

JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

Council Assessment Report

Panel Reference	Panel Reference No. 2018HCC019 DA
DA Number	47044/2015 Part 2
Local Government Area	Central Coast Council
Proposed Development	Section 4.55 Amendment – Increase Units from 66 to 72, Increase Parking Spaces, Height Decrease by 400mm.
Street Address	Lot: 100 DP: 1066540 70 John Whiteway Drive GOSFORD
Applicant	Benson McCormack Architecture
Owner	Emirates Pearl Gosford Pty Ltd
Date of DA Lodgement	8/05/2018
Number of Submissions	Three
Recommendation	Approval - subject to conditions
Regional Development Criteria - Schedule 7 of the State Environment Planning Policy (State and Regional Development) 2011	Capital Investment Value > \$20M Part 1: \$20,080,400.00 Part 2: \$25,803,366.00
List of all relevant 4.15(1)(a) matters	• <i>Environmental Planning and Assessment Act 1979 (EP&A Act)</i> • <i>Rural Fires Act 1997 (RF Act)</i> • <i>Roads Act 1997 (Roads Act)</i> • <i>State Environmental Planning Policy No 19 – Urban Bushland (SEPP 19)</i> • <i>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)</i> • <i>Gosford Local Environmental Plan 2014 (GLEP 2014)</i> • <i>Gosford Development Control Plan 2013 (GDGP 2013)</i> • <i>Apartment Design Guide. Tools for improving the design of residential apartment development (ADG)</i>

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List all documents submitted with this report for the Panel's consideration

Drawing	Description	Sheets	Issue	Date
-	Cover Page	1	-	undated
A-0000	Location Plan	2	A	March 2018
A-0001	Site Photographs 1/2	3	A	March 2018
A-0002	Site Photographs 2/2	4	A	March 2018
A-0010	Basement – Approved DA	5	A	March 2018
A-0011	Ground Floor – Approved DA	6	A	March 2018
A-0012	Level 01 – Approved DA	7	A	March 2018
A-0013	Level 02 – Approved DA	8	A	March 2018
A-0014	Level 03 – Approved DA	9	A	March 2018
A-0015	Level 04 – Approved DA	10	A	March 2018
A-0016	Roof Plan – Approved DA	11	A	March 2018
A-0101	Basement	12	A	March 2018
A-0102	Basement 1/2	13	A	March 2018
A-0103	Basement 2/2	14	A	March 2018
A-0104	Ground Floor	15	A	March 2018
A-0105	Ground Floor 1/2	16	A	March 2018
A-0106	Ground Floor 2/2	17	A	March 2018
A-0107	Level 01	18	A	March 2018
A-0108	Level 01 1/2	19	A	March 2018
A-0109	Level 01 2/2	20	A	March 2018
A-0110	Level 02	21	A	March 2018
A-0111	Level 02 1/2	22	A	March 2018
A-0112	Level 02 2/2	23	A	March 2018
A-0113	Level 03	24	A	March 2018
A-0114	Level 03 1/2	25	A	March 2018
A-0115	Level 03 2/2	26	A	March 2018
A-0116	Level 04	27	A	March 2018
A-0117	Level 04 1/2	28	A	March 2018
A-0118	Level 04 2/2	29	A	March 2018
A-0119	Roof / Site Plan	30	A	March 2018
A-0201	Elevation North	31	A	March 2018
A-0202	Elevation South	32	A	March 2018
A-0203	Elevations East	33	A	March 2018
A-0204	Elevation East'	34	A	March 2018
A-0205	Elevation East 1/2	35	A	March 2018

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	A-0206	Elevation East 2/2	36	A	March 2018
	A-0207	Elevations West	37	A	March 2018
	A-0208	Elevation West 1/2	38	A	March 2018
	A-0209	Elevation West 2/2	39	A	March 2018
	A-0210	Elevation West'	40	A	March 2018
	A-0221	Section AA	41	A	March 2018
	A-0222	Section BB	42	A	March 2018
	A-0223	Section CC'	43	A	March 2018
	A-0224	Section DD	44	A	March 2018
	A-0225	Section EE / FF – Access Ramps	45	A	March 2018
	A-1101	Door Schedule	46	A	March 2018
	A-1102	Window Schedule	47	A	March 2018
	A-1301	Massing Study 1/2	48	A	March 2018
	A-1302	Massing Study 2/2	49	A	March 2018
	A-1303	Shadow Analysis – Plan March 21 / 0900	50	A	March 2018
	A-1304	Shadow Analysis – Plan March 21 / 1200	51	A	March 2018
	A-1305	Shadow Analysis – Plan March 21 / 1500	52	A	March 2018
	A-1306	Shadow Analysis – Plan June 21 / 0900	53	A	March 2018
	A-1307	Shadow Analysis – Plan June 21 / 1200	54	A	March 2018
	A-1308	Shadow Analysis – Plan June 21 / 1500	55	A	March 2018
	A-1309	Shadow Analysis – Plan December 21 / 0900	56	A	March 2018
	A-1310	Shadow Analysis – Plan December 21 / 1200	57	A	March 2018
	A-1311	Shadow Analysis – Plan December 21 / 1500	58	A	March 2018
	A-1312	Solar Access –	59	A	March 2018

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		June 21			
A-1313	Solar Access – June 21 – 09am	60	A	March 2018	
A-1314	Solar Access – June 21 – 10am	61	A	March 2018	
A-1315	Solar Access June 21 – 11am	62	A	March 2018	
A-1316	Solar Access June 21 – 12pm	63	A	March 2018	
A-1317	Solar Access June 21 – 1pm	64	A	March 2018	
A-1318	Solar Access June 21 – 2pm	65	A	March 2018	
A-1319	Solar Access June 21 – 3pm	66	A	March 2018	
A-1320	Solar Access & Cross Ventilation Assessment	67	A	March 2018	
A-1321	GFA / FSR Calculations	68	A	March 2018	
A-1322	Finishes	69	A	March 2018	
A-1323	Units Typology – 1 bedroom	70	A	March 2018	
A-1324	Unit Typology – 1 bedroom	71	A	March 2018	
A-1325	Units Typology – 2 bedroom	72	A	March 2018	
A-1326	Units Typology – 2 bedroom	73	A	March 2018	
A-1327	Units Typology – 2 bedroom	74	A	March 2018	
A-1328	Units Typology – 2 bedroom	75	A	March 2018	
A-1329	Units Typology – 2 bedroom	76	A	March 2018	
A-1330	Units Typology – 3 bedroom	77	A	March 2018	
A-1331	Units Typology – 3 bedroom	78	A	March 2018	
A-1332	Units Typology – 3 bedroom	79	A	March 2018	
A-1333	Units Typology – 3 bedroom	80	A	March 2018	
A-1334	Units Typology – 3 bedroom	81	A	March 2018	
A-1335	S4.55 Notification – Site Plan	82	A	March 2018	
A-1336	S4.55	83	A	March 2018	

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		Notification - Elevations			
	Assessment of Parking & Traffic Impacts associated with Section 4.55(2) Application. Approved Residential Flat Building				16/03/18
	SEPP 65 Design Verification Statement				23/03/2018
	Stormwater Management Plan				March 2018
	Landscape Plans				23/03/2018
	Statement of Compliance Access For People with a Disability				01/03/2018
	BASIX Certificate: 912211M				29/03/18
	Statement of Environmental Effects				March 2018
	Report prepared by	A Cropley – DFP Planning			
Report date	26 November 2018				

Summary of section 4.15 matters

Have all recommendations in relation to relevant section 4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?

Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes (Note: Not applicable to section 4.55 modification)

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Title: Development Application No 47044/2015 Part 2,
Proposed Section 4.55 modification to Residential Flat
Building

Department: Environment and Planning

SUMMARY

This Section 4.55(2) application seeks to modify Development Consent No 47044/2015 for a proposed residential flat building determined by the Hunter and Central Coast Joint Regional Planning Panel on 24 August 2017. The proposal has been examined having regard to the matters for consideration detailed in section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant	Benson McCormack Architecture
Owner	Emirates Pearl Gosford Pty Ltd
Application No	47044/2015 Part 2
Description of Land	Lot: 100 DP: 1066540, 70 John Whiteway Drive, GOSFORD
Proposed Development	Residential Flat Building
Site Area	4776m ²
Zoning	R1 GENERAL RESIDENTIAL
Existing Use	Vacant
Employment Generation	Yes
Estimated Value	\$25,803,366.00

RECOMMENDATION

1 *The Hunter and Central Coast Regional Planning Panel grant consent to the Section 4.55(2) application to modify Development Consent Number 47044/2015 on Lot: 100 DP: 1066540, No. 70 John Whiteway Drive, Gosford. The Development Consent No 47044/2015 be modified per the attached conditions and summarised below:*

- a. Modify the following conditions:
 - i Condition 1.1.
 - ii Condition 2.9.
 - iii Condition 4.10.
 - iv Condition 4.11.
 - v Condition 6.4.
 - vi Condition 6.9.

- b. Insert the following additional conditions:
 - i Condition 2.11.
 - ii Condition 3.13.
 - iii Condition 6.10 – Condition 6.16 (inclusive).

- c. Delete the following conditions:
 - i Condition 4.22.

2 *That Council advise those who made written submissions of the Hunter and Central Coast Regional Planning Panels decision.*

VARIATIONS TO POLICIES

Policy	Details
Gosford Local Environmental Plan 2014	• Building Height – Consistent with approved DA. (4.5% variation)
Gosford Development Control Plan 2013	• Street Setback – Consistent with approved DA (200% variation) • Building Depth & Bulk – Consistent with approved DA (11% variation) • Side Setback – Consistent with approved DA (Variation to 6m = 33%, Variation to 9m = 55%) • Deep Soil zone – Minor variation. Consistent with approved DA (Variation to minimum width 33%) • Street address – Consistent with approved

	DA • Vehicle Access – Consistent with approved DA • On-site parking – Consistent with approved DA (3.8% variation) • Site facilities – Consistent with approved DA • Wind mitigation – Consistent with approved DA • Location of adaptable dwellings – Consistent with approved DA • Special Area – John Whiteway Drive Precinct – Consistent with approved DA.
State Environmental Planning Policy No. 65: Design Quality of Residential Apartment Development / Apartment Design Guide	• Communal open space – Consistent with approved DA (45.7% variation) • Deep Soil zone – Minor variation. Consistent with approved DA (Variation to minimum width 33%) • Visual privacy – Consistent with the approved DA (Variation to 6m = 33%, Variation to 9m = 55%) • Solar Access – Consistent with the approved DA (6% variation to 3 hours, 4% variation to no-direct sunlight) • Room Depths – Consistent with the approved DA (6.25% variation)

THE SITE

The site is known as Lot: 100 DP: 1066540 No. 70 John Whiteway Drive, Gosford.

The site is located on the eastern side of John Whiteway Drive. The northern side of the site has frontage to the unformed Georgiana Terrace road reserve. The Georgiana Terrace road reserve is an unconstructed public road containing a bushfire access trail to Rumbalara Reserve. A plan identifying the location of the site in the context of the surrounding area is provided as Figure 1.



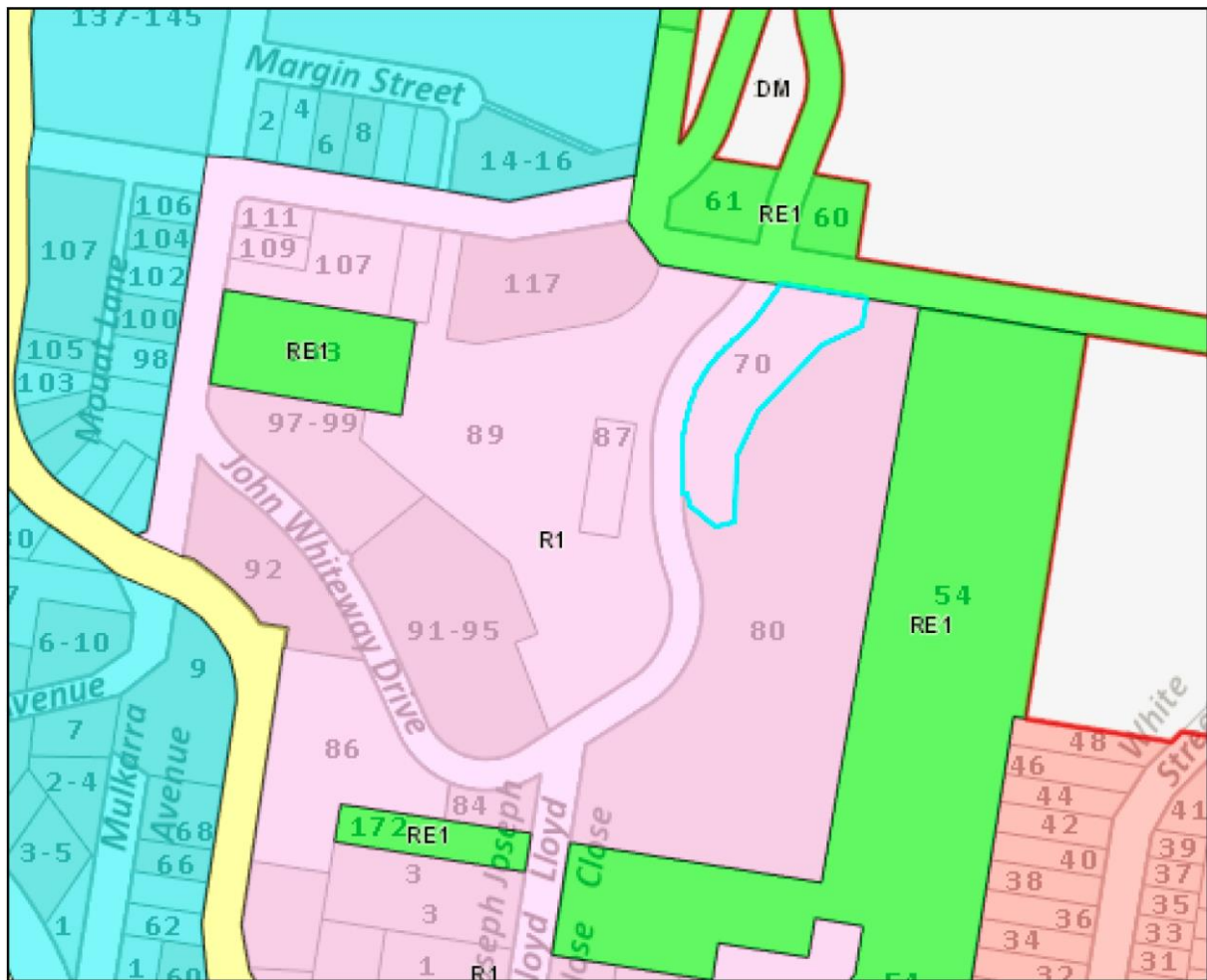
Figure 1: Locality Plan (Site shown edged in blue)

The site slopes from RL 52m Australian Height Datum (AHD) on the eastern side to RL 72m AHD at the John Whiteway Drive frontage. On the western side of John Whiteway Drive, the crest of the site is at RL 82m AHD. Land to the north of the site, being Rumbalara Reserve, rises to RL 156m AHD. Land to the east which contains the four residential towers known as The Sanctuary has an RL of 46m AHD.

The site contains trees and vegetation and is vacant.

The subject site is identified as "bushfire prone land" on Council's bushfire maps. A Bushfire Assessment Report prepared by Ecological Australia dated 29 January 2015 was submitted with the development application. The modified application was referred to NSW Rural Fire Services (RFS) on 15 May 2018 and RFS advised that it has no objection to the proposed modifications subject to the General Terms of Approval set out in their letter dated 4 May 2016.

The site is zoned R1 General Residential under *Gosford Local Environmental Plan 2014* (GLEP 2014).



previous report and comprehensively addresses the matters required to be addressed in Part 4.1.7.4 of GDCP 2013;

- *Confirmation there is no easement or Restriction to User under the Conveyancing Act (s88B) for any part of the site where building works are proposed (noting references to such restrictions in Part 4.1.7.4 of GDCP 2013).*
- *Submission of a revised Clause 4.6 Variation Request to reflect the revised plans, and any other details to reflect the above changes.*

In response, the applicant submitted amended plans which:

- Deleted the top level of block 3 which reduces block 3 from 5 storeys to 4 storeys;
- Reduced the number of apartments from 75 to 67;
- Reduced the Floor Space Ratio from 1.5:1 to 1.34:1; and
- Reduced the car parking from 106 to 76 spaces.

The amended DA was listed for consideration by the JRPP on 24 August 2017.

On 17 August 2017, in response to further issues raised by the JRPP, the applicant submitted:

- Amended plans which moved Block B units 3m towards John Whiteway Drive. This resulted in the reduction of the total number of apartments from 67 to 66, with a subsequent reduction in shadow impact on the adjoining towers;
- An amended clause 4.6 submission to vary the height development standard of clause 4.1 of GLEP 2014; and
- Additional geotechnical advice.

