provides a better overshadowing impact than were the full height realized. Again, as with Tower 1, the previous amendment to Towers 5 and 6 have had their setback increased from the eastern boundary to reduce overshadowing further.

Further to the above, 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.

What can be taken away from the above examples is that 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).

In evaluating solar access to the various adjoining footpaths, the current proposal does not represent a significant increase beyond the current situation arising from the existing buildings on site – and beyond what would be caused by a fully height compliant building. In the previous amendment, additional setbacks are also provided within Towers 2 and 3 to Mann Street, allowing greater solar access to the shared private/public realm.

Based on the consideration of this objective, it is proposed that compliance with the development standard is unnecessary, as the proposed height does not hinder the objective being realised.

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

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.

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

Finally, 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.

In light of the points raised above, it is considered that the application of the development standard is not warranted in this instance.

(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,

Figure 2.14 within the Gosford City Centre DCP nominates significant views which are to be protected (see Figure 8).

Given the location of the site at the northern edge of the City Centre Precinct, it is clear that the proposal does not represent any loss of view within the relevant corridor, being the views to President’s Hill and Rumbalara Reserve from Kibble Park. In fact, the site is not visible from these locations due to the topography, and the developed nature of the area.

In addition to the above, the buildings proposed all have a maximum height well below the RL 99m, with the two (2) highest towers being at RL 74m and 74.5m. RL 99m has been established by Council in the past as being the maximum height for which a building will not impact upon the ridgeline which provides a backdrop to the City Centre.