Development Application 47044/2015 was determined by way of approval on 24 August 2017 by the JRPP for a proposed residential flat building at No. 70 John Whiteway Drive, Gosford.

The reasons for the Panel's decision were as follows:

'The Panel generally agreed with the balancing of the assessment of the environmental considerations as outlined in the council staff supplementary reports.

The Panel had regard to the applicants' Clause 4.6 variation request regarding the maximum height limit within Clause 4.3 of Gosford Local Environmental Plan 2014 ("the LEP"). Given there is an existing and commenced development consent for the site, the Panel was of the view that it was reasonable to have regard to the form and scale of the previously approved development, as well as associated impacts of both the previously approved development and the subject development. The Panel formed the view the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP and it was considered compliance with the height limit was unnecessary and unreasonable in this case. The amendments made to the proposal to reduce its overshadowing impacts and improve its streetscape relationship were noted.

In regard to geotechnical matters, Mr Perica and Mr. McDonald were satisfied that the geotechnical reports and updated information provided suitable certainty that geotechnical issues were able to be adequately mitigated and addressed through further analysis, reporting and detail. This view helped form an additional detail condition.

Kara Krason and Ken Greenwald agreed with the overall merits of the proposal and Clause 4.6 Variation to height, although did not believe adequate certainty existed regarding the geotechnical conditions to support the proposal. In this specific regard, they were not willing to support the approval of the proposed development.'

HISTORY

Council's records show that the following development applications were previously lodged on this site:

- Development Application No. DA 19775/2003 seeking consent for a two lot subdivision of Lot 2 DP 7788384 into Lots 100 and 101 and erection of a proposed 48 unit residential flat building on Lot 100 was approved on 1 March 2004.
- Development Application No. DA 47044 / 2015 seeking consent for a proposed residential flat building containing 66 apartments was approved on 24 August 2017.

SURROUNDING DEVELOPMENT

To the east and south are four residential towers known as "The Sanctuary" containing 217 apartments (No. 80 John Whiteway Drive). The maximum height of the towers is RL 77m AHD. Directly to the north is a public road being part of Georgiana Terrace which contains the start of a fire trail which provides firefighting access to Rumbalara Reserve.

To the west of John Whiteway Drive is a vacant site (No. 89 John Whiteway Drive) being a former quarry, which has consent for 178 units under DA 19601/2003 approved on 13 February 2004. This consent has commenced and is still current. The approved buildings on No. 89 John Whiteway Drive have a height varying from RL 75m AHD at the southern end to RL 82.4m AHD at the northern end. On 13 June 2018, a Development Application for a residential flat building containing 299 units was submitted for the site (DA 54602/2018). This DA is currently under assessment with Council.

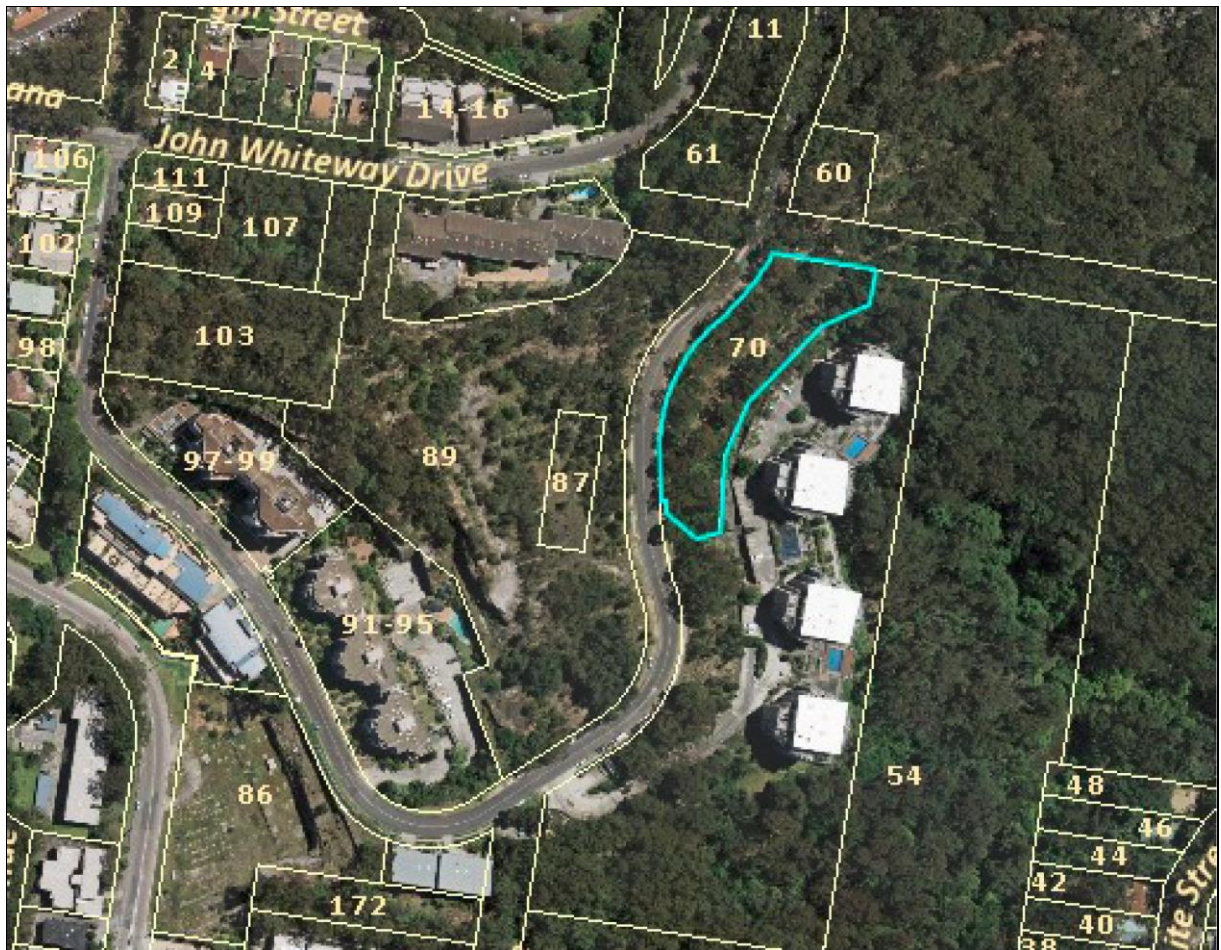


Figure 3: Aerial photograph (site shown edged in blue)

THE PROPOSED DEVELOPMENT

The applicant is seeking to modify the consent for Development Application 47044/2015 under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by increasing the number of apartments from 66 to 72; increasing the number of car parking spaces from 76 to 102; and decreasing the maximum height of the building from RL 80.85m AHD to RL 80.45m AHD. In detail, approval is sought for the following modifications:

Basement

- Increase the extent of the basement excavation beneath Block A;
- Modify the parking layout increasing the number of parking spaces from 35 to 69;
- Relocate bicycle parking into basement and provide a total of 35 spaces;
- Extend lift access to basement from Block A;
- Provide utility lift linking basement and ground floor; and
- Minor relocation of driveway access from Georgiana Terrace.

Ground

- Decrease the number of parking spaces from 39 to 33;
- Increase number of accessible parking spaces from 2 to 11;
- Increase in the number of apartments from 7 to 12;
- Increase in gross floor area (GFA) from 793m² to 1,164.4m² (increase in 371.4m²);
- Change in apartment mix from 5 x 2-bedroom apartments and 2 x 3-bedroom apartments to 4 x 1-bedroom apartments, 5 x 2-bedroom apartments, and 3 x 3-bedroom apartments;
- Modifications to internal planning of apartments resulting in amendments to building articulation; and
- Relocation of ground floor communal open space to rooftop.

Level 1

- No change to number of apartments;
- Increase in gross floor area from 1,578m² to 1,660.2m² (increase in 82.2m²)
- Modifications to internal planning of apartments resulting in amendments to building articulation; and
- Change in apartment mix from 4 x 1-bedroom, 11 x 2-bedroom and 2 x 3-bedroom to 2 x 1-bedroom, 11 x 2-bedroom and 4 x 3-bedroom.

Level 2

- No change to number of apartments;
- Increase in GFA from 1,595m² to 1,683.5m² (increase in 88.5m²);
- Modifications to internal planning of apartments resulting in amendments to building articulation; and
- Change in apartment mix from 3 x 1-bedroom, 12 x 2-bedroom and 2 x 3-bedroom to 1 x 1-bedroom, 12 x 2-bedroom and 4 x 3-bedroom.

Level 3

- No change to number of apartments;
- Increase in GFA from 1,595m² to 1,683.5m² (increase in 88.5m²);
- Modifications to internal planning of apartments resulting in amendments to building articulation; and
- Change in apartment mix from 3 x 1-bedroom, 12 x 2-bedroom and 2 x 3-bedroom to 1 x 1-bedroom, 12 x 2-bedroom and 4 x 3-bedroom.

Level 4

- Increase in the number of apartments from 8 to 9;
- Increase in GFA from 847m² to 965.6m² (increase in 118.6m²);

-
- Modifications to internal planning of apartments resulting in amendments to building articulation;
 - Change in the apartment mix from 2 x 1-bedroom, 4 x 2-bedroom and 2 x 3-bedroom to 1 x 1-bedroom, 2 x 2-bedroom and 6 x 3-bedroom; and
 - Provision of communal open space at northern end of building.

Roof

- Amendments to the profile and extent of roof.

Floor Levels

- Finished floor levels of Block C have been lowered by 250mm to correspondence with the floor levels within Blocks A and B.



Figure 4: Massing Study of south east corner of proposed residential flat development



Figure 5: Massing Study showing northern elevation (Georgiana Terrace)

Waste Servicing

With regard to the subject modification application, several elements are proposed with regard to waste servicing:

- Three waste storage rooms are provided (one for each circulation core). The waste storage room for Block A is located on the basement level. The waste storage rooms for Blocks B and C are located on the ground level.
- A utility lift is provided between the basement and ground floor to transport bins to the bin holding room/collection point on the ground level adjacent to the entry ramp;
- Bin rooms are provided at each level adjacent to the circulation cores along with a garbage chute and recycling bin; and
- Bin collection point is from Georgiana Terrace.

Materials and Finishes

- The exterior material and finishes schedule is shown in Figure 6:



Landscaping

- Landscaping for the whole of the site is proposed in accordance with the landscape plan accompanying the development application (refer to Figure 7).

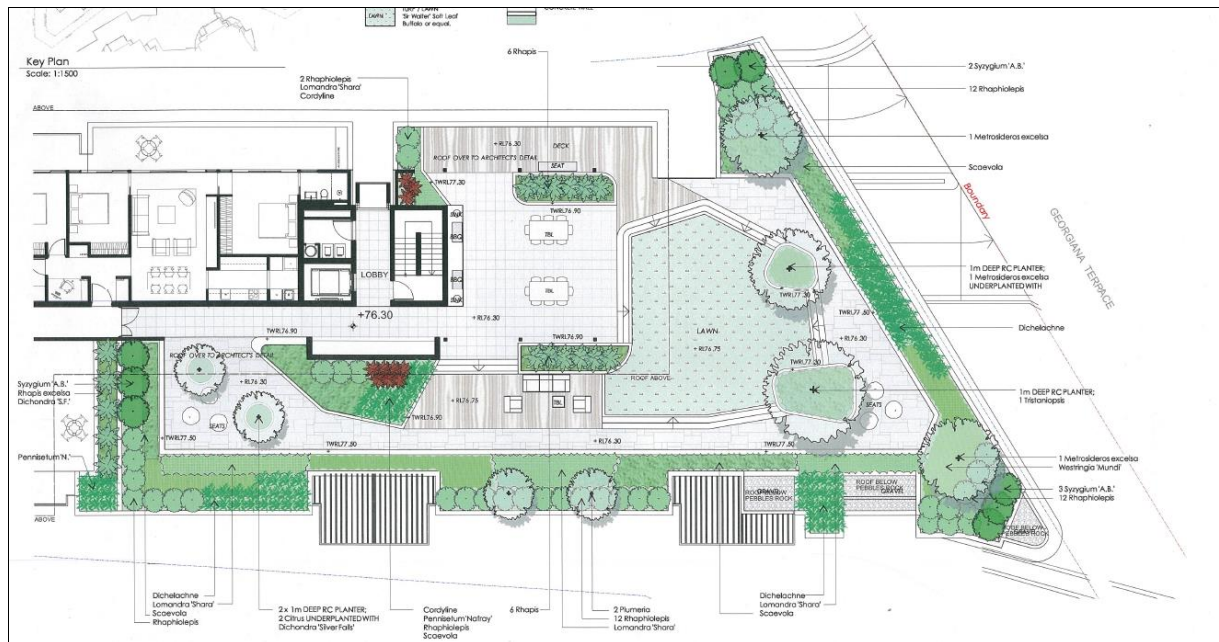


Figure 7: Proposed Landscaping Plan (Level 4 Communal Open Space)

Amendments to Conditions

The following conditions are proposed/ recommended to be modified as part of the section 4.55 application:

- Condition 1.1.
- Condition 2.9.
- Condition 4.10.
- Condition 4.11.
- Condition 6.4.
- Condition 6.9.

The following new conditions are proposed to be inserted:

- Condition 2.11.
- Condition 3.13.
- Conditions 6.10 – 6.16 (inclusive).

The following condition is proposed to be deleted:

- Condition 4.22.

CONSIDERATION

The proposal is required to be assessed having regard to the following matters.

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP & A Act) enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and

In determining the application for modification, the consent authority must take into consideration such matters referred to under section 4.15(1) as are relevant. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Therefore, Council's assessment of the application to modify the subject development consent must consider the following issues:

1. **Is the proposed development as modified substantially the same development approved by Council?**

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 provides that a consent authority may, on application being made by the applicant, modify a development consent if it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

The Land and Environment Court (LEC) consistently describes the section 4.55 modification provision as "beneficial and facultative". It is designed to assist the modification process rather than to act as an impediment to it; *"It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision"* (*North Sydney Council v Michael Standley & Associates Pty Limited [1998]*). Therefore, the modification power is there for a reason, namely, to avoid the full DA process that is always otherwise available.

Nevertheless, there are legal tests that need to be satisfied before a modification application can be considered on its merits

Firstly, a proposal can only be regarded a modification if it involves *"alteration without radical transformation"* (*Sydney City Council v Ilenace Pty Ltd [1984]*). So, if the proposed changes result in a "radical transformation", they will need to be dealt with as a new development application, rather than a modification application. The term "radical transformation" is a very broad term, leaving much scope to change a development consent via section 4.55.

Secondly, the consent authority must also be "satisfied" that the modified development will be "substantially the same development" as authorised by the original development consent. A threshold exercise requirement that the consent authority be satisfied as to a subjective matter before it proceeds further with its merit assessment is to compare the proposed modified development against the development as it was originally approved.

In addition, the environmental impacts of the proposed modification are relevant to the legal question of whether it is "substantially the same development". This means it is possible for some issues that might be characterised as "merit" issues, to also arise in addressing the "substantially the same" test.

In the case *Moto Projects (No 2) Pty Ltd v North Sydney Council 1999*, the LEC said that any comparison exercise cannot be undertaken in a sterile vacuum. Rather, the comparison involves consideration of quantitative and qualitative elements of the development. These elements must be considered in their proper contexts – which include the circumstances in which the development consent was granted (i.e. all of the changes to the consent should be considered, not just changes to plans.)

A qualitative and quantitative analysis between the development as originally consented to and the proposed modification is required, and the modification must render the altered development "essentially" or "materially" the same.

The following table provides a summary of the proposed amendments to the DA.