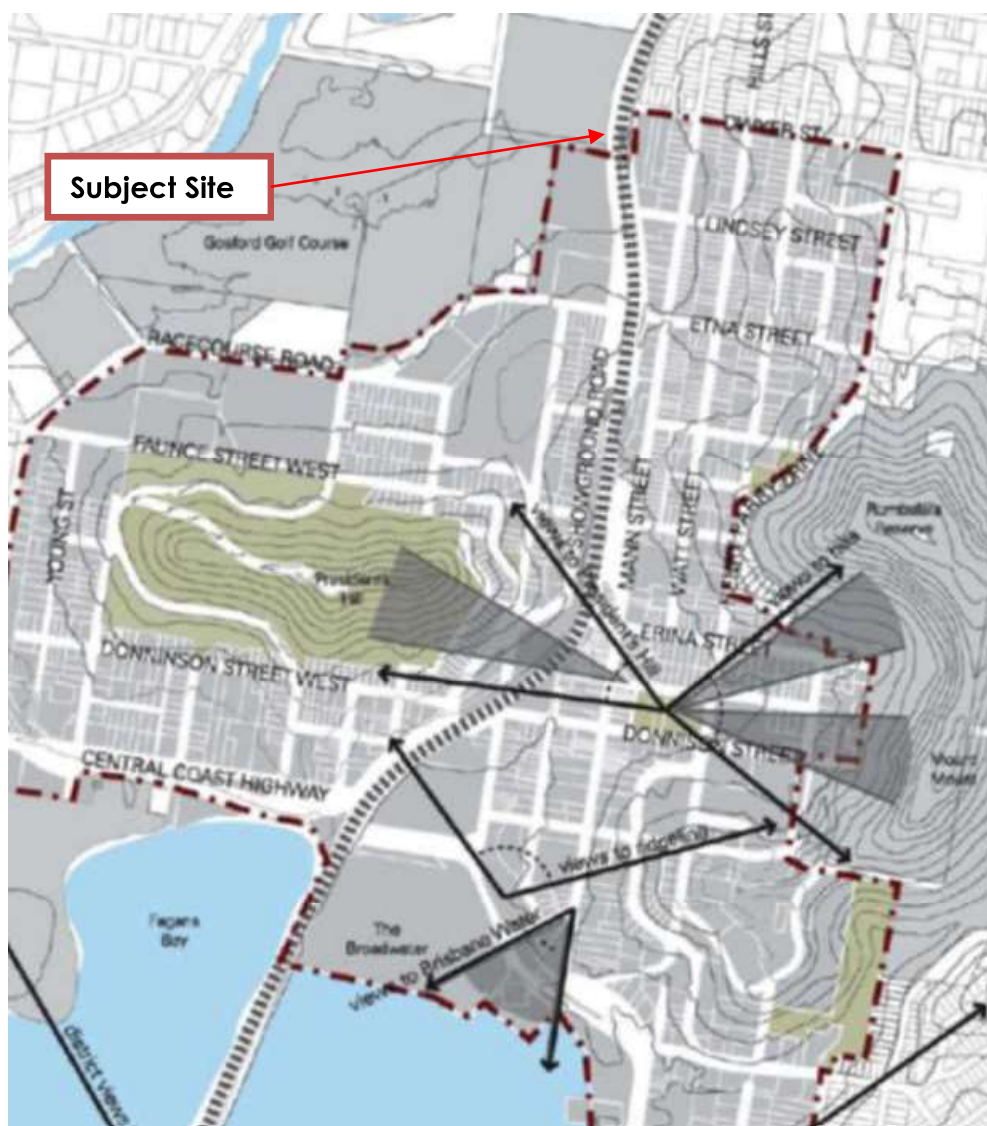


Figure 8: DCP Figure 2.14 Significant Views

The above responses all point to the fact that the application of the development standard is in this case not warranted, as the objective is being met.

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

The proposal is not in an area where there is potential for overshadowing of any public space, as there are no parks or similar areas nearby. The latest amendment does however, increase the setbacks along Mann Street to 4.1m and 3.89m to allow ground level public solar access to the shared public/private realm.

As outlined previously, the City Centre DCP nominates specific view corridors to be protected, and the subject site does not impact on those corridors, due to its location at the northern extremity of the City Centre; topography; and previous development between the nominated viewing areas and the site.

The subject site has previously been identified by Council as one which can support additional height, in the interest of creating a “Gateway” to the City Centre.

Given the bonus building height provision available to the site under Clause 8.9, it is also relevant to assess the objectives of Part 8.

Part 8

Objective/Comment

(a) to promote the economic and social revitalisation of Gosford City Centre,

The proposed development does not hinder the attainment of the objective to promote the economic and social revitalisation of Gosford City Centre. In fact, this objective has been a leading driver in the design, including the proposed height.

As mentioned throughout this request, the proposal is actually located on a site where Council has planned for additional height and FSR, being a “Gateway” site.

The Department of Planning and Environments “Urban Feasibility Model” which, as mentioned above, illustrates that development achieving even the bonus height controls are generally economically unviable. Therefore, the consequence of enforcing the building height control is that there is a high chance for many potential developments to not eventuate in the current economic climate. The danger is that owners will simply continue to land bank, or at best, attempt to sell sites with consent. The scenarios described here are not consistent with the promotion of the “economic and social revitalisation of Gosford City Centre”. It is noted with interest that this issue was detailed in the recent Council submission to the Central Coast Regional Plan (CCRP), where the need for more flexible planning controls was expressed.

An important consideration with any proposal of this type is the need for the proposal to be seen as capable of supporting a “critical mass” of people (residents and workers), with the associated spending and investment in the City Centre flowing on from this.

Taking the above into consideration, there is nothing about the proposed development, particularly its built form and associated height, which hinders the attainment of this objective; rather it is considered that the proposal is more able to do so than a fully compliant one.

(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,

The crucial element to achieving all of these objectives is people. Without a critical mass of people living within the City Centre, the danger is that at best, a centre is created which is busy during the day, but desolate at night. The proposal ensures that each of these objectives are able to be more readily achieved by contributing to the overall demand for each of the services outlined.

The current upgrade works to the Gosford Hospital, totalling over \$300 million in investment will act as an additional driver for demand for accommodation and commercial floor space – particularly within a site which is so close to that facility.

The proposal represents a unique opportunity to effectively master plan a large portion of the City Centre, and ensures that the intention of Council to have the “Gateway” site developed as one holding will be able to be realised which in turn strengthens the regional position of Gosford.

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

This site and Gosford in general, have languished for many years, becoming somewhat of an eyesore. The City Centre has struggled with the development of Erina Fair, and past controls and development decisions have deterred investors from trying to make it in Gosford.