Item	Approved DA	Proposed Modifications	Difference
No of Apartments	66 (12 x 1 bedroom; 44 x 2 bedroom; 10 x 3 bedroom)	72 (9 x 1 bedroom; 42 x 2 bedroom; 21 x 3 bedroom)	+ 6
Car Parking	76 (62 residential and 14 visitor)	102 (87 residential and 15 visitor)	+ 26 (+25 residential and +1 visitor)
Motorcycle Parking	5	8	+3
Bicycle Parking	30	35	+ 5
Communal Open Space	215m ² (4.5%)	647.8m ² (13.6%)	+ 432.8m ²
Deep Soil Zone	1,487m ² (31.1%)	1,460m ² (30.6%)	- 27m ²
Height	RL 80.85m AHD	RL 80.45m AHD	- 0.4m
GFA	6677m ²	7157.2m ²	480.2m ²
FSR	1.39:1	1.49:1	+0.1:1

Figure 8 – Comparison Table between Approved DA and Proposed Amendments



Figure 9 – Eastern Elevation of development as approved

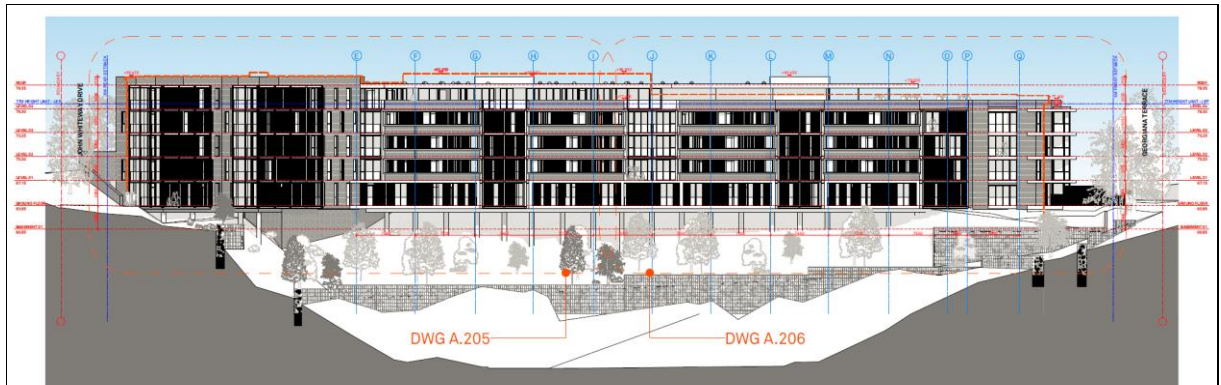


Figure 10– Proposed Eastern Elevation of development

The applicant has provided the following information to support the section 4.55 application to demonstrate that the proposal is substantially the same development as previously approved by the JRPP:

“...the Section 4.55 proposal is “essentially or materially” the same as the development that was initially approved. The overall built form will generally remain as approved, particularly to John Whiteway Drive where only minor changes are proposed to the building’s façade to reflect the internal changes. The most significant changes are to the sides of the approved built form which results in a rationalised stepped footprint and a more sympathetic architectural expression within the sites given context. Protrusion and recession of certain building elements therefore result, with works maintaining appropriate separation distances and setbacks. Modifications largely remain within the approved building envelope.

In terms of comparing the qualitative and quantitative comparative aspects of the development, the modification proposes the following:

- *An increase to the number of units from 66 to 72.*
- *An increase to the number of car parking spaces at the site from 76 to 102 spaces including 11 accessible spaces.*
- *The proposal will provide for an improved unit mix, with the introduction of more 3-bedroom units whilst maintaining an adequate number of 1 and 2-bedroom units. The overall height of the development has been generally decreased by 400mm.*
- *Relocation of the communal open space from the eastern side of the ground floor to the roof top, toward the northern side of the building and toward Rumbalara Reserve.*
- *Adjustment of numerous floor slabs which would result in lowering of the northern wing (Block 3) of the built form and consequently removal of warped slabs which were previously associated with parking areas.*
- *Amendments to the built forms architectural expression which will result in a more contemporary presentation and one that further compliments the areas natural context.*
- *Overall improvements to solar access and cross ventilation for the benefit of future residents.*
- *Overall improvement in solar access for neighbouring development.*

Notwithstanding the above quantitative comparisons, the characteristics of the development, when taking into consideration the qualitative aspects are essentially considered the same. The reasons for this are:

- The proposal generally reduces the height of the approved built form as amendments to the roofscape are proposed.*
- An area of communal open space will be retained, however will now be placed on the roof.*
- The proposed materials and finishes will generally remain consistent with that of the approved.*
- The approved building envelope will generally remain the same with minor modifications in terms of recession and protrusions of certain building elements due to internal modifications and additions.*

Assessment Comment

The consent authority's power to modify consent is a power "to alter without radical transformation". It is considered that the proposal does not constitute a radical transformation to the approved proposed residential flat building.

The modifications sought with the Section 4.55(2) Application represent substantially the same development as that originally granted under DA 47044/2015.1 for the following reasons:

- The modified development comprises a proposed residential flat building development containing 72 apartments an increase of 6 units;
- The overall built form of the development remains the same. There are minor changes to the building envelope as a result of modifications to internal apartment layout;
- The modified development increases the gross floor area of the building by 480.2m². The additional gross floor area does not substantially alter the bulk and scale of the development;
- The proposal reduces the maximum height of building from RL 80.85m AHD to RL 80.45m AHD;
- The proposed modifications will result in a minor decrease in deep soil zone of 27m² but an increase in the communal open space;
- The proposed modifications sought are not anticipated to give rise to an additional adverse amenity impacts in terms of overshadowing, visual privacy or views; and
- The proposed modifications adopt a similar palette for materials and finishes.

Accordingly, the proposal as amended is considered to be substantially the same development as previously approved and does not warrant a new development application.

2. **Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies?**

This application does not require the concurrence of the relevant Minister, public authority or other approval body.

3. **Whether any submissions were made concerning the proposed modification.**

The owners of adjoining properties were notified of the proposed development between 17 May 2018 and 7 June 2018. The notification resulted in 3 submissions being received.

4. **Any relevant considerations under section 4.15(1) of the Environmental Planning and Assessment Act 1979.**

Assessment of the proposal indicates that the proposed modifications result in additional/ and new non-compliances with Council's development controls. However, it is considered that the proposed modifications will have no significant impact upon the properties in the near vicinity of the site, and the "quantum and quality is the same" as was originally approved.

Further consideration is provided below with regard to the relevant planning provisions.

Section 4.15 (1)(d) of the EP & A Act: Consultation

Public Consultation

In accordance with Chapter 7.3 Notification of Development Proposals of *Gosford Development Control Plan 2013* (GDCP 2013), the section 4.55 development application was notified between Thursday, 17 May 2018 until Thursday, 7 June 2018, where three (3) submissions was received.

The issues raised in the submission received are discussed below.

- ***The development as proposed to be modified is not substantially the same as the original approved proposal.***

Comment:

The development as proposed to be modified is considered to be substantially the same development as the original approved development because:

- The modified development comprises a proposed residential flat building development containing 72 apartments an increase of 6 apartments;
- The overall built form of the development remains the same. There are minor changes to the building envelope as a result of modifications to internal apartment layout;

-
- The modified development increases the gross floor area of the building by 480.2m². The additional gross floor area does not substantially alter the bulk and scale of the development;
 - The proposal reduces the maximum height of building from RL 80.85m AHD to RL 80.45m AHD;
 - The proposed modifications will result in a minor decrease in deep soil zone of 27m² but an increase in the communal open space;
 - The proposed modifications sought are not anticipated to give rise to an additional adverse amenity impacts in terms of overshadowing, visual privacy or views; and
 - The proposed modifications adopt a similar palette for materials and finishes.
- ***Relocation of the communal open space from the eastern side of the ground floor to the northern end of Level 4, along with an increase in the area of the communal open space will have an adverse impact on the amenity (visual and acoustic privacy) of adjoining properties***

Comment:

The proposed modification increases the communal open space from 215m² to 647.8m² (an increase in 432.8m²). The area of communal open space is equivalent to 13.6% of the site area. The relocated communal open space will provide an improved outcome for the residents of No. 70 John Whiteway Drive as it will receive direct sunlight between 9am and 3pm on 21 June at mid-winter. It has been designed to provide for a range of activities consistent with the Apartment Design Guidelines (ADG).

A planter box has been located along the eastern edge of the communal open space to provide additional visual privacy. This provides increased separation distance between the usable area of the communal open space and the adjoining residential development to the east. It will also prevent direct overlooking from the communal open space into the adjoining development.

- ***The proposed development provides inadequate building separation between the proposed development and the adjacent residential development at No. 80 John Whiteway Drive. The setbacks to the eastern boundary have been reduced and this will have an adverse impact on visual and acoustic privacy.***

Comment:

The minimum building separation distances between Tower 3 of No. 80 John Whiteway Drive and the proposed development range between 23.7m and 24.4m on the ground level; and between 23.7m and 26.3m on Levels 1 to 4. This is consistent with the ADG, which requires a minimum building separation distance of 18m between habitable rooms / balconies for a building up to 8 storeys.

The minimum building separation distances between Tower 4 of No. 80 John Whiteway Drive and the proposed development range between 15.7m and 20.8m. These building separation distances are consistent with the approved DA.

- ***The increase in the number of units in the development will result in increased traffic and increased demand for on-street parking.***

Comment:

The section 4.55 modification is supported by an updated Assessment of Parking & Traffic Impacts prepared by Stanbury Traffic Planning dated 16 March 2018. Council's Traffic and Transport Planner reviewed this documentation and raised no objection.

Parking on site has been provided in accordance with the Roads and Maritime Services (RMS) Parking Guide for Metropolitan Sub-regional Centres. A minimum of 73 vehicle spaces are required for residential units, where 87 spaces are proposed. A total of 15 visitor spaces are proposed, as required.

The six additional dwellings are projected to generate an addition 1.7 peak hour vehicle trips over and above the approved development. This is not considered to result in any measurable impacts on the overall level of safety and efficiency of the surrounding road network, over and above what has been previously approved.

- ***Council should upgrade John Whiteway Drive***

Comment:

This is outside of the scope of this Development Application.

Public Authority Consultation/ Approvals

- New South Wales Rural Fire Service

No objection raised subject to the continued imposition of the General Terms of Approval, dated 4 May 2016.

Internal Consultation

The development application was referred to the following internal officers for comment:

- Architect

The section 4.55 modification application has been assessed by Council's Architect, in relation to the SEPP 65 Design Quality Principles and the ADG. This advice and recommendations are discussed in this report.

-
- Development Engineer

The section 4.55 modification application has been assessed by Council's Development Engineer in relation to access and drainage and no objection was raised subject to recommended conditions.

- Traffic and Transport Planner

The section 4.55 modification application has been assessed by Council's Traffic and Transport Planner, where no objection was raised.

- Waste Services (Garbage)

The section 4.55 modification application has been assessed by Council's Waste Services Division where no objection was raised subject to recommended conditions.

- Water and Sewer

The section 4.55 modification application has been assessed by Council's Water and Sewer Division where no objection was raised subject to recommended conditions.

- Tree Development Officer

The section 4.55 modification application has been assessed by Council's Tree Development Officer where no objection was raised subject to recommended conditions.

Ecologically Sustainable Principles

The modifications have been assessed having regard to ecologically sustainable development principles and are considered to be consistent with the DA as approved.

The proposed development as modified is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the section 4.55 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.

Assessment:

Having regard for the matters for consideration detailed in section 4.15 of the EP & A Act and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for the Panels information.

Section 4.15 (1)(a)(i) of the EP & A Act: Provisions of Relevant Instruments/ Plans/ Policies

State Environmental Planning Policies

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

The modification application is supported by a BASIX certificate, which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate. The proposal is considered to be consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

State Environmental Planning Policy No 19 – Urban Bushland (SEPP 19)

The site adjoins Rumbalara Reserve, albeit separated from the reserve by the road reserve for Georgiana Terrace. This is a public road, which will provide vehicular access to the development. There is also an existing fire trail that provides access to Rumbalara Reserve. The aim of SEPP 19 is to prevent nutrients and weeds from entering the bushland from the proposed development. The construction of Georgiana Terrace will assist in protecting Rumbalara Reserve.

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

The provisions of this SEPP technically apply however, the site has a history of residential use and so contamination is not likely to be present. In accordance with clause 7(2) of the SEPP, no further consideration is required in this regard.

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

The proposal is subject to the requirements of SEPP 65.

The modification application is supported by a Design Verification Statement prepared by Glen P McCormack of Benson McCormack Architecture, Reg. Architect No. 7536, dated 28 March 2018.

Council's Architect has provided assessment advice in relation to the SEPP 65 Design Quality Principles which are provided in **Attachment 6**. Several concerns were raised by Council's Architect and are summarised below:

- Context and Neighbourhood Character

The site is currently empty but adjoins four 12-storey towers directly to the east. The application is considered consistent with the context because its part four and part five storeys height sits level with the adjoining buildings that are located further down the slope. The application proposes reinstating an additional level to part of the northern section of the building. This increases the visual scale and is considered incompatible with this context.

- Built Form and Scale

The application results in significant non-compliance (50% to 66% non-compliance) with setback and building separation controls on parts of the eastern boundary. It is noted that the sections are taken through areas with recesses and do not indicate the true extent of non-compliance.

The application proposes reinstating an additional level increasing height non-compliance to 34.5m above the permissible RL 77m AHD in the GLEP 2014.

The building has a continuous length of 120m however this is disguised by curving the building around the corner and by the recessed entries. The use of some areas of significant landscaping on the street setback contribute further to disguising the bulk of the building and improving its contextual fit.

In other respects the scale is generally acceptable. The building is articulated and uses variation in materials and small scale details to disguise visual bulk, though the large areas of rendered masonry on the southern elevation could be further improved.

- Landscape

The non-complying setbacks on the east result in a significant reduction in deep soil planting and landscaping. Adequate planting and landscaping is considered essential to provide screening and outlook to and from the adjoining buildings and to disguise the excessive scale resulting from the non-complying height.

- Amenity

Non-complying setbacks and inadequate deep soil zones and landscaping result in privacy conflicts and poor outlook.

Council's Architect concluded the following:

-
- The non-complying setbacks and consequent reduction in deep soil zones and landscaping result in detrimental impacts on the amenity of the adjoining buildings and the loss of landscaping further reduces the visual compatibility with the context.
 - The s.4.55 application is not supported in its present form but it is considered that the reintroduction of some larger setbacks and increased deep soil and landscaping on the south east would address the majority of concerns and would be screen and disguise the increased bulk resulting from the additional area of non-complying height.
 - Additional deep soil landscaping on the street front would further disguise the proposed non-complying height.
 - It is considered that an amended design that addressed these issues could be supported.

Planning Response:

Regarding the Design Quality Principles contained within Schedule 1 of SEPP 65, additional consideration is provided in response to the concerns raised by Council's Architect: -

- Context and Neighbourhood Character

One additional apartment is provided on Level 4 as compared to the approved DA. The apartment is set back from the western elevation by an additional 2.5m creating a terrace. This is not considered to increase the overall visual scale of the building. Overall, the building heights are lower than the approved DA.

- Built Form and Scale

The approved DA had a maximum building height of RL 80.85m AHD. The proposed modification reduces this maximum building height by 400mm to RL 80.45m AHD. As noted above, the proposed modification to the approved development will result in one additional apartment located on Level 4 of the development. The other five additional apartments are located on the ground floor and do not provide any additional bulk or scale.

Due to alterations to the internal layouts of units, the modulation and articulation of the western elevation has been modified. Setbacks along the eastern boundary are consistent with the approved DA.

- Landscape

Setbacks along the eastern boundary are consistent with the approved DA. There is a small decrease in the area of deep soil zone of 27m². However, overall 30.6% of the site area is identified as deep soil zone. The communal open space will increase by 432.8m². The rooftop communal open space will provide a high level of amenity for residents of the development.

-
- Amenity

There are modifications to the articulation of the eastern façade as a result of alterations to apartment layout. However, setbacks along the eastern boundary are consistent with the approved DA. The rooftop communal open space will provide a high level of amenity. Privacy concerns are mitigated by the provision of a 2m wide planter along the eastern and northern boundaries. The proposed modifications do not result in additional overshadowing of the adjacent development at No. 80 John Whiteway Drive.

Summary

Whilst there are modifications to the articulation and modulation of the eastern elevation of the proposed residential flat building as a result of modifications to internal apartment layout, setbacks to the eastern boundary are consistent with the approved DA. There is a small decrease in the area of deep soil zone of 27m². However, overall 30.6% of the site area is identified as deep soil zone.

In view of the above considerations, the application is supported in its current form.

In addition to SEPP 65, the Apartment Design Guide (ADG) provides objectives, design criteria and design guidance on how residential development proposals can meet the Design Quality Principles contained within Schedule 1 of SEPP 65, through good design and planning practice.

An assessment of all relevant provisions of the ADG has been carried out and is provided in **Attachment 3**. Having regard to the design guidelines within the ADG, the variations are supported and no further objection is raised.

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) was gazetted by the NSW Government on 3 April 2018 and replaces State Environmental Planning Policy No71 – Coastal Protection. The Site is not mapped as being located within the land application area under the mapping associated with the SEPP.

State Environmental Planning Policy (Gosford City Centre) 2018 (Gosford City Centre SEPP)

The site is located in the Gosford City Centre under Gosford City Centre SEPP. The SEPP commenced on 12 October 2018. Under the saving provisions relating to development applications (clause 1.8A), if a development application has been made prior to the commencement of the SEPP and the application has not been finally determined before the SEPP commences, then the application must be determined as if this SEPP had not commenced. This modification application was made on 8 May 2018. Therefore, the provisions of the Gosford City Centre SEPP do not apply to this section 4.55 modification application.