The release of the SoSI is testimony to this acknowledgement and the desire of the Council to reverse this situation and make the City Centre a real destination. Additionally, the adoption of CI 8.9 *Development Bonuses* within the LEP speaks to the desire on the part of the Council for a higher built form.

With this in mind, it is considered that this objective in the context of this development is more about enhancement of the city, and facilitating a new era of investment and activity; and in this regard, the proposal not only completely turns the site around in terms of vitality, identity and diversity but it also contributes to its surrounds – particularly along Mann and Dwyer Streets.

The “Gateway” status of the site as confirmed within the Gosford LEP – and the approval of the Waterside development at the southern end of Mann Street are both relevant considerations when discussing the “identity” of the City Centre. As previously discussed, these two (2) sites create the opportunity to “bookend” Mann Street, with each one (1) acting as an entry statement to the CBD. With Waterside being approved at a height well beyond the standard controls, it is deemed appropriate to also consider additional height for the northern bookend of Mann Street, so that the “Gateway” potential is not lost.

The mix of uses and of accommodation types will attract all demographics enhancing the sites diversity.

Every part of the development, from its height, to its chosen mix of uses, has been deliberate. It is the intention of the proponent to create the long planned for “Gateway” to Gosford and create an iconic development which will not only revitalise this site but it will have a flow on effect through increased activity to the area in general.

With this in mind, developing beyond the building height controls is vital in order to achieve this objective and given the uniqueness of the site, its surrounds and the development itself, is considered to warrant exception.

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

The design of the development includes landscape boulevards along the Mann Street frontages giving a lush landscaped entry to Gosford. This not only softens the built form of the development but creates an open space ideal for gathering and recreation. This feature is enhanced by the height of the two slimline corner towers which have been designed generally at the same RL creating a classic gateway statement. Reducing the height of the towers would diminish the gateway and its ability to create the entry celebration experience.

The construction of a development of this scale will have significant employment benefits and these will continue through the ongoing management and maintenance of the building as well as employment generated through the commercial and retail spaces. Enforcing the LEP height control will significantly reduce unit and floor space yield and therefore the attractiveness to proceed to the next step (construction).

In light of the above, it is considered that the proposed building height variation in no way hinders the attainment of this objective, as it acts to promote Gosford and thereby further encourage investment and development within the City Centre.

<p><i>(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,</i></p> <p>The intensity and associated height of the development will contribute to employment generation within the City Centre, providing employment generating uses close to residential accommodation and within walking distance to Gosford Train Station as well as employment opportunities within Gosford itself.</p> <p>In addition to this, the residential aspect of the development has been designed to provide sustainable housing through adhering to BASIX requirements. Increasing the height of the towers allows for slimmer floor plates and therefore greater building separation and better internal natural lighting and ventilation. Developing within the building height control would result in poorer internal amenity and would remove the connection of the buildings to the outdoors through the central open spaces, and the visual links through the site.</p> <p>Allowing the proposed built form to access flexibility in terms of height will allow for a development which more concisely achieves sustainable social, economic and environmental outcomes.</p>
<p><i>(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,</i></p> <p>The site does not possess areas of environmental sensitivity. The ridgeline backdrop of the wider Gosford CBD would however, be considered an area requiring protection and in this regard, the proposed building remains below this level which has been previously established as RL 99m.</p>
<p><i>(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,</i></p> <p>While much of the focus for the City Centre to date has been centred more toward the southern end of Mann Street, this proposal represents an opportunity to draw investment and people further north as well.</p> <p>The nature of the B4 zone is such that over time, the uses which have dominated this end of Mann Street will eventually relocate, with the land being put to its highest and best use, commensurate with the zone objectives. The proposed development – along with future redevelopment of adjoining sites will increase activity in the area, thus contributing to a safe and attractive northern end of the main street.</p> <p>The development provides a variety of accommodation types, as well as the commercial spaces. The overall result being that the site will attract permanent residents who will use the area at all times of the day throughout the year, and employees who will use the site predominantly during the day.</p> <p>The proposed height variation will not detract from this achievement.</p>
<p><i>(h) to enhance the Gosford waterfront,</i></p> <p>N/A as the site is well removed from the Waterfront Precinct.</p>
<p><i>(i) to provide direct, convenient and safe pedestrian links between Gosford City Centre and the Gosford waterfront.</i></p> <p>N/A as the site is well removed from the Waterfront Precinct.</p>

Taking the above into consideration, the proposed development is considered to more consistently achieve the objectives of Part 8 than would a building of compliant height.