Gosford Local Environmental Plan 2014 (GLEP 2014)

Compliance Table

Development Standard	Required	Proposed	Compliance with Controls	Variation	Compliance with Objectives
4.4 Floor Space Ratio	1.5:1 (Area S)	1.49:1 (Area S)	Yes	N/A	Yes
8.9 (3)(a) Height of Buildings	0m (Area A)	RL 80.450m AHD	No. Consistent with the approved development	80.45m	Yes
	RL77.0m AHD (Area RL4)	RL 80.450m AHD	No. Consistent with the approved development	3.45m	Yes

Figure 11 - GLEP 2014 Compliance Table

Permissibility

The site is zoned R1 General Residential under GLEP 2014. The proposed use is defined as a "residential flat building" within GLEP 2014 and is permitted with the consent of Council. The objectives for the R1 General Residential 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 meets the objectives of the R1 General Residential zone in that upon completion the housing mix of the locality will be increased. Furthermore, the development is consistent with the regional city fringe locality, provides for additional population accommodation within walking distance of the shops, services and public transport, and does not affect residential amenity.

Height of Buildings

There are two height of building development standards that apply to the site (Figure 12). The southern portion of the site has 0m building height limit. The rest of the site has a maximum height limit of RL 77m AHD.

The proposed maximum height of building is RL 80.45m AHD. This is a variation of 3.45m or 4.5% to the development standard. This is consistent with the approved DA.



Figure 12 – Mapped Height (subject site shown edged in light blue)

Although clause 4.6 does not apply to a section 4.55(2) modification, the application is accompanied by a clause 4.6 variation to the maximum height of building development standard. This submission provides a basis for assessment of the variation to the maximum height development standard, refer to **Attachment 5**. The submission provides a basis for assessment in accordance with section 4.15 of the EP&A Act and consideration as to whether the proposed development satisfies the “substantially the same” test under section 4.55.

Floor Space Ratio

The provisions of clause 4.4 (Floor Space Ratio) within GLEP 2014 establishes a maximum floor space ratio (FSR) for buildings. The applicable FSR control is 1.5:1 (Area S) as per Figure 13.

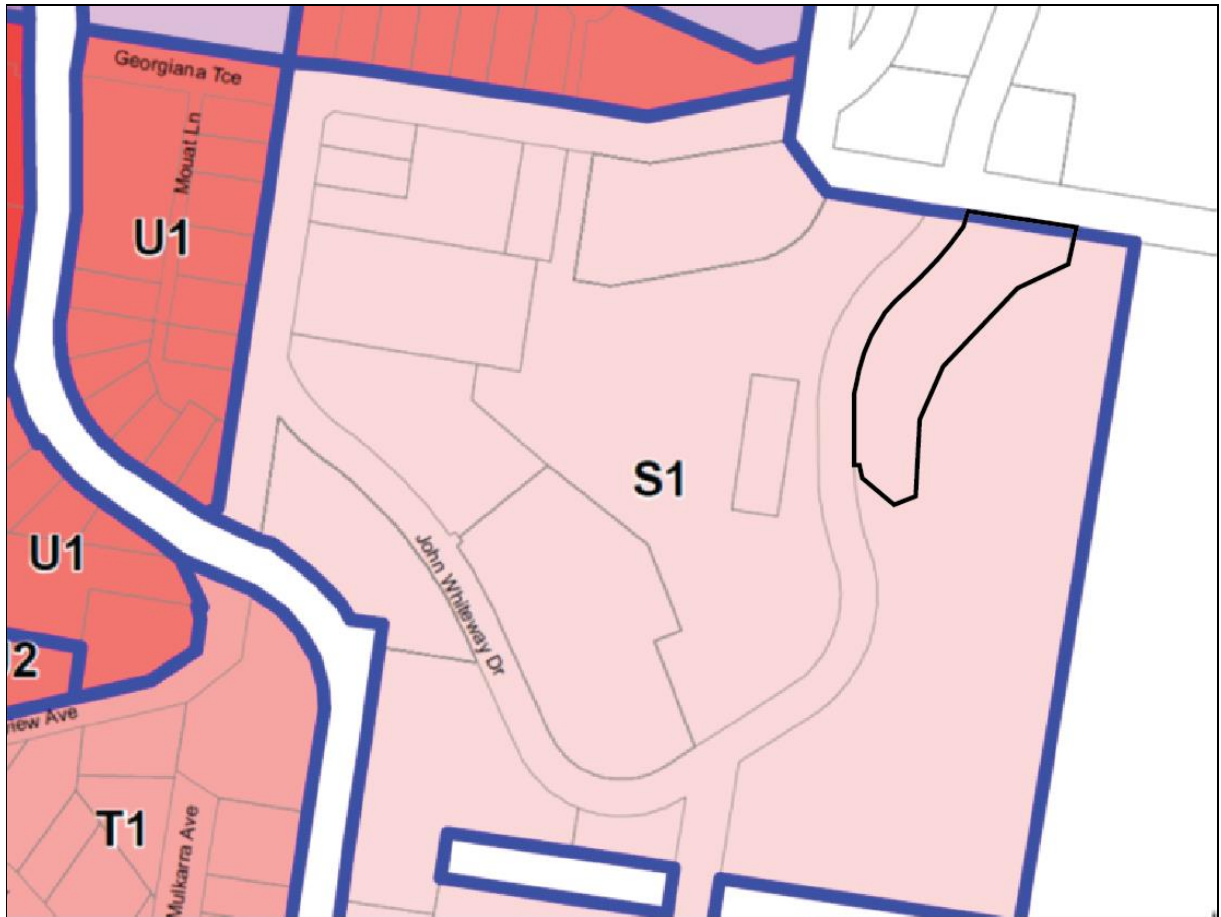


Figure 13 – Mapped FSR (subject site shown edged in black)

The proposed development has a maximum FSR of 1.49:1 which complies with this development standard.

Clause 5.10 Heritage Conservation

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

Clause 7.1 Acid Sulfate Soils

The land is identified as being affected on the Acid Sulfate Soils Map and accordingly the matters contained in clause 7.1 of GLEP 2014 have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposed works are not considered to impact on Acid Sulfate Soils.

Clause 7.2 Flood Planning

The site is not identified as being subject to flood impacts.

Clause 8.5 Design Excellence

The provisions of clause 8.5 (Design Excellence) of GLEP 2014 require Council 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 are 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 achieves a built form and scale appropriate to the R1 General Residential zone objectives as detailed within this Assessment Report. The design achieves a high standard of design and incorporates a range of materials and detailing which provide for internal amenity and design variation. The building has been designed to respond to the site's steep topography.

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

The proposal will result in the loss of existing vegetation from the site. However, no additional vegetation is proposed to be removed as part of the modification. The proposed development provides a high quality architectural finish, which responds to the site's bushland setting.

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

The proposed site it is not located in any 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,*

The proposed development is not located near and does not overshadow these areas.

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

GDCP 2013 has been considered within this Assessment Report and the proposal is considered worthy of support.

- 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.*

The building has been designed in response to the site constraints of slope, access, bushfire risk and is considered to be suitable for the site. The proposed development provides a mix of dwelling sizes and the additional 6 apartments proposed as part of the section 4.55 modification application will contribute to provide housing choice in the Gosford City Centre. The proposed development has an articulated façade providing visual interest. The overall built form and scale is consistent with the approved DA.

Section 4.15(1)(a)(ii) of the EP& A Act: Draft Environmental Planning Instruments:

No draft Environmental Planning Instruments apply to this development application.

Section 4.15(1)(a)(iii) of the EP& A Act: Provisions of any development control plan:

Gosford Development Control Plan 2013 (GDCP 2013)

GDCP 2013 provides objectives, design criteria and design guidance on how development proposals can achieve good design and planning practice. The proposal is considered acceptable having regard to the requirements of GDCP 2013. Where non-compliances with the GDCP 2013 have been identified, these are consistent with the variations approved under DA 47044/2015. For a detailed consideration, refer to the GDCP 2013 Compliance Table contained within **Attachment 4**.

Setbacks

A minimum 4m side setback has been established along the eastern site boundary, which is consistent with the approved development. This is a variation to the requirements of the GDCP 2013, which requires a 6m side setback for habitable rooms in buildings up to 12m in height and 9m side setback for habitable rooms in buildings over 12m in height.

The minimum building separation distances between Tower 3 of No. 80 John Whiteway Drive and the proposed residential flat building range between 23.7m and 24.4m on the ground level; and between 23.7m and 26.3m on Levels 1 to 4. This is consistent with GDCP 2013 and

ADG, which requires a minimum building separation of 18m between habitable rooms / balconies for a building up to 8 storeys.

The minimum building separation distances between Tower 4 of No. 80 John Whiteway Drive and the proposed development range between 15.7m and 20.8m. These building separation distances are consistent with the approved DA.

As a result of internal modifications to apartment layouts, the articulation of the eastern façade of the building has been amended. However, the modifications are contained within the approved building envelope.

Buildable Area

Section 4.1.7.4 of GDCP 2013 identifies a buildable area in which development can be located, unless a geotechnical report supports the proposal. As part of the original development application, a Geotechnical Assessment Report was prepared by Pells Sullivan Meynink, Engineering Consultants dated 27 April 2017. A supplementary letter was prepared by Pells Sullivan Meynink, dated 14 August 2017.

The proposed modification increases the extent of the basement beneath Block A. The applicant did not provide any additional geotechnical information as part of the section 4.55 application.

It is noted that the Panel imposed Condition 2.10 as part of the development consent. This condition requires the preparation of a detailed geotechnical report to be prepared by a qualified and experienced geotechnical engineer prior to the issue of a Construction Certificate. This condition is considered to be appropriate for the modified development.

Gosford City Centre Development Control Plan 2018 (GCCDCP 2018)

The GCCDCP 2018 commenced on 19 October 2018. Under the savings provisions, the provisions of GCCDCP 2018 do not apply to this development.

Section 4.15(b) of the EP & A Act: The Likely Impacts of the Development:

Built Environment

The proposed built form as modified is considered acceptable in the context of the built environment of the site. It is considered that the modifications to the proposed residential flat building development are consistent with the desired future character of the General Residential zone within Gosford City Centre. It is considered that the proposed modifications will not have any additional adverse impacts on the adjoining residential development.

Natural Environment

The site has already been determined as being suitable for the purposes of a residential flat building. The development as modified will not result in any additional impacts on the natural environment.

Economic Impacts

The proposed scale of the development continues to contribute to the economic revitalisation of Gosford. The provision of additional dwellings proximate to the city centre contributes positively to the vibrancy and commercial vitality of the centre.

Social Impacts

The proposed modifications will continue to provide for a high-quality residential development within Gosford City Centre. The development provides a mix of 1 bedroom, 2 bedroom and 3 bedroom apartments providing additional housing choice.

Section 4.15 (1)(c) of the EP & A Act: Suitability of the Site for the Development:

Residential flat buildings are permitted with consent in the R1 General Residential zone. The development as modified is in accordance with the desired future character of the area as envisaged by the GLEP 2014 and GDCP 2013.

Section 4.15 (1)(e) of the EP & A Act: The Public Interest:

Approval of the section 4.55 modification application is considered to be in the public interest. The development will provide additional housing choice, including a range of apartment sizes in a locality, which is highly accessible to Gosford city centre and related employment services and transport options.

Section 4.55(3) of the EP & A Act: Reasons for Consent

Under section 4.55(3) of the EP & A Act, the consent authority must take into consideration the reasons given for the granting of the consent that is sought to be modified. The following table provides a review against the reasons for the decision outlined in the determination report for DA 47044/2015 dated 24 August 2017.

Reason	Comment
<i>The Panel generally agreed with the balancing of the assessment of the environmental considerations as outlined in the council staff supplementary reports.</i>	The proposed development as modified is considered to be substantially the same development as the one approved by the JRPP on 24 August 2017.
<i>The Panel had regard to the applicants' Clause 4.6 variation request regarding the maximum height limit within Clause 4.3 of Gosford Local Environmental Plan 2014 ("the LEP"). Given there is an existing and commenced development consent for the site, the Panel was of the view that it was reasonable to have regard to the form and scale of the previously approved development, as well as associated impacts of both the previously approved development and the subject development. The Panel formed the view the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP and it was considered compliance with the height limit was unnecessary and unreasonable in this case. The amendments made to the proposal to reduce its overshadowing impacts and improve its streetscape relationship were noted.</i>	The maximum height of the proposed residential flat building is reduced by 400mm. The overall form and scale of the proposed residential flat building is consistent with the form and scale of the approved development. The proposed modifications will not result in additional overshadowing or privacy impacts on the adjoining residential development.
<i>In regard to geotechnical matters, Mr Perica and McDonald were satisfied that the geotechnical reports and updated information provided suitable certainty that geotechnical issues were able to be adequately mitigated and addressed through further analysis, reporting and detail. This view helped form an additional detail condition.</i> <i>Kara Krason and Ken Greenwald agreed with the overall merits of the proposal and Clause 4.6 Variation to height, although did not believe adequate certainty existed regarding the geotechnical conditions to support the proposal. In this specific regard, they were not willing to support the approval of the proposed development.</i>	It is noted that the proposed modifications increase the extent of excavation required for the proposed residential flat building development. The applicant did not submit any additional geotechnical as part of the modification application package. Nevertheless, it is considered that Condition 2.10 is suitable to the development as modified. It requires the preparation of a detailed geotechnical report by a qualified and experienced geotechnical engineer, prior to the issue of a Construction Certificate. A copy of the detailed geotechnical report is to be provided to the certifier and Council.

Figure 14 – Review of reasons for consent DA

Other Matters for Consideration

Central Coast Regional Plan 2036

In October 2016, the NSW Government released the Central Coast Regional Plan 2036 (Regional Plan). The aim of the Regional Plan is to guide land use planning priorities and decisions over the next 20 years to 2036. The Regional Plan provides an overarching framework that guides the preparation of detailed land use plans, the determination of development proposals and infrastructure funding decisions.

Goal 4 of the Regional Plan states “*A variety of housing choice to suit needs and lifestyle*”. This goal is supported by the following directions:

- Direction 19: Accelerate housing supply and improve housing choice;
- Direction 20: Grow housing choice in and around local centres; and
- Direction 21: Provide housing choices to meet community needs.

The proposed development as modified for a residential flat building at No. 70 John Whiteway Drive is consistent with the aims, goals and directions of the Regional Plan. The proposed development will provide a mix of 1, 2 and 3 bedroom apartments in close proximity to Gosford City Centre.

Solar Access and Overshadowing

Shadow diagrams and solar access diagrams have been prepared by McCormack Benson Architecture. The shadow diagrams have been prepared at 9am, noon and 3pm for mid-winter (21 June), autumn equinox (21 March) and mid-summer (21 December). The shadow diagrams compare the shadows from the development as approved and the shadows from the proposed development as modified. The shadow diagrams demonstrate that there will be a small amount of additional overshadowing to the podium rooftop adjacent to Tower 3 of No. 80 John Whiteway Drive at noon on 21 June.

Solar access diagrams based on “*Views from the Sun*” have been prepared at hourly intervals between 9am and 3pm on 21 June. The solar access diagrams compare the approved building envelope with the proposed building envelope (Figure 15). These diagrams demonstrate that there is no reduction in solar access to No. 80 John Whiteway Drive between 9am and 11am. After 11am, the diagrams indicate that whilst there is some reduction in solar access to Tower 3, there is improved solar access to Tower 4. This is a result of the modification to the articulation of the eastern elevation. On balance, solar access to the adjacent residential development is considered to be consistent with the approved DA.

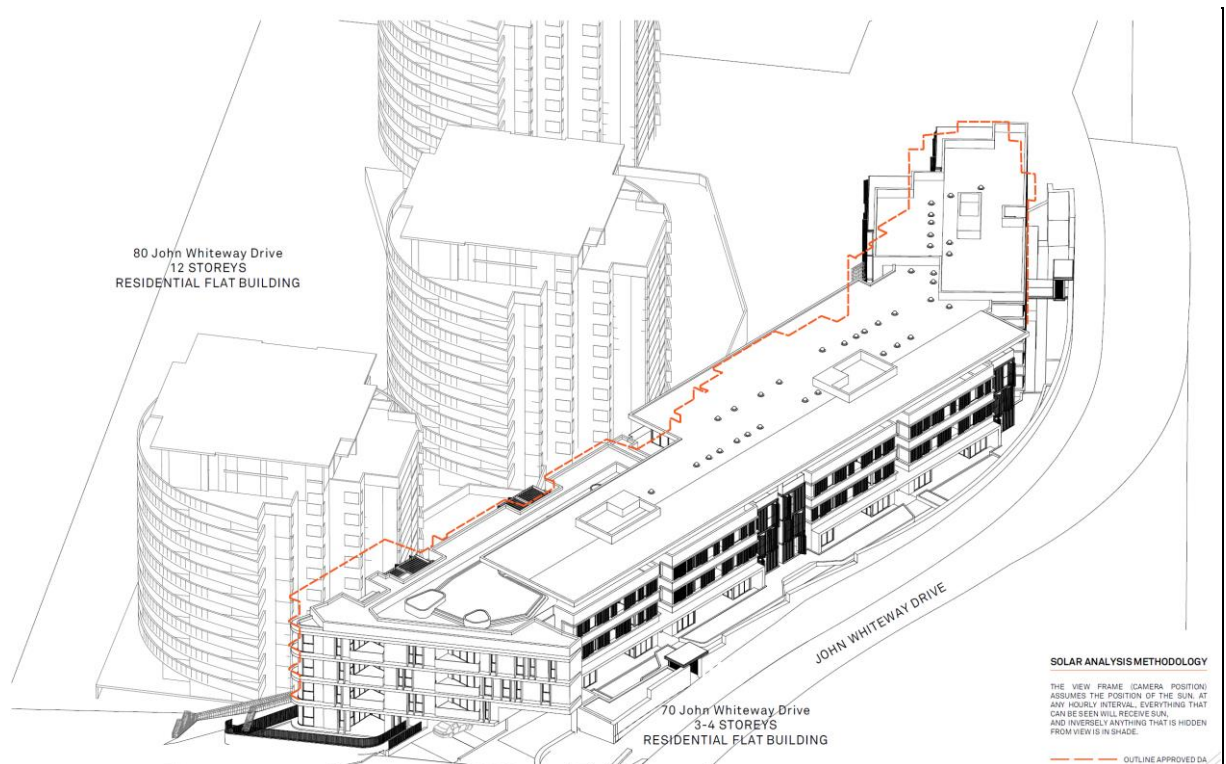


Figure 15 – Solar Analysis diagram for noon on 21 June

Additional Apartments

As part of the assessment of the original DA, amendments were made to the proposed residential flat building that reduced the total number of apartments within the development from 75 to 66. This was the result of the removal of the top floor of Block C and moving Block B closer to John Whiteway Drive.

The proposed modifications propose six (6) additional apartments to result in a total of 72 apartments. Five (5) of these additional apartments are located on the ground floor and are provided as a result of amendments to the basement and ground floor parking layouts. These apartments do not result in any adverse environmental impacts and do not add any additional bulk or scale to the building. However, it is noted that the five additional apartments on the ground floor (Unit Numbers B001, B002, B003, B004 and C001) do not receive any direct sunlight into primary living areas or private open space between 9am and 3pm on 21 June.

One of the additional apartments is located on Level 4 of Block C, adjacent to the proposed communal open space (Unit B405). This additional apartment is located on western side of the building so that it does not result in any additional overshadowing of the adjoining residential development at No. 80 John Whiteway Drive. The apartment receives 5 hours of direct sunlight between 9am and 3pm on 21 June.

Development Contribution Plan

Development contributions are applicable to the subject development application, which is subject to Section 94A Contributions Plan - Gosford City Centre A 2% contribution applies to DA 47044 as it was lodged after 31 August 2014 and before 1 February 2015. This contribution rate continues to apply for the subject modification application.

Condition 2.9 was originally imposed requiring the development contribution to be paid prior to the issue of any Construction Certificate.

The Applicant provided an up to date Capital Investment Value Report due to the works to the car parking and additional units. **Condition 2.9** is recommended to be modified accordingly.

Water and Sewer Contributions

The proposed development is subject to Water and Sewer Contributions. The requirement to pay the contributions has been imposed as a condition of consent.

CONCLUSION

The proposal seeks to amend Development Consent 47044/2015 for the approved residential flat building at No. 70 John Whiteway Drive, Gosford. The modifications include an increase in the number of units from 66 to 72, an increase in the number of parking spaces from 76 to 102; an increase in the area of communal open space from 215m² to 647.8m²; and a decrease in the maximum height of the building by 400mm.

This development application has been assessed under the heads of consideration of sections 4.15 and 4.55(2) of the *Environmental Planning and Assessment Act 1979* and all relevant instruments and policies.

The proposal is considered to have no additional environmental impacts as it is located within the approved building envelope. The proposed modifications will not result in adverse amenity impacts on the adjoining residential development and streetscape.

It is considered that the proposed development as modified will complement the locality and meet the desired future character of the area. The proposed modified development is considered to be substantially the same development as originally approved by the Hunter and Central Coast Joint Regional Planning Panel. Accordingly, the development application is recommended for approval in accordance with section 4.16 of the *Environmental Planning and Assessment Act*.

Attachments

- 1** Proposed Conditions of Consent
- 2** Development Plans
- 3** ADG Compliance Table
- 4** GDCP 2013 Compliance Table
- 5** Clause 4.6 variation Request
- 6** Architect Referral Comments

ATTACHMENT 1

Proposed Conditions of Consent

1. PARAMETERS OF THIS CONSENT

1.1. Approved Plans and Supporting Documents

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

~~Architectural Plans by dem Architects.~~

Drawing	Description	Sheets	Issue	Date
ar-0001	Site Analysis	1	b02	29/1/2015
ar-0200	Site Plan	1	b07	15/8/2017
ar-1200	Basement Plan	1	b08	15/8/2017
ar-1201	Ground floor plan	1	b07	16/8/2017
ar-1202	Level 1 floor plan	1	b06	14/8/2017
ar-1203	Level 2 floor plan	1	b05	14/8/2017
ar-1204	Level 3 floor plan	1	b05	14/8/2017
ar-1205	Level 4 floor plan	1	b08	14/8/2017
ar-1206	Roof plan	1	b06	15/8/2017
ar-2100	Sections	1	b05	15/8/2017
ar-2101	Cut and fill sections	1	b04	16/8/2017
ar-2300	Carpark ramp detail sections	1	b02	29/1/2015
ar-2500	Elevations sheet 1	1	b03	18/4/2017
ar-2501	Elevations sheet 2	1	b03	18/4/2017
ar-3300	Adaptable Unit typical layout	1	b02	29/1/2015
ar-3500	Site Coverage and deep soil calculation diagrams	1	b03	15/8/2017
ar-3501	FSR calculation diagrams	1	b07	15/8/2017
la-0301	Tree removal plan	1	A04	9/11/2106
la-0501	Landscape plan	1	A04	9/11/2016
la-2400	Landscape sections	1	A04	9/11/2016
arsk9101	Materials	1	C	22/1/2015
arsk9102	Materials	1	C	22/1/2015
arsk9103	Materials	1	C	22/1/2015

Supporting Documentation

Document	Title	Date
Ingham Planning P/L	Statement of Environmental Effects and Addendum Job No 14224	January 2015 & September 2016
dem	SEPP 65 Design Verification Statement Rev A	27/1/2015
dem	SEPP 65 Schedule of Compliance Rev B	23/1/2015
dem	Visual Impact Assessment Report	January 2015
Ingham planning P/L	Request to breach height control pursuant to Clause 4.6 of the LEP	August 2017
Victor Lin and Associates P/L	Basix Certificate No 597786M_02	25/1/2015
Australian Bushfire Protection Planners P/L	Bushfire Protection Assessment	22/10/2015
Ecological Australia	Flora and Fauna Assessment	16/12/ 2014
Michael Shaw Consultin Arborist	Arboricultural impact assessment	27/1/2015
dem	Crime prevention through environmental design	Undated
Accessible Building Solutions	Statement of Compliance Access for People with a disability.	28/1/2015
dem	Waste management Plan	January 2015
Transport & Traffic Planning Associates	Assessment of Traffic and Parking Implications. Rev C	January 2015
C&M Consulting Engineers	Stormwater Management Plan	January 2015
City Plan Services	Building Code of Australia Compliance Report	24/3/2015
Pells Sullivan Meynink	Geotechnical Assessment Report PSM669002L REV 2 and PSM 669-003L	27/4/2017 and 14/8/2017
dem architects	Shadow Diagrams 21 June	16/8/2017

Architectural Plans by dem Architects.

Drawing	Description	Sheets	Issue	Date
-	Cover Page	1	-	undated
A-0000	Location Plan	2	A	March 2018
A-0001	Site Photographs 1/2	3	A	March 2018
A-0002	Site Photographs 2/2	4	A	March 2018
A-0010	Basement – Approved DA	5	A	March 2018
A-0011	Ground Floor – Approved DA	6	A	March 2018
A-0012	Level 01 – Approved DA	7	A	March 2018
A-0013	Level 02 – Approved DA	8	A	March 2018
A-0014	Level 03 – Approved DA	9	A	March 2018
A-0015	Level 04 – Approved DA	10	A	March 2018
A-0016	Roof Plan – Approved DA	11	A	March 2018
A-0101	Basement	12	A	March 2018
A-0102	Basement 1/2	13	A	March 2018
A-0103	Basement 2/2	14	A	March 2018
A-0104	Ground Floor	15	A	March 2018
A-0105	Ground Floor 1/2	16	A	March 2018
A-0106	Ground Floor 2/2	17	A	March 2018
A-0107	Level 01	18	A	March 2018
A-0108	Level 01 1/2	19	A	March 2018
A-0109	Level 01 2/2	20	A	March 2018
A-0110	Level 02	21	A	March 2018
A-0111	Level 02 1/2	22	A	March 2018
A-0112	Level 02 2/2	23	A	March 2018
A-0113	Level 03	24	A	March 2018
A-0114	Level 03 1/2	25	A	March 2018
A-0115	Level 03 2/2	26	A	March 2018
A-0116	Level 04	27	A	March 2018
A-0117	Level 04 1/2	28	A	March 2018
A-0118	Level 04 2/2	29	A	March 2018
A-0119	Roof / Site Plan	30	A	March 2018
A-0201	Elevation North	31	A	March 2018
A-0202	Elevation South	32	A	March 2018
A-0203	Elevations East	33	A	March 2018
A-0204	Elevation East'	34	A	March 2018
A-0205	Elevation East 1/2	35	A	March 2018
A-0206	Elevation East 2/2	36	A	March 2018
A-0207	Elevations West	37	A	March 2018
A-0208	Elevation West 1/2	38	A	March 2018
A-0209	Elevation West 2/2	39	A	March 2018
A-0210	Elevation West'	40	A	March 2018
A-0221	Section AA	41	A	March 2018

A-0222	Section BB	42	A	March 2018
A-0223	Section CC'	43	A	March 2018
A-0224	Section DD	44	A	March 2018
A-0225	Section EE / FF – Access Ramps	45	A	March 2018
A-1101	Door Schedule	46	A	March 2018
A-1102	Window Schedule	47	A	March 2018
A-1301	Massing Study 1/2	48	A	March 2018
A-1302	Massing Study 2/2	49	A	March 2018
A-1303	Shadow Analysis – Plan March 21 / 0900	50	A	March 2018
A-1304	Shadow Analysis – Plan March 21 / 1200	51	A	March 2018
A-1305	Shadow Analysis – Plan March 21 / 1500	52	A	March 2018
A-1306	Shadow Analysis – Plan June 21 / 0900	53	A	March 2018
A-1307	Shadow Analysis – Plan June 21 / 1200	54	A	March 2018
A-1308	Shadow Analysis – Plan June 21 / 1500	55	A	March 2018
A-1309	Shadow Analysis – Plan December 21 / 0900	56	A	March 2018
A-1310	Shadow Analysis – Plan December 21 / 1200	57	A	March 2018
A-1311	Shadow Analysis – Plan December 21 / 1500	58	A	March 2018
A-1312	Solar Access – June 21	59	A	March 2018
A-1313	Solar Access – June 21 – 09am	60	A	March 2018
A-1314	Solar Access – June 21 – 10am	61	A	March 2018
A-1315	Solar Access June 21 – 11am	62	A	March 2018
A-1316	Solar Access June 21 – 12pm	63	A	March 2018
A-1317	Solar Access June 21 – 1pm	64	A	March 2018
A-1318	Solar Access June 21 – 2pm	65	A	March 2018
A-1319	Solar Access June 21 – 3pm	66	A	March 2018
A-1320	Solar Access & Cross Ventilation Assessment	67	A	March 2018
A-1321	GFA / FSR Calculations	68	A	March 2018
A-1322	Finishes	69	A	March 2018
A-1323	Units Typology – 1 bedroom	70	A	March 2018
A-1324	Unit Typology – 1 bedroom	71	A	March 2018
A-1325	Units Typology – 2 bedroom	72	A	March 2018
A-1326	Units Typology – 2 bedroom	73	A	March 2018

A-1327	Units Typology – 2 bedroom	74	A	March 2018
A-1328	Units Typology – 2 bedroom	75	A	March 2018
A-1329	Units Typology – 2 bedroom	76	A	March 2018
A-1330	Units Typology – 3 bedroom	77	A	March 2018
A-1331	Units Typology – 3 bedroom	78	A	March 2018
A-1332	Units Typology – 3 bedroom	79	A	March 2018
A-1333	Units Typology – 3 bedroom	80	A	March 2018
A-1334	Units Typology – 3 bedroom	81	A	March 2018
A-1335	S4.55 Notification – Site Plan	82	A	March 2018
A-1336	S4.55 Notification – Elevations	83	A	March 2018

Supporting Documentation

Document	Title	Date
Ingham Planning P/I	Statement of Environmental Effects and Addendum Job No 14224	January 2015 & September 2016
dem	SEPP 65-Design Verification Statement Rev A	27/1/2015
dem	SEPP 65- Schedule of Compliance Rev B	23/1/2015
dem	Visual Impact Assessment Report	January 2015
Ingham planning P/L	Request to breach height control pursuant to Clause 4.6 of the LEP	August 2017
Victor Lin and Associates P/L	Basix Certificate No 597786M_02	25/1/2015
Australian Bushfire Protection Planners P/L	Bushfire Protection Assessment	22/10/2015
Ecological Australia	Flora and Fauna Assessment	16/12/ 2014
Michael Shaw Consulting Arborist	Arboricultural impact assessment	27/1/2015
dem	Crime prevention through environmental design	Undated
Accessible Building Solutions	Statement of Compliance Access for People with a disability.	28/1/2015
dem	Waste management Plan	January 2015
Transport & Traffic Planning Associates	Assessment of Traffic and Parking Implications. Rev C	January 2015
C&M Consulting Engineers	Stormwater Management Plan	January 2015
City Plan	Building Code of Australia Compliance Report	24/3/2015

Services		
Pells Sullivan Meynink	Geotechnical Assessment Report PSM669002L REV 2 and PSM 669-003L	27/4/2017 and 14/8/2017
dem architects	Shadow Diagrams 21 June	16/8/2017
Stanbury Traffic Planning	Assessment of Parking & Traffic Impacts associated with Section 4.55(2) Application. Approved Residential Flat Building	16/03/18
Benson McCormack Architecture	SEPP 65 Design Verification Statement	23/03/2018
C & M Consulting Engineers	Stormwater Management Plan	March 2018
Matthew Higginson Landscape Architecture Pty Ltd	Landscape Plans	23/03/2018
Howard Moutrie	Statement of Compliance Access For People with a Disability	01/03/2018
Victor Lin & Associates Pty Ltd	BASIX Certificate: 912211M	29/03/18
GAT & Associates Pty Ltd	Statement of Environmental Effects	March 2018
Construction Consultants (QS)	Capital Investment Value Report	27 November 2018

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

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

All conditions under this section must be met prior to the issue of any Construction Certificate

- 2.1. No activity is to be carried out on site until any Construction Certificate has been issued, other than:
- a. Site investigation for the preparation of the construction, and / or
 - b. Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
- 2.2. Submit to Council, the accredited certifier and relevant adjoining property owners a dilapidation report, prepared by a practising structural engineer, detailing the structural characteristics of all buildings located on adjoining properties and any Council asset in the vicinity of the development. The report must indicate the structure's ability to withstand

the proposed excavation, and any measures required to ensure that no damage to these structures will occur during the course of works.

In the event that access to an adjoining property(s) for the purpose of undertaking the dilapidation report is denied, the applicant must demonstrate in writing that all steps were taken to obtain access to the adjoining property(s).

- 2.3. Submit an application to Council under Section 138 of the *Roads Act, 1993*, for the approval of required works to be carried out within the road reserve.

Submit to Council Engineering plans for the required works within a public road that have been designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control. The Engineering plans must be included with the Roads Act application for approval by Council.

Design the required works as follows:

- a. Full width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum width to accommodate the largest vehicle to enter/exit the site across the full frontage of the site in Georgiana Tce generally in accordance with drwg 01328_801 dated 27/01/15 Rev 07 21/09/16 by C & M Consulting Engineers (dn 23326319). The pavement shall be minimum 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- b. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in John Whiteway Dr and Georgiana Tce.
- c. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the full frontage of the site in John Whiteway Dr and Georgiana Tce.
- d. Heavy-duty vehicle crossing from John Whiteway Dr to connect to the fire trail (north side of Georgiana Tce) in Rumbalara reserve that has a minimum width of 4m and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom. Provision of guard rail in accordance with RMS and relevant Australian Standards.
- e. Required tie-in works to connect the proposed road works in Georgiana Terrace with the fire trails. Security gates are to be provided and/or relocated to suitable locations near the Georgiana Terrace road pavement and fire trail interface to prohibit vehicles parking on the fire trails.
- f. All redundant vehicular crossings are to be removed and the footway formation reinstated with turf and a 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location.