Council must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone. This is demonstrated within the following table:

B4 Mixed Use Zone
Objective/Comment
<p><i>To provide a mixture of compatible land uses</i></p>
<p>The proposed development, comprising a broad range of studio, one (1), two (2) and three (3) bedroom dwellings and commercial floor area is ideally suited to this City Centre location, providing the long planned for "Gateway". The development will have a beneficial flow on effect beyond the site itself through the activation and vibrancy of the city's existing services.</p>
<p>The provision of additional accommodation within the City Centre, especially with the variety of types proposed, is regarded to be consistent with the overall aims for the City Centre, where the intention is to activate the area during both the night and the day. Additionally, the proximity of the site to major employment hubs such as the City Centre and the Hospital Precinct makes for a compatible land use.</p>
<p>The additional height proposed does not detract from the attainment of this objective.</p>
<p><i>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.</i></p>
<p>The subject site is located within approximately 800m to the Gosford Train Station, in a straight walk down Mann Street. It is also located opposite a regular bus service which connects the site to places such as Erina Fair and The University of Newcastle's Ourimbah Campus, as well as the surrounding local area. Accordingly, both the residents and workers using the building will be able to do so without an over reliance on private transport.</p>
<p>The proximity of the site to existing residences and businesses within the City Centre will also encourage external residents to walk or use public transport.</p>
<p>The proposed height variation assists in the full achievement of this objective by facilitating additional population within such a suitable location. It also allows for a fine grained and interesting ground level presentation; one which facilitates pedestrian amenity particularly through the increased public domain space along Mann Street.</p>
<p><i>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.</i></p>
<p>This objective is clearly being met by the proposal, which provides commercial floor space and a variety of higher density residential units. The proposed variations to height in fact increases the degree to which this objective is being met.</p>
<p><i>To allow development in Point Frederick to take advantage of and retain view corridors while avoiding a continuous built edge along the waterfront.</i></p>
<p>N/A given the distance of the site from Point Frederick.</p>
<p><i>To create opportunities to improve the public domain and pedestrian links of Gosford City Centre.</i></p>
<p>The primary improvement to the public domain is the increased width of the footpath along Mann Street on the eastern and western sides. This has been achieved by the increased setbacks at the lower levels, with the upper levels overhanging this area. This design element provides an increased open area feel for pedestrians, with links to the interior of the building.</p>

By activating the northern end of Mann Street with additional commercial and residential uses, existing pedestrian links will experience greater use, thereby leading to increased safety.
The proposed variation to the height control does not hinder the attainment of this objective.
<i>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.</i>
N/A as the site is well removed from the Waterfront Precinct.
<i>To protect and enhance the scenic quality and character of Gosford City Centre.</i>
The site currently contains a number of old style buildings, across a range of uses, from single residential to vacant commercial space. The overall impression is not consistent with the planned for "Gateway" status for the site, and instead offers a relatively tired entry point to the CBD, with absolutely no sense of arrival. The proposal seeks to remedy this situation in a manner which is consistent with the long planned for objectives, and which will provide the much needed northern bookend, and an identifiable entry point.
The proposed variation to the height control does not hinder the attainment of this objective.

Taking the above into consideration, the proposed development is considered to more consistently achieve the objectives of the B4 Mixed Use Zone than would a building of compliant height.

Council must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the R1 General Residential Zone. It should be noted that the R1 zone forms a very minor component of the site, with the extent of development within that portion only related to Tower 1.

The compliance with the R1 zone, is demonstrated within the table below:

R1 General Residential
Objective/Comment
To provide for the housing needs of the community.
As part of the overall development, these two (2) R1 zoned lots are enabling an increase in the amount of housing available to the community.
The proposed variation to the height control allows an additional level of accommodation and therefore does not hinder the attainment of this objective.