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- g. The piping of stormwater from within the site to Council's drainage system.
 - h. Roadside furniture and safety devices as required e.g. fencing, signage, guide posts, chevrons, directional arrows, and/or guard rail in accordance with RMS and relevant Australian Standards.
 - i. Retaining walls. Retaining walls must be designed by a practising Civil / Structural engineer and must not conflict with services.
 - j. Erosion and sedimentation control plan.

The Roads Act application must be approved by Council.

A fee for the approval of engineering plans under the *Roads Act 1993* applies. The amount of this fee can be obtained by contacting Council's Customer Services on (02) 4325 8222.

- 2.4. Submit a dilapidation report to Council with the Roads Act application and / or Construction Certificate application. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.5. Pay a security deposit of \$100,000.00 into Council's trust fund. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.6. Apply for and obtain from Council (Water Authority) a Section 307 Certificate of Compliance under the *Water Management Act 2000*. Conditions and contributions may apply to the Section 307 Certificate.

The 'Application for 307 Certificate under Section 305 *Water Management Act 2000*' form can be found on Council's website www.gosford.nsw.gov.au. Early application is recommended.

- 2.7. Submit design details of the following engineering works within private property:
 - a. Driveways / ramps and car parking areas must be designed according to the requirements of AS2890: *Parking Facilities* for the geometric designs, and industry Standards for pavement designs.
 - b. A stormwater detention system must be designed in accordance with the Gosford DCP 2013 Chapter 6.7 - Water Cycle Management and Council's Civil Works Specification. The stormwater detention system must limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1% AEP storm event. A runoff routing method must be used. An on-site stormwater detention report including an operation and

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- maintenance plan must accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
- c. Nutrient/pollution control measures must be designed in accordance with Gosford DCP 2013 Chapter 6.7 - Water Cycle Management. A nutrient / pollution control report including an operation and maintenance plan must accompany the design.
 - d. On-site stormwater retention measures must be designed in accordance with Council's DCP Chapter 6.7 - *Water Cycle Management*. A report detailing the method of stormwater harvesting, sizing of retention tanks for re-use on the site and an operation and maintenance plan must accompany the design.
 - e. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to Council's drainage system.

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

2.8. A vertical ceiling height of 4.0m must be provided in areas serviced by waste trucks.

~~2.9. Pay to Council a contribution amount of **\$401,608.00** that may require adjustment at time of payment, in accordance with the Section 94A Development Contribution Plan – Gosford City Centre.~~

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

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

~~Any Construction Certificate must not be issued until the developer has provided the accredited certifier with a copy of a receipt issued by Council that verifies that the Section 94 contributions have been paid. A copy of this receipt must accompany the documents submitted by the certifying authority to Council under Clause 104 of the *Environmental Planning and Assessment Regulation 2000*.~~

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

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

2.9. Pay to Council a contribution amount of **\$516,067.00** that may require adjustment at time of payment, in accordance with the Section 94A Development Contribution Plan - Gosford City Centre.

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

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

Any Construction Certificate must not be issued until the developer has provided the accredited certifier with a copy of a receipt issued by Council that verifies that the Section 94 contributions have been paid. A copy of this receipt must accompany the documents submitted by the certifying authority to Council under Clause 104 of the *Environmental Planning and Assessment Regulation 2000*.

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

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

2.10. Prior to the issue of a Construction Certificate, a further detailed geotechnical report shall be prepared by a qualified and experienced geotechnical engineer. The geotechnical report shall:

- Be prepared in consultation with an experienced and qualified structural engineer, as may be necessary to ascertain loads and construction etc;
- Carry out further investigation of the site following clearing, preliminary earthworks and survey layout;
- Examine and report on existing rock anchors & shot-crete retaining walls and the stability of existing structures and rock;
- Determine whether the existing and recommended geotechnical measures (to date) are adequate and determine the need for new measures to ensure stability of the site and surrounds during and after construction;
- Ensure there is no impact on neighbouring properties, public assets and future buildings from geotechnical considerations;
- Provide a process and timing of monitoring of work during construction and inform when a qualified Geotech engineer is required on site; and
- Be certified by both the Geotechnical and Structural Engineer.

A copy of the final Geotechnical report shall be provided to the PCA and Council and the recommendations and details shall inform the plans and supporting details with the Construction Certificate.

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

- a. Storage areas are to be provided in accordance with the following minimum rates:
 - i. 6m³ for one bedroom units;
 - ii. 8m³ for two bedroom units;

-
- iii. 10m³ for three plus bedroom units; and

At least 50% of the required storage areas are to be provided within each dwelling.

- b. Provide one unisex accessible toilet adjacent to the rooftop communal open space for the use of residents.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

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

- 3.1. Appoint a Principal Certifying Authority after the construction certificate for the building work has been issued.
 - a. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
 - b. Submit to Council a *Notice of Commencement of Building Works* or *Notice of Commencement of Subdivision Works* form giving at least two (2) days notice of the intention to commence building or subdivision work. The forms can be found on Council's website www.gosford.nsw.gov.au
- 3.2. Keep a copy of the stamped approved plans on site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 3.3. Do not commence site works until the sediment control measures have been installed in accordance with the approved plans / Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation and Control*.
- 3.4. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
 - a. The name, address and telephone number of the principal certifying authority for the work; and
 - b. The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c. That unauthorised entry to the work site is prohibited.

Remove the sign when the work has been completed.

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- 3.5. Prevent public access to the construction site as required by Clause 298 of the *Work Health and Safety Regulation 2011* when building work is not in progress or the site is unoccupied. Site fencing specifications are outlined under Australian Standard AS1725.1-2010 - *Chain-link fabric fencing - Security fencing and gates*. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

A separate application made under the Roads Act 1993 will need to be lodged with Council If a hoarding or construction site fence must be erected on the road reserve or a public place.

- 3.6. Install a hoarding or construction site fence between the work site and any public place to prevent any materials from or in connection with the work falling onto the public place. The use of barbed wire and/or electric fencing is not to form part of the hoarding or construction site fence.

A separate application made under the *Roads Act 1993* will need to be lodged with Council If the hoarding or construction site fence must be erected on the road reserve or a public place.

- 3.7. The Structural Engineer's details are to be certified that they have been prepared in accordance with the details and recommendations of the Geotechnical Engineers Report No. PSM669-002L dated 10 March 2015 prepared by Pells Sullivan Meynink Engineering Consultants.
- 3.8. Submit to Council details for the disposal of any spoil gained from the site and / or details of the source of fill, heavy construction materials and proposed haulage routes to and from the site. Details are to be accompanied by a dilapidation report for the road carriageway and kerbs from the intersection of John Whiteway Dr and Donnison St to the intersection of John Whiteway Dr and Henry Parry Dr. Approval of these details must be obtained from Council. Updated details must be provided during construction if details change.
- 3.9. The applicant must ensure that all parties/trades working on the site are fully aware of their responsibilities with respect to tree protection conditions.
- 3.10. Tree Protection is to be as per the recommendations within the Arboricultural Impact Assessment by M Shaw 27/1/15.
- 3.11. Prior to the commencement of any works, suitable arrangements shall be put in place in agreement with Gosford City Council for the establishment and ongoing implementation of an inner protection area over land to the north of the site within Georgiana Terrace as shown on Drawing No. 1328 801 Rev 7 prepared by DEM dated 21/9/2016. This area shall be managed in accordance with section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

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- 3.12. Submit both a Plumbing and Drainage Inspection Application, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the Plumbing and Drainage Act 2011 (to be provided by licensed plumber). These documents can be found on council's website at: www.gosford.nsw.gov.au

Contact council prior to submitting these forms to confirm the relevant fees.

- 3.13. Establish a Tree Protection Zone (TPZ) around trees identified to be retained.

Erect a 1.8 metre high chain mesh fence around the tree that must remain intact until construction is completed. The distance from the tree to the boundary of the protection fence is to be no less than 3m from the trees trunk.

Sign-post fences around Tree Protection Zones to warn of its purpose.

4. DURING WORKS

All conditions under this section must be met during works

- 4.1. Clearing of land, excavation, and / or earthworks, building works, and the delivery of building materials must only be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

- a. No work is permitted on Sundays and Public Holidays
 - b. No work is permitted on:
 - Saturdays when a public holiday is adjacent to that weekend.
 - Construction industry awarded rostered days off.
 - Construction industry shutdown long weekends.
- 4.2. Undertake and maintain Erosion and Siltation control measures in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls must comply with Gosford DCP 2013 Chapter 6.3 - *Erosion and Sedimentation Control*.
- 4.3. Keep a copy of the stamped approved plans on site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.4. Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 4.5. Do not carry out construction work or store building materials on the road reserve unless they are associated with a separate approval under the *Roads Act 1993*.

4.6. Action the following when an excavation extends below the level of the base of the footings of any building, structure or work on adjoining land:

- a. notify the owner of the adjoining land, and
- b. protect and support the building, structure or work from possible damage from the excavation, and
- c. underpin the building, structure or work where necessary, to prevent any such damage.

These actions must be undertaken by the person having the benefit of the development consent at their own expense.

4.7. Implement all recommendations of the geotechnical report(s) listed as supporting documentation in this development consent. Furthermore, the geotechnical engineer must provide written certification to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained within the geotechnical report(s).

4.8. Construct the works within the road reserve that required approval under the Roads Act. The works must be constructed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control.

4.9. Do not place filling or debris within any watercourse or drain.

~~4.10. Trees to be removed shown on the approved Tree Removal Plan must be removed in a manner so as to prevent damage to those trees that are to be retained.~~

4.10. Tree removal is to be as shown on the approved Tree Removal Plan, dated 9 November 2016. Remove trees in a manner so as to prevent damage to those trees that are to be retained.

~~4.11. The internal road strength used by the waste trucks must be sufficiently strong enough to withstand a truck loading of 22.5 tonnes.~~

4.11. The internal road strength used by the waste trucks must be sufficiently strong enough to withstand a truck loading of 23 tonnes.

4.12. The road surface used by the waste trucks must be constructed of reinforced concrete.

4.13. No obstructions to the wheel out of the waste bins being permitted including grills, speed humps, barrier kerbs etc.

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- 4.14. The waste truck servicing grade is to be 3% or less for the following areas:
- Within the enclosure
 - For bulk bin roll out pads
 - Within the 13m bulk bin and truck service area
- 4.15. Compliance with all commitments as detailed in the Waste Management Plan signed by T Satıcı dated January 2015, Amendment dated March 2015.
- 4.16. Waste storage areas to be constructed in accordance with Appendix D and Appendix G, Part 7.2 Waste Management of Gosford DCP 2013.
- 4.17. Refuse loading zone controls i.e. refuse loading area warning light/roller shutter etc to be as detailed within the Waste Management Plan and Dwg No. ar-1201, issue b06 dated 16 September 2016.
- 4.18. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
- 4.19. New construction complies with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
- 4.20. Submit a report prepared by a registered Surveyor to the Principal Certifying Authority at each floor level of construction of the building (prior to the pouring of concrete) indicating that the finished floor level is in accordance with the approved plans.
- 4.21. Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Office of Environment and Heritage shall be contacted immediately and any directions or requirements complied with.
- 4.22. ~~Incorporate the following Crime Prevention Through Environmental Design (CPTED) principles and strategies to minimize the opportunity for crime:~~
- ~~a. Provide adequate lighting to common areas as required under AS1158: *Lighting for roads and public spaces*.~~
 - ~~b. Paint the ceiling of the car park white.~~
 - ~~c. Design of landscaping, adjacent to mailboxes and footpaths, must not provide concealment opportunities for criminal activity.~~
 - ~~d. Design the development to avoid foot holes or natural ladders so as to minimise unlawful access to the premises.~~
 - ~~e. Provide signage within the development to identify all facilities, entry/exit points and direct movement within the development.~~

4.22. DELETED

5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

All conditions under this section must be met prior to the issue of any Occupation Certificate

- 5.1. Submit an application for the Occupation Certificate to the Principal Certifying Authority for approval.
- 5.2. Do not occupy the premises until the Occupation Certificate has been issued.
- 5.3. Submit a Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011*.
- 5.4. Provide certification from a geotechnical engineer to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained within the geotechnical report(s) listed as supporting documentation in this development consent.
- 5.5. Complete works within the road reserve that required approval under the Roads Act. The works must be completed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control, and documentary evidence for the acceptance of such works must be obtained from the Roads Authority.
- 5.6. Rectify any damage not shown in the dilapidation report submitted to Council before site works had commenced. Any damage will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense.
- 5.7. Complete the internal engineering works within private property in accordance with the plans and details approved with the construction certificate.
- 5.8. Amend the Deposited Plan (DP) to:
 - Include an Instrument under the *Conveyancing Act 1919* for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants must be defined by bearings and distances shown on the plan.
 - a. Create a 'Restriction as to User' over all lots containing an on-site stormwater detention system and/or a nutrient/pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

And,

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- Include an instrument under the *Conveyancing Act 1919* for the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).
 - a. To ensure on any lot containing on-site stormwater detention system and / or a nutrient / pollution facility that:
 - (i) The facility will remain in place and fully operational.
 - (ii) The facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner
 - (iii) Council's officers are permitted to enter the land to inspect and repair the facility at the owners cost.
 - (iv) Council is indemnified against all claims of compensation caused by the facility.

Submit, to the Principal Certifying Authority, copies of registered title documents showing the restrictive and positive covenants.

- 5.9. Amend the deposited plan (DP) to include a Section 88B instrument under the *Conveyancing Act 1919* to indemnify Council against claims for loss or damage to the pavement or other driving surface and against liabilities losses, damages and any other demands arising from any on-site collection service, at the applicant's cost.

6. ONGOING OPERATION

- 6.1. Insulate and / or isolate the motor, filter, pump and all sound producing equipment or fitting associated with or forming part of the pool filtering system so as not to create an offensive noise to the occupants of the adjoining premises as defined in the *Protection of the Environment Operations Act 1997*.
- 6.2. Maintain the on-site stormwater detention facility in accordance with the operation and maintenance plan.
- 6.3. Maintain the nutrient / pollution control facilities in accordance with the operation and maintenance plan.
- ~~6.4. Waste storage to be as indicated on Dwg No. ar-1201, issue b06 dated 16 September 2016 by dem architecture.~~
- 6.4. Waste storage is to be as indicated on Drawing No. A-0104 Issue A, Revision B dated 18 May 2018 by Benson McCormack Architecture
- 6.5. The residents, caretaker or Body Corporate must be responsible for placing the mobile waste containers at a suitable location at the kerbside. These arrangements should be made no earlier than the evening prior to the collection day and returned to the approved residential waste storage enclosures as soon as possible after service collection day.

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- 6.6. Transfer of bulk waste bins within the development to be undertaken by persons suitably trained and experienced in the use and operation of any mechanical bin transporter and/or lifter.
- 6.7. Waste vehicle access and manoeuvring to be in accordance with AS2890.2, and the Traffic and Traffic Planning Associates Report Reference 14298, dated May 2015 (Rev D), and the addendum to the Traffic and Traffic Planning Associates Report Reference 14298, dated 29 September 2016 (SP3 and SP4).
- 6.8. Manage and maintain the entire property as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- ~~6.9. Complete landscaping works.~~
- 6.9. Maintain all works associated with the approved Landscape Plans for a period of twelve (12) months from the date of the issue of any Occupation Certificate to ensure the survival and establishment of the landscaping.
- 6.10. Construct and manage garbage chutes in accordance with the provisions of Gosford Development Control Plan 2013, Part 7: Chapter 7.2 –Waste Management, Appendix F. Use for former Gosford Council LGA Only.
- 6.11. Do not place or store waste material, waste product or waste packaging outside the approved waste store enclosure.
- 6.12. Provide to the Principal Certifying Authority a design verification statement from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the Construction Certificate was issued, having regard to the Design Quality Principles set out in Part 2 of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development.
- 6.13. Implement the following Crime Prevention through Environmental Design (CPTED) principles and strategies to minimise the opportunity for crime:
- a) provide adequate lighting to common areas as required under Australian Standard AS 1158: *Lighting for roads and public spaces*
 - b) paint the ceiling of the car park white
 - c) design of landscaping, adjacent to mailboxes and footpaths, must not provide concealment opportunities for criminal activity
 - d) design the development to avoid foot holes or natural ladders so as to minimise unlawful access to the premises
 - e) provide signage within the development to identify all facilities, entry / exit points and direct movement within the development

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- f) install a system of Closed Circuit Television of a type and in locations on the site that will record high-quality images of all public areas within the site.
- 6.14. Provide mail receptacles appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post.
- 6.15. Replace all damaged, dead or missing areas of lawn and plantings at the completion of the landscaping maintenance period, including adjoining road reserve areas that are in a state of decline, to a healthy and vigorous condition in accordance with the approved detailed Landscape Plans and Development Consent Conditions.