To provide for a variety of housing types and densities.
As part of the overall development, these two (2) R1 zoned lots are enabling an increase in the amount of housing available to the community, along with a range of housing types.
The proposed variation to the height control allows an additional level of accommodation and therefore does not hinder the attainment of this objective.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.
N/A as Tower 1 includes residential units only.
To ensure that development is compatible with the desired future character of the zone.
As previously discussed, two (2) other developments have been approved along Hills Street also of an eight (8) storey design and also above the height control. The proposed variations to height will therefore be compatible with the future character of the area.
To promote best practice in the design of multi dwelling housing and other similar types of development.
The proposal is considered to be consistent with this objective in that it seeks to renew a very aged portion of the City Centre in a manner which is consistent with Council's intention for that area. The high design quality – and mix of different housing types is also a key to achieving this objective.
The proposed variation to the height control does not hinder the attainment of this objective.
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
N/A as Tower 1 includes residential units only.

Taking the above into consideration, the proposed height variation is not considered to hinder the attainment of the R1 General Residential Zone objectives.

4.4 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? (CLAUSE 4.6(3)(B))

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.

4.5 IS THE DEVELOPMENT IN THE PUBLIC'S INTEREST? (CLAUSE 4.6(4)(A)(II))

As stated previously, Clause 4.6(4)(a)(ii) requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. An assessment against the zone objectives and the objectives of the development standards has been thoroughly explored above.

In summary, the proposal represents an opportunity to create the long planned for "Gateway" development, providing the northern "bookend" to the City Centre. The proposal will serve to activate the northern end of the city, and will be a real driver in the revitalisation of the Gosford City Centre, providing a critical mass of people (residents and workers), who will drive further demand for goods and services, creating a City Centre economy the likes of which has not existed in Gosford for decades.

4.6 MATTERS OF SIGNIFICANCE FOR STATE AND REGIONAL ENVIRONMENTAL PLANNING? (CLAUSE 4.6(5)(A))

The variation of the building height development standard does not raise any matter of significance for State or regional planning. It is noted however, that the proposal is consistent with the recently released CCRP which outlines the visions, goals and actions that are geared towards growing the regional economy, accelerating housing supply, and protecting and enhancing the natural environment over the next 20 years (2016-2036).

The CCRP prioritises providing greater housing choice to satisfy the community's desire for smaller households. The plan also places emphasis on providing this new housing in existing and committed growth areas. In this regard, the subject site is ideally positioned within one of the committed growth areas, being within the Northern Growth Corridor.

To meet the projected housing demands over the next 20 years, the CCRP requires an average of 2,000 new homes to be constructed each year. Based on the above, it is clear that the additional height proposed, which facilitates additional housing, provides a strategically ideal opportunity to facilitate the delivery of additional dwellings to assist in achieving these targets.

4.7 THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD? (CLAUSE 4.6(5)(B))

There is no public benefit in maintaining the building height development standard in this instance. Maintaining and enforcing the development standard in this case would unreasonably constrain the orderly and economic development of this strategically significant site, and unnecessarily reduce the various community benefits this development brings which include the increased public domain along Mann Street and the additional broad mix of housing.

In some circumstances, it may be in the public benefit for development controls to be strictly applied, for example if an undesirable precedent could be set.

This site and the development project is however, unique in its Gateway location and its significant size and is therefore unable to create an undesirable precedent for varying the height standard.

The proposed variation arises principally because the project requires a certain yield to offset the cost in provided a design worthy of its Gateway location. The development could achieve the height control through a less desirable and bulky built form; however this would provide a missed opportunity, particularly in activating Mann Street.

The proposed height variation is therefore seen as an exceptional circumstance that will allow a better outcome to be delivered. It is therefore considered to be in the public interest that a variation to the development standard is supported in this case.

4.8 HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?

The objects set down in Section 5(a)(i) and (ii) are as follows:

“to encourage

- i. The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- ii. The promotion and coordination of the orderly and economic use and development of land...”*

As discussed previously, the design of the development, in particular the two slimline towers facing Mann Street, paired with the wider landscaped street setbacks provides a classic gateway to the City Centre. The additional height proposed therefore represents a key design element which promotes the social and economic welfare of the community.