7. ADVICE

- 7.1. Consult with public authorities who may have separate requirements in the following aspects:
- a. *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b. *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c. *Ausgrid* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d. *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e. *Central Coast Council* in respect to the location of water, sewerage and drainage services.
- 7.2. Carry out all work under this Consent in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 7.3. Dial Before You Dig
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

- 7.4. Separate application is required should the applicant require a new or upsized water supply connection to Council's water supply system.
- 7.5. Install and maintain backflow prevention device(s) in accordance with Council's *WS4.0 Backflow Prevention Containment Policy*. This policy can be found on Council's website at: www.gosford.nsw.gov.au
- 7.6. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 7.7. Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with Council's fees and charges.

8. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

9. REVIEW OF DETERMINATION

- 9.1. Subject to provisions of Section 82A of the Act the applicant may make an application seeking a review of this determination, providing it is made in time for Council to determine the review within six (6) months of this determination.

10. RIGHT OF APPEAL

- 10.1. Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court within six (6) months, from the date of determination.
- 10.2. To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.

ATTACHMENT 2

Development Plans

ATTACHMENT 3

ADG Compliance Table.

Design Criteria	Required	Proposed	Compliance
3D-1 Communal Open Space	Minimum communal open space area 25% of the site	The approved DA provided 215m ² (4.5%) of communal open space. The amended DA provides for 647.8m ² (13.56%) of communal open space at the northern end of level 4. This is an increase of 432.8m ² .	No. However, is an improvement from the approved DA
	50% direct sunlight to principal usable part for min 2 hrs between 9am and 3pm mid-winter	The development will comply, with the required 50% of direct sunlight to the principle useable area, receiving a minimum of 2 hours direct sunlight on the 21 June between 9am and 3pm.	Yes
3E-1 Deep Soil Zone	Minimum 7% of the site, with minimum dimension 6m for a site greater than 1,500m ²	A Deep Soil Zone of 1,460m ² is provided, which is equivalent to 30.6% of the site area. The deep soil zone will be decreased by 27m ² , which is considered to be minor. The deep soil zone does not have a minimum dimension of 6m along the eastern boundary, however this is consistent with the approved DA.	No. However is consistent with the approved DA.
	On some sites, it may be possible to provide a greater area for deep soil zones. Sites between greater than 1500m ² 15% should be achieved, if possible.	The proposal provides 30.6% of the site area as a deep soil zone.	Yes
3F-1 Visual Privacy	Separation from boundaries (habitable rooms and balconies): 6m (up to 12m in height) 9m (up to 25m in height) 12m (over 25m in height)	The proposed residential flat building is a part 4 and part 5 storey development. The proposed development provides building separation distances of 15.025m and 30.05m between the proposed residential flat building development and the existing residential development at 80 John Whiteway Drive. These separation distances are consistent with the approved DA.	No. Consistent with the approved DA.
3J-1 Bicycle and Car Parking	Minimum parking provided in accordance with the RMS Parking Guide for Metropolitan Sub-Regional Centres.	0.6 spaces per 1 bedroom unit (9 units) = 5.4 spaces 0.9 spaces per 2 bedroom unit (42 units) = 37.8 spaces 1.4 spaces per 3 bedroom unit (21 units) = 29.4 spaces 1 space per 5 units (72 units) = 14.4 spaces	Yes

Design Criteria	Required	Proposed	Compliance
		Vehicle parking is provided in excess of RMS requirements: - A minimum of 73 spaces are required for the residential units, with a total of 87 spaces proposed - A minimum 15 visitor spaces are proposed as required. Under the GDCP, bicycle parking is required at the following rates: 1 space for residents per 3 dwellings (72 units) = 24 spaces 1 space for visitors per 12 dwellings (72 units) = 6 spaces The proposed development provides a total of 35 bicycle parking spaces.	
	Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	Secure undercover bicycle parking is located in the basement level	Yes
	Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces	All supporting facilities within the car park can be accessed without having to cross any car parking spaces.	Yes
4A-1 Solar and Daylight Access	Living rooms and private open space of at least 70% of apartments receive a minimum of 3hr sun between 9am and 3pm mid-winter	46 (64%) of the proposed units receive a minimum of 3 hours of sun between 9am and 3pm mid-winter. An additional 3 apartments receive a minimum of 2 hours of sun between 9am and 3pm mid-winter.	No. Consistent with approved DA.
	Maximum of 15% of apartments receive no direct sun between 9am and 3pm mid-winter	14 units (19%) of the proposed unit receive no direct sun between 9am and 3pm mid-winter.	No. Minor non-compliance
4B-3 Natural Ventilation	Min 60% of apartments cross ventilated	63 units, equivalent to 87.5% are naturally cross ventilated.	Yes
4C-1 Ceiling	Minimum 2.7m	Complies.	Yes

Design Criteria	Required	Proposed	Compliance
Heights			
4D-1 Apartment Size	1 bedroom: 50m ² 2 bedroom: 75m ² (5m ² per additional bathroom) 3 bedroom – 90m ² (5m ² per additional bathroom)	The following minimum apartment sizes are provided: 1 bedroom = 57.3m² 2 bedroom = 84.4m² 3 bedroom = 103.7m²	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
4D-2 Room depths	Habitable room depths and maximum 8m depth for open plan layouts.	The depths of open plan layouts in some of the residential units is greater than 8m. However, it is generally consistent with the approved DA.	No , however generally consistent with approved DA.
4D – 3 Layout	Bedroom and living room sizes – 9 & 10m ² bedrooms with min 3m width, 3.6m-4m width living rooms	Complies	Yes
4E-1 Balconies	1 bedroom: 8m ² , min 2m depth 2 bedroom: 10m ² , min 2m depth 3 bedroom: 12m ² , min 2.4m depth	The following minimum balcony sizes are provided: 1 bedroom = 10.1m² 2 bedroom = 10.1m² 3 bedroom = 15.6m²	Yes
	Podium/ground level private open space minimum 15m ² , minimum depth 3m	Units with direct access to ground level privacy space have a minimum private open space of 15m ² .	Yes
4F-1 Common Circulation	Maximum of 8 apartments off a circulation core (although design guidance allows up	A maximum of 8 apartments are provided off a circulation core.	Yes

Design Criteria	Required	Proposed	Compliance
	to 12 apartments)		
4G-1 Storage	1 bedroom: 6m ³ 2 bedroom: 8m ³ 3 bedroom: 10m ³ Note: Minimum 50% within unit	Areas for storage have been identified within each apartment and within the basement. However, this has not been quantified A condition of consent is recommended ensuring compliance with the required storage areas. Refer to Condition 2.11	Yes
4H Acoustic Privacy	Noise transfer is limited through the siting of the buildings and building layout	It is considered that the apartments are orientated so as it minimise noise from living areas and outdoor terraces.	Yes
4J Noise and Pollution	The impact of external noise transfer and pollution are minimised through the siting and layout of the building.	Complies	Yes
4K Apartment Mix	A range of apartment types are provided to cater for different household types, and distributed throughout the building.	The following apartment mix is provided: 9 x 1 bedroom apartments = 11% 42 x 2 bedroom apartments = 52% 21 x 3 bedroom apartments = 30%	Yes
4L Ground Floor Apartments	Maximise street frontage activation and amenity.	Ground level apartments provide passive surveillance of John Whiteway Drive.	Yes
4M Facades	Provide visual interest whilst respecting the character of the area.	Architectural treatments create visual interest.	Yes
4N Roof Design	Roof features are incorporated in the roof design, response to the street and provide sustainability features.	Complies	Yes
4O Landscape Design	Landscape design is viable, sustainable, contributes to the streetscape and amenity.	Complies	Yes
4P Planting on	Appropriate soil depths are provided	Complies	Yes

Design Criteria	Required	Proposed	Compliance
Structures			
4V Water	Water Management and Conservation is achieved.	Complies	Yes
4W Waste	Waste storage facilities are provided to minimise impacts on the streetscape, building entry an amenity of residents.	Complies	Yes

ATTACHMENT 4

GDCP 2013 Compliance Table.

Development Control	Required	Proposed	Compliance
4.1.1.4 City Centre Character	<u>General Residential Zone:</u> New development within this zone will consist of medium to high density with heights allowing for 5 to 7 storeys.	The Site is located within the General Residential Zone. It comprises a medium residential flat building and is a maximum five storeys.	Yes
4.1.2.2 Building to street alignment and street setback	Min 5m to max 6m.	A minimum street setback of 5 metres has been provided to John Whiteway Drive and Georgiana Terrace. The maximum street setback varies due to the curved geometry of John Whiteway Drive. The street setbacks are generally consistent with the approved DA.	No. Consistent with approved DA.
	Balconies may project up to 600mm into front building setbacks.	There are minor projections into the street setback	Yes
4.1.2.3 Street Frontage Height	Not applicable		n/a
4.1.2.4 Building Depth & Bulk	Maximum floor plate above 18m – 500m ² Maximum building depth (excluding balconies) – 18m	Maximum building depth (excluding balconies) exceeds 18 metres. However, it is generally consistent with the approved DA. The apparent bulk and scale of the building is broken up through the modulation of the building form	No. Consistent with approved DA.
4.1.2.5 Side Setback (up to 12m height)	Habitable - 6m min.	A 4m side setback has been established to eastern site boundary. Setbacks vary from a minimum of 4 metres to greater than 12 metres. Due to internal modifications to building and apartment layout, certain building elements have been recessed or protruded. However generally the building envelope is consistent with the approved DA.	No. Consistent with approved DA
4.1.2.5 Side Setback (above 12m height)	Habitable - 9m min.	As noted above. The setbacks are generally consistent with the approved DA.	No. Consistent with approved DA
4.1.2.5	Habitable - 6m min.	A minimum 6 metre setback has been	Yes

Development Control	Required	Proposed	Compliance
Rear Setback (up to 12m height)		established to the rear (southern) boundary of the site.	
4.1.2.5 Rear Setback (above 12m height)	Habitable - 9m min.	There is a minor non-compliance with a small portion of the balcony located within the rear setback.	No. Minor variation is considered acceptable. Generally consistent with approved DA.
4.1.2.7 Site Cover	50%	The proposal has a maximum site coverage of 37%	Yes
4.1.2.7 Deep Soil Zones	15% min. Min. Dimension 6m	30.6% of the site will be deep soil zone. Minimum dimension is 4 metre, however generally the deep soil zone is wider than 6 metres.	No. Consistent with approved DA.
4.1.2.8 Landscape Design	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.	An OSD tank is located in the northern corner of the site. A landscape concept plan has been prepared. Native trees, shrubs and perennials are planted within the deep soil landscape zone.	Yes
4.1.2.9 Planting on Structures	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.	The provisions within this section only apply to the Commercial Core, Mixed Use and Enterprise Corridor Zones. Nevertheless, the minimum standards for soil depth and area have been considered in the design of the rooftop communal open space in order to ensure plant establishment and growth can occur. The rooftop planters are indicated to be a minimum of one (1) metre deep to accommodate a range of shrubs and small to medium trees.	Yes
4.1.2.10 View Corridors	Protect significant view corridors	Figure 2.1.4 within the Gosford City Centre Development Control Plan nominates significant views which are considered integral to the character of the area and which require protection	Yes

Development Control	Required	Proposed	Compliance
		and consideration with regard to new development. The site is not located in any identified view corridor.	
4.1.3.3 Street Address	Clear Street address	The proposed development provides for three entries from John Whiteway Drive.	Yes
	Direct front door access for ground floor units.	Direct front door access is not provided for ground floor units due to the site's topography.	No. Consistent with approved DA
	Residential buildings are to provide not less than 65% of the lot width as street address.	There are no blank facades facing John Whiteway Drive.	Yes
4.1.3.5 CPTED Principles	Address Safer by Design and CPTED principles	The apartments are orientated to provide passive surveillance over communal spaces, access ways, entries and driveways.	Yes
4.1.3.7 Vehicle Access	One access point only. Max. 2.7m width (or up to 5.4m wide for safety reasons)	Access is provided from Georgiana Terrace. There are separate driveways providing access to the basement and ground level parking.	No. Consistent with approved DA.
4.1.3.9 Building Exteriors	Various controls, similar to clause 8.5 of GLEP.	The proposed development is considered to exhibit high quality design. The building facades are articulated to create visual interest. This also assists in breaking up the overall form and scale of the building. Generally the materials and finishes remain as approved.	Yes
4.1.4.2 Pedestrian Access and Mobility	Building Entry Points - Clearly visible from street	The building entry points are clearly visible from the street. These provide An updated access report has been provided and the proposal is capable of compliance with the BCA and DDA requirements. 15% of units (11) are adaptable.	Yes
	Design for disabled persons		
	Barrier free access to not less than 20% of dwellings		
	At least 1 main pedestrian entrance with convenient barrier free access to ground floor		
	Continuous access paths of travel from all public roads		
	Access paths of durable materials (slip resistant materials, tactile surfaces and contrasting colours)		
4.1.4.3	Located 6m min. from the	Vehicular access to the site is from	Yes

Development Control	Required	Proposed	Compliance
Vehicle Footpath Crossings and Vehicular Driveways and Manoeuvring	perpendicular of any intersection	Georgiana Terrace. Council's Development Engineers has reviewed the plans and relevant conditions are recommended for imposition.	
	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		
4.1.4.4 On-Site Parking	1 space/1-bed (9 units) = 9 1.2 space/2-bed (42 units) = 50.4 1.5 space/ 3- bed (21 units)= 31.5 Visitor parking (0.2 per unit) =14.4 Disability accessible car parking, Not less than 10% of the required resident and visitor spaces: 10.2 Motorcycle parking 1 space/15 dwellings (or part thereof): 4.8 Bicycle parking: 1 resident's space per 3 dwellings + 1 visitor space/12 dwellings (or part thereof): 35	<u>Total required:</u> - Residential spaces: 91 - Visitor spaces: 15 - Accessible spaces: 11 - Motorcycle parking: 5 - Bicycle parking: 35 <u>Total Proposed:</u> - Residential spaces: 87 (shortfall of 4 spaces 4% non-compliance) - Visitor spaces: 15 (complies) - Accessible Spaces: 11 (complies) - Motorcycle parking: 8 (complies) - Bicycle parking: 35 (complies)	No. Parking has been provided in accordance with RMS Parking Guide for Metropolitan Sub-Regional Centres. Consistent with the approved DA.
	Provided car parking wholly underground unless unique site conditions prevent achievement.	Car parking is located underground	
	Compliance with	Capable of compliance	Yes

Development Control	Required	Proposed	Compliance
	AS2890.1		
	Uncovered parking areas are prohibited	Not applicable	Not applicable
	Bicycle parking secure and accessible with weather protection	Complies	Yes
4.1.4.5 Site Facilities	Mail boxes in one location, integrated into a wall, similar building materials and secure and of sufficient size	Two mail box locations have been identified. One is provided for Block A and another is provided for Blocks B and C.	No. Consistent with the approved DA.
	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	Considered acceptable. Appropriate conditions required by Waste Servicing are recommended for imposition.	Yes
	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		
4.1.4.5 Fire & Emergency Vehicles	Compliance with Fire Brigades Code of Practice – Building Construction – NSWFB Vehicle Requirements	Considered acceptable.	Yes
4.1.5.2 Energy Efficiency and Conservation	Compliance with BASIX	Acceptable.	Yes
4.1.5.3 Water Conservation	Efficient best practice management of water resources	Acceptable. An OSD tank and rainwater tank has been provided.	Yes

Development Control	Required	Proposed	Compliance
4.1.5.4 Reflectivity	Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.	It is considered that glare will not pose a problem to surrounding road users.	Yes
4.1.5.5 Wind Mitigation	Wind Effects Report for buildings over 14m	The height of the proposed development	No. Not considered necessary. Consistent with the approved DA.
4.1.5.6 Waste and Recycling	Length of storage area 0.65 x no of bins	Acceptable	Yes
	Width of storage area 2.5m min.		
	SEPP 65 & ADG		
4.1.5.7 Noise and Vibration	Effective management of noise and vibration in a city centre environment	Consistent with approved DA.	Yes
4.1.6.1 Residential Development Controls	3.3.3.5.2 Sunlight and Overshadowing	Updated shadow diagrams and solar analysis have been prepared comparing the approved development and the proposed development. The extent of overshadowing of the adjoining residential apartment development is consistent with the approved DA.	Yes. Consistent with the approved DA.
4.1.6.2 Housing Choice & Mix	1 bed units 10% min to max 25%	The proposed development generates the following unit mix: • 1 bed: 12% • 2 bed: 58% • 3 bed: 30%	Yes
	2 Bed not more than 75%		
	15% of dwellings (for sites with slope less 20%) capable of adaption for disabled or elderly residents = 11 accessible dwellings	A total of 11 dwellings will be capable of adaption.	Yes
	Where possible provide adaptable dwellings on the ground level	Due to the site's topography, the adaptable dwellings are located throughout the development.	No. Consistent with the approved DA.
	Application to be accompanied by an Access Consultant report	An updated access report has been provided.	Yes
	Car parking to adaptable dwelling to comply with AS	Complies.	Yes

Development Control	Required	Proposed	Compliance
4.1.6.3 Storage	7.5m ³ for 1 bed units 10m ³ for 2 bed units 12.5m ³ for 3 bed plus Min 50% of required storage areas within dwelling	Storage areas have been identified within the apartments. The volume of storage has not been quantified it is recommended to include a condition to ensure compliance with the ADG.	Yes. Capable of compliance with the ADG
4.1.7.4 Special Area – John Whiteway Drive Precinct	Height of building Lot 2 DP 778384 = RL77.0m AHD	The proposed building has a maximum height of RL80.45m AHD. This is 400mm lower than the maximum building height of the approved DA.	No. Consistent with approved DA
	Buildable Area	The proposed building extends beyond the buildable area. This includes extension of the basement carpark beyond the area identified in the approved DA. Condition 2.10 was imposed as part of the approved DA and requires the preparation of a detailed geotechnical report to be prepared by a qualified and experienced geotechnical engineer prior to the issue of a Construction Certificate. This condition is considered to be appropriate for the modified development.	No. Consistent with the approved DA.
6.3 Erosion and Sediment Control	Plans required	Complies	Yes.
6.4 Geotechnical Requirement	Investigations	Condition 2.10 was imposed as part of the approved DA and requires the preparation of a detailed geotechnical report to be prepared by a qualified and experienced geotechnical engineer prior to the issue of the Construction Certificate.	Yes. Via a condition.
6.7 Water Cycle Management	Minimise the impact of the development on the natural predevelopment water cycle.	Complies	Yes

ATTACHMENT 5

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

WRITTEN JUSTIFICATION TO VARY CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF THE GOSFORD LOCAL ENVIRONMENTAL PLAN 2014

1. Introduction

This submission seeks a variation to Clause 4.3 of the Gosford Local Environmental Plan 2014 (GLEP14), which relates to building height.