The question therefore of whether strict compliance with the clauses under consideration would hinder the attainment of the objects specified in Sections 5(a)(i) and (ii) of the Act is answered in the affirmative. Strict compliance with the maximum height control would have the potential to impact on the viability of the project to the point where it would not occur, or would at the very least, need to be redesigned, resulting in a much more squat built form, where the current opportunities for a more slender built form, and visual links through the site would be lost.

4.9 IS THE VARIATION WELL FOUNDED?

Yes, for reasons outlined in the preceding sections of this submission, the variation to the height limit is well founded as compliance with this standard is unreasonable or unnecessary as the development does not contravene the objects specified within 5(a)(i) and (ii) of the Act, the objectives of the B4 Mixed Use Zone and the R1 General Residential Zone, the objectives of the Gosford City Centre provisions within Part 8 and the objectives surrounding the building height standard.

The variation to the building height facilitates the delivery of a superior design located at an identified “Gateway” location – a location which demands a development of the highest quality in terms of design, finishes, and amenity. The variation to the building height enables the delivery of these imperative urban outcomes in a manner that does not result in adverse impacts.

The proponent's vision for the site is one in which the site will be a major catalyst for the

continued revitalisation of the City Centre, with an emphasis on the northern end, and the provision of the “bookend” development to compliment the Waterside development at the southern end.

This vision is consistent with the SoSI, a document which highlights the moving trend and benefits towards taller slender built forms which allow for buildings of a greater height.

Taking the above into consideration, the proposed variation to the building height control is considered well founded and worthy of support.

5.0 Recent Clause 4.6 Variations

One aspect of assessing the reasonableness of enforcing a development standard is the consistency or otherwise of the determining authority to adhere to that standard. Whilst previous assessments do not set a precedent for other developments to follow, a consistent assessment, one way or the other, provides a trend and character which can be used with the development.

Taking the above into consideration, it is worth noting that the following developments have been consented to with height variations to the 30% bonus provisions (shaded height variations are the same or exceed the proposed):

DA	Zone	Build Height Variation	FSR Variation	Consent Authority
46209	B4	73.97%	32.69%	JRPP
47046	B4	211%	Complies on average	JRPP
48653	R1	58%	complies	Council
48710	B4	10%	complies	Council
48850	R1	4.2%	4.5%	Council
48881	R1 & B6	9%	complies	Council
49056	B4	55.4%	complies	JRPP
49479	R1	27.4%	complies	Council
49489	B4	18.3%	complies	Council
49522	R1	4%	complies	Council
49533	R1	14%	complies	Council
49542	R1	21%	complies	Council
49549	R1	37%	complies	Council
49552	R1	12%	complies	Council
49556	B4	19%	complies	JRPP
49558	R1	35.5%	complies	JRPP
49560	R1	16.7%	complies	Council
49563	R1	31%	complies	Council
49564	R1	7.7%	complies	JRPP
49569	R1	27%	complies	Council
49573	R1	6%	complies	Council
49584	R1	36%	complies	Council
49585	R1	44%	complies	Council

Interestingly, aside from two (2) developments, the remaining developments which exceed the building height control continue to achieve the FSR control; this being the same as the proposed. What this points to is two-fold; a) the building height and FSR controls are out of balance; and b) Council/JRPP have recognised and accepted this and consistently approved variations in this regard.

This proposal therefore is not out of context with previous approvals within the City Centre and as such, is appropriately dealt with under Clause 4.6.

6.0 Conclusion

Based on the information provided within the preceding sections, it is considered that Council and JRPP can be satisfied that:

- a) The subject request adequately addresses the matters required to be demonstrated by Clause 4.6(3) being:
 - (i) Compliance with the development standard is unreasonable or unnecessary in the circumstance;
 - (ii) There are sufficient environmental planning grounds to justify contravening the development standard;
- b) The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the relevant zone objectives.

Taking the above into consideration, the consent authority is able to grant development consent to the development under Clause 4.6, notwithstanding the contravention of the building height standard.