This submission has been prepared with regards to a Development Application over No. 70 John Whiteway Drive, Gosford seeking a Section 4.55(2) Modification to the approved 4-5 storey residential flat building development.

The Environmental Planning Instrument to which this variation relates to is the Gosford Local Environmental Plan 2014.

The development standard to which this objection relates to is Clause 4.3 – Height of Buildings of the Gosford Local Environmental Plan 2014, which reads as follows:

4.3 Height of Buildings

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

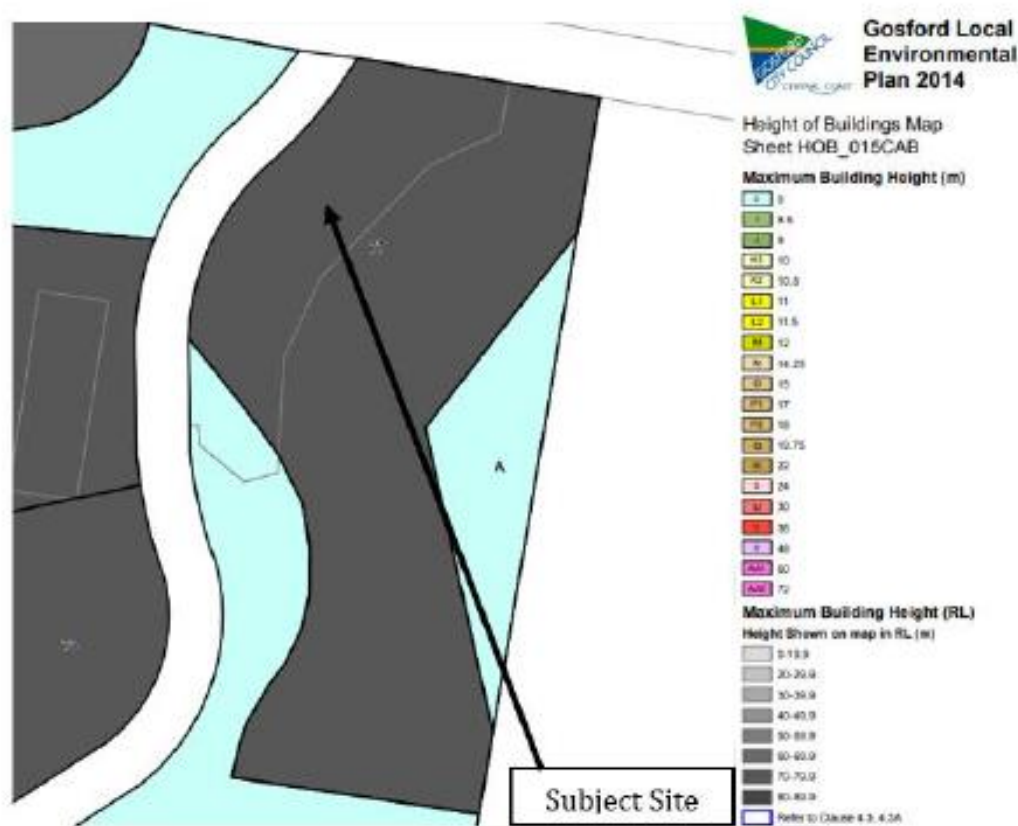
- (a) to establish the maximum height limit for buildings,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate 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.*

(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 for exceptions to the maximum height shown for the relevant land on the Height of Buildings Map in certain circumstances.

As demonstrated in Figure 1 below, in accordance Clause 4.3(1), the subject site is found to contain two (2) height controls. Part of the site, being contained to the southernmost portion, has a prescribed maximum height of 0m. The remaining portion of the site has been prescribed a maximum building height of 77RL.

Figure 1 – Height of Buildings Map (Source: NSW Legislation, GLEP14, map 015CAB)



The approved residential flat building was approved with a variation to the standard. As approved the development provides for a maximum building height of RL80.85m which is a breach of 3.85m or a variation of 4.76%. The proposed modifications have resulted in an overall lowering of the built form by 400mm, therefore the maximum building height proposed is RL80.45m or a lesser breach of 3.45m equalling 4.48%.

A written justification is therefore required for the proposed variation to the maximum building height development standard applying to the site at 70 John Whiteway Drive, Gosford.

2. Extent of Non-Compliance

As noted above Clause 4.3 of the GLEP 14 states that the maximum building height for the site is RL77m.

The current proposal seeks a maximum building height of RL80.45m which is 400mm lower than the approved building height of RL80.85m.

The approved scheme had varied the standard by 3.85m or 4.76% with the modifications, lessening the extent of the breach to equal 3.45m or 4.48%. The difference being 400mm or 0.28%.

It is our submission that because the breach to the building height control has been reduced there will not be any impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development.

As the variation is reduced, a degree of flexibility is considered reasonable in this instance.

3. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827.

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

It is therefore our submission that the *Wehbe* test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the *Four2Five* matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>

Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>
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In respect of the building height standard, the first method is invoked.

The objectives supporting the maximum building height control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

- "(1) The objectives of this clause are as follows:*
- (a) to establish the maximum height limits for buildings*
 - (b) to permit building heights that encourage high quality urban form,*
 - (c) to ensure buildings and public areas continue to receive satisfactory exposure to the 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 proposed modifications satisfy objective (a), in that a maximum height limit has been established for the site being RL77m. Development consent was given under DA 47044/2015 for a maximum building height of 80.85m which varied the control by 3.85m. The modifications result in a lesser height breach being 3.45m, which is an improvement in this regard, and is not considered significant.

The proposed modifications will continue to perpetuate a building form that is of high quality. Stepped footprints have rationalised the built form, whilst continuing to offer a positive articulation, further complimented by deeper recessions, breaking up the perceived length of the building. The built forms architectural expression and language are enhanced, with a more sympathetic integration to sites natural context deemed to result. Consistency with Objective (b) will continue.

As, approved the built form remains as essentially the same development through the proposed modifications. Modifications ensure that the proposal will continue to comply with the relevant solar access provisions, with any overshadowing impacts remaining as approved. Adequate separation distances to 'The Sanctuary' development as approved, will be retained. Objective (c) is adhered to.

In regard to Objective (d), the built form will continue to provide for an adequate transition to the street and to the west, from 'The Sanctuary' development. Views to Rumbalara Reserve are maintained, with the modifications being consistent with the approved building envelope and siting of the development.

In terms of Objective (e), the subject site has not been identified as located in an area that comprises a protected view corridor. There are no further impacts deemed to result in this regard.

With the built form maintaining essentially the same bulk and scale as approved, there are no additional impacts deemed to result in terms of overshadowing to public open spaces. The site is notably to the south of Rumbalara Reserve. Importantly, the building height is reduced as to what was approved. Consistency with Objective (f) is maintained.

4. Are there Sufficient Environmental Planning Grounds?

The assessment above and as demonstrated throughout the Section 4.55(2) Modification Report has demonstrated that the resultant environmental impacts of the proposed modifications will be satisfactory.

The proposal addresses the sites constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.

Whilst the modifications continue to exhibit a breach to Council's maximum height standard, this is of a lesser extent than approved, hence a more positive outcome is deemed to result.

We respectfully submit that the proposal will result in a better planning outcome than approved. Overall, the built forms architectural expression is enhanced, with the overall design being rationalised. Deeper recesses will work to mitigate the perceived length of the built form, resulting in a more sympathetic integration with the sites natural context.

With the site being located within the Gosford City Centre, it is benefited by numerous local amenities, services, facilities and infrastructure within proximity of the site. Connection to such amenities is facilitated via John Whiteway Drive which connects to Henry Parry Drive and then more broadly to the Gosford City Centre. Within proximity of the site are several bus stops along nearby Henry Parry Drive, Mann Street and Dane Drive. Gosford Railway Station is located at an approximate distance of 860m north-west of the site, each providing connections to a more expansive public transport network.

The development is also notably continuing to ensure compliance with the maximum FSR at the site proposing 1.49:1.

In this case, strict compliance with the development standard for height of buildings development standard of the GLEP 14 is unnecessary and unreasonable.

5. Is the Variation in the Public Interest?

A variation to a development standard must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The building contextually has regard to its surrounding properties and provides sufficient communal open space and landscaping for the amenity of future residents.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development, which are as follows:

Zone R1 General Residential Zone

Objectives of zone

- *To provide for the housing needs of the community*
- *To provide 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.*

In response to the above the following is provided:

The proposed modifications will continue to provide for the housing needs of the community with an increase in unit numbers from the approved 66 to the proposed 72 units. An improved unit mix will result with inclusion of additional 3-bedroom units, whilst maintaining an adequate number of 1 and 2-bedroom units. This diverse housing choice is capable of accommodating a range of family and household structures. As approved, the residential nature of the development will remain unchanged.

Through the proposed modifications, the desired future character of the area will be positively contributed to, as the modifications will result in essentially the same development as approved. Modifications are well designed and are of a high architectural quality, resulting in an improved relationship with the natural environment, offering a more sympathetic and contemporary fabric than approved.

There are no other land uses proposed through this application.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

6. Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed modifications will allow for the creation of additional units and parking spaces, whilst offering a more sympathetic integration of built form within the sites natural context.

The modified development is of a high architectural standard which continues to promote solar access, natural cross ventilation and appropriate separation distances. An adequate unit mix will continue to be provided, catering to a variety of lifestyles and familial structures with the Gosford City Centre, being an area well serviced by local amenities, infrastructure and services along with public transport.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the height of buildings control within the GLEP 14 is lessened than that approved. The modifications continue to allow for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

7. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Written Variation is well founded in that:

- ☐ Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- ☐ There are sufficient environmental planning grounds to justify the departure from the standards;
- ☐ The development meets the objectives of the standard to be varied (height of buildings) and objectives of the R1 General Residential zoning of the land;
- ☐ The proposed modifications are in the public interest and there is no public benefit in maintaining the standard;
- ☐ The breach does not raise any matter of State or Regional Significance; and
- ☐ The modifications maintain essentially the development as approved under DA 47044/2015.

Based on the above, the variation is considered to be well founded.

8. Conclusion

The proposal does not strictly comply with the maximum building height control as prescribed by Clause 4.3 of the GLEP 14. However, has resulted in a lesser breach to the standard than approved. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the breach to the control does not create any adverse environmental impacts.

Based on the above, it is sensible to conclude that strict compliance with the maximum building height control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions regarding the proposed development, please do not hesitate to contact me.

Kind regards,

Valdis Aleidzans
GAT & Associates
Plan 3288

ATTACHMENT 6

Architect Referral Comments

The modification application has been assessed in response to the nine SEPP 65 Design Quality Principles and the Apartment Design Guide (ADG).

Context and Neighbourhood Character

Approved Development Application

The removal of the top (5th) level on the northern part of the building has reduced the visual bulk and increased compatibility with the context.

The building has a continuous length of approximately 120 metres however this is disguised by curving the building around the corner and by the recessed entries. The use of some areas of significant landscaping on the street setback contributes further to disguising the bulk of the building and improving its contextual fit.

s.4.45

The application proposes reinstating an additional 23 metres to the top level section of the building and using the approved roof area as communal open space.

This increases the visual scale. Considered in isolation this may be acceptable but when combined with the reduced articulation it is considered to increase the visual scale of the building when viewed from the street and adjoining sites.

On the south west facing the adjoining towers the approved application provided some areas with deep recesses in the façade that provided space for landscaping has been reduced which further emphasises the dominance of the building.

Built Form and Scale

Approved Development Application

The approved application exceeded the height control by approximately 1 metre.

There are significant non-compliances (50% to 66% non-compliance) with the setback and building separation controls on parts of the eastern boundary. It is noted that the sections are taken through areas with recesses and do not indicate the true extent of non-compliance.

The application proposes reinstating an additional level increasing height non-compliance to approximately 2.5 metres above the permissible RL 77m AHD in the LEP.

The building has a continuous length of approximately 120 metres however this is disguised by curving the building around the corner and by the recessed entries. The use of some areas of significant landscaping on the street setback contribute further to disguising the bulk of the building and improving its contextual fit.

In other respects the scale is generally acceptable. The building is articulated and uses variation in materials and small scale details to disguise visual bulk, though the large areas of rendered masonry on the southern elevation could be further improved.

s.4.55

The application proposes a maximum height of RL 79.35m AHD or 2.35m above the RL 77.00m AHD height control. It is acknowledged that the approved application also exceeded the RL 77.00m AHD height control however the new proposal increases the non-complying area by approximately 200m² and also proposes a roof over part of the communal open space which will further increase the area of non-compliance.

Non-complying setbacks on the southeast facing the adjoining site are generally similar to the approved application for the first four levels however the fifth level adds approximately 150m² of predominantly balconies to the non-complying area which is located closest to the adjoining Tower 1.

In isolation the additional non-complying height does not significantly increase bulk and scale but when combined with increased area of non-complying setbacks and removal of façade recesses and landscaping it is considered to increase the bulk and scale of the building, particularly when viewed from the adjoining Tower 1.

Density

Both comply.

Sustainability

Both comply with BASIX.

Landscape

Approved Development Application

The approved application provided adequate deep soil zones and landscaping on the southeast to screen and disguise the scale of the building from the adjoining sites but there remained concern at the absence of any deep soil area on the street setback necessitating the reliance of on-slab planting and planting outside the site to disguise visual bulk.

s.4.45

The non-complying setbacks on the east result in a significant reduction in deep soil planting and landscaping. Adequate planting and landscaping is considered essential to provide screening and outlook to and from the adjoining buildings and to disguise the scale resulting from the non-complying height.

It is noted that the S96 application has rationalised the parking layout and now allocates former parking area to storage. It is considered that some of this area should be allocated to deep soil landscaping within the site. This would assist in disguising the increased scale resulting from the additional non-complying height and reduced articulation.

Amenity

Non-complying setbacks and inadequate deep soil zones and landscaping result in privacy conflicts and poor outlook.

Safety

Both acceptable.

Housing Diversity and Social Interaction

Both acceptable.

AestheticsApproved Development Application

Acceptable.

s.4.45

The application proposes further increasing non-compliance with height, setback and reducing articulation and landscaping. This increases the visual bulk and uniform appearance of the building and is not supported.

Recommendations

The non-complying setbacks and consequent reduction in deep soil zones and landscaping result in detrimental impacts on the amenity of the adjoining buildings and the loss of landscaping further reduces the visual compatibility with the context.

The s.4.55 application is not supported in its present form but it is considered that the reintroduction of some larger setbacks and increased deep soil and landscaping on the south east would address the majority of concerns and would be screen and disguise the increased bulk resulting from the additional area of non-complying height.

Additional deep soil landscaping on the streetfront would further disguise the proposed non-complying height.

It is considered that an amended design that addressed these issues could be supported.