



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-138
	DA/46209/2014/D
PROPOSAL	Modification of DA approved by Regional Planning Panel Variations to height and FSR over 10%
ADDRESS	Lots A & C, DP 355117; Lots 10 & 11, DP 591670; and Lots 1 - 4, DP 382784 27 - 37 Mann Street and 125 Georgiana Terrace, Gosford.
APPLICANT	Doug Sneddon Planning Pty Ltd
OWNER	Rola Property Group Pty Ltd
MOD LODGEMENT DATE	10 June 2022
ORIGINAL DA DETERMINATION DATE	15 December 2016
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	Clause 2 Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General development over \$30M
CIV	\$ 45,316,738.50 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 5.25 (Height) and 5.26 (FSR) of State Environmental Planning Policy (Precincts—Regional) 2021
KEY SEPP/LEP	State Environmental Planning Policy (Precincts—Regional) 2021
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	8
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plans, DVS, SEE
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	SIC contributions are administered and collected by the Dept Planning
RECOMMENDATION	Refusal

DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	26 June 2023
PLAN VERSION	
PREPARED BY	Brett Brown, Director Ingham Planning, Planning Consultant
DATE OF REPORT	11 May 2023

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for amendments to a consent granted under DA DA46209/2014 approved by the Joint Regional Planning Panel (JRPP) on 15 December 2016. This consent approved a Mixed Use - Retail, Commercial, Restaurant, Residential Development and Demolition of Existing Structures (but retained an existing heritage item at 27-37 Mann Street Gosford ('the site')). The modification application includes the relevant information required by Clause 100 of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation').

The application is referred to the Hunter and Central Coast Regional Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 as it comprises General development with a CIV over \$30 million. The proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly CI 123BA of the Regulation 2000).

Section 4.55(2) – changes proposed include:

- increased height, FSR, retail floor space and parking
- changes to apartment configuration and the external appearance of the development;
- reduction in the number of apartments from 132 to 128 and the amount of commercial floor space;
- changes to the communal open space including the provision of a new external swimming pool;
- expansion of the basement and reduction in deep soil area;
- changes to the treatment of the heritage item on the site 'Creighton Funeral Parlour';
- changes to the waste collection arrangements.

It is considered that the proposed modification does not satisfy the 'substantially the same development test' required by Section 4.55 of the EP&A Act.

The application was placed on public exhibition from 13 June 2022 to 22 July 2022. 8 submissions were received. These submissions raised issues relating to loss of solar access, loss of privacy, loss of views and outlook, loss of airflow, excessive height and scale, acoustic impacts, increased traffic impacts and safety impacts from vehicles, lack of parking, increased costs to prevent access to existing visitor parking, social impacts, construction impacts, lack of a dilapidation report and adverse heritage impacts. These issues are considered further in this report.

A briefing was held with the Panel on 7 September 2022 where key issues were discussed, including referral to Panel to be investigated in regard to Gosford City Centre SEPP, physical

commencement to be confirmed, comparison table to be provided to confirm that the modification is substantially the same as originally approved – requires a qualitative and quantitative analysis, management of waste collection to be outlined, driveway grade changes along Georgiana Terrace to be identified, clarification of GFA calculations required, additional car parking above DCP requirements is to be calculated as additional GFA– if relevant, urban design outcomes to be considered in assessment and identification of impacts arising from the change between approved and proposed development.

The key issues associated with the proposal identified in the assessment of the application include:

1. *Excessive height* - The proposed built form is considerably higher than the approved built form which is already 67-126% greater than permitted by Clause 5.25 of State Environmental Planning Policy (Precincts—Regional) 2021. The approved stepping of the top of the building has been removed, creating a form which is not a sympathetic response to the existing and desired future context and one that has adverse impacts on neighbours and the scenic quality of the area.
2. *Excessive bulk and scale* - The proposed built form has 5.8% more GFA than the approved built form (which is already 23% greater than permitted by Clause 5.26 of State Environmental Planning Policy (Precincts—Regional) 2021). The approved stepping of the top of the building has been removed, creating a form which is not a sympathetic response to the existing and desired future context and one that has adverse impacts on neighbours and the scenic quality of the area. The lack of appropriate articulation and the monotonous use of white rendered concrete also adds to the visual bulk of the building.
3. *Inconsistency with SEPP 65 and the ADG* – The above and other issues result in the proposal being inconsistent with the Design Quality Principles of SEPP 65 and failure to meet many of the objectives of Parts 3 and 4 of the ADG. The submitted Design Verification Statement is not in accordance with Clause 102 of the EP&A Regulation.
4. *Inconsistency with the provisions of Gosford City Centre DCP* – the proposal is inconsistent with the built form requirements of Section 5.25, the deep soil requirements of Section 5.2.14, the building exterior requirements of Section 5.2.17, the bicycle parking requirements of Section 7.4, the energy efficiency and water conservation requirements of Section 8.2 and 8.3 respectively, the waste management requirements of Section 8.6 and the heritage requirements of Section 10.1.
5. *Inappropriate treatment of the existing heritage item* – the proposal is inconsistent with the requirements of Clause 5.36 of State Environmental Planning Policy (Precincts—Regional) 2021 and Section 10.1 of the Gosford City Centre DCP as it provides a poorer interface with the heritage item at the Georgian Terrace frontage than the approved scheme.
6. *Impact on trees* – the proposal includes relocation of an existing Palm Tree however the submitted details are inadequate.
7. *Parking, Access and Waste* - the submitted details are inadequate to make a proper assessment.
8. *Not substantially the same development* - having regard to the above and the detailed discussions in this assessment, the proposal is both quantitatively and qualitatively substantially different from the approved scheme.
9. *The proposal is inconsistent with the reasons given by the consent authority for the grant of the consent* - The JRPP provided a Statement of Reasons for their decision to grant the consent on 15 December 2016 (see copy at **Attachment A**). As discussed in detail the proposal is at odds with some of these reasons including the proposed increase in height and FSR and the relationship to the heritage item.

Following consideration of the matters for consideration under Section 4.15(1) and 4.55 of the EP&A Act, it is considered that the proposed modification cannot be supported.

1. THE SITE AND LOCALITY

1.1 The Site

The site has a frontage of 60.5m to Mann Street, a frontage of 48.7m to Georgiana Terrace, a frontage of 60.3m to Parlour Lane, and a southern side boundary of 48.7m (Figure 1). The area of the site is approximately 2948sqm.

The land is steeply sloping from RL21.49m at Parlour Lane to RL11.2m at Mann Street (approximately 21% slope).

Located on the corner of Mann Street and Georgiana Terrace within the site is the former *Creighton's Funeral Parlour*, a two storey building of Inter-War Art Deco architecture built in 1938. Creighton's Funeral Parlour is an item of environment heritage of local significance under State Environmental Planning Policy (Precincts—Regional) 2021 (Item No. 37). A number of other shops and offices exist along the Mann Street frontage of the site.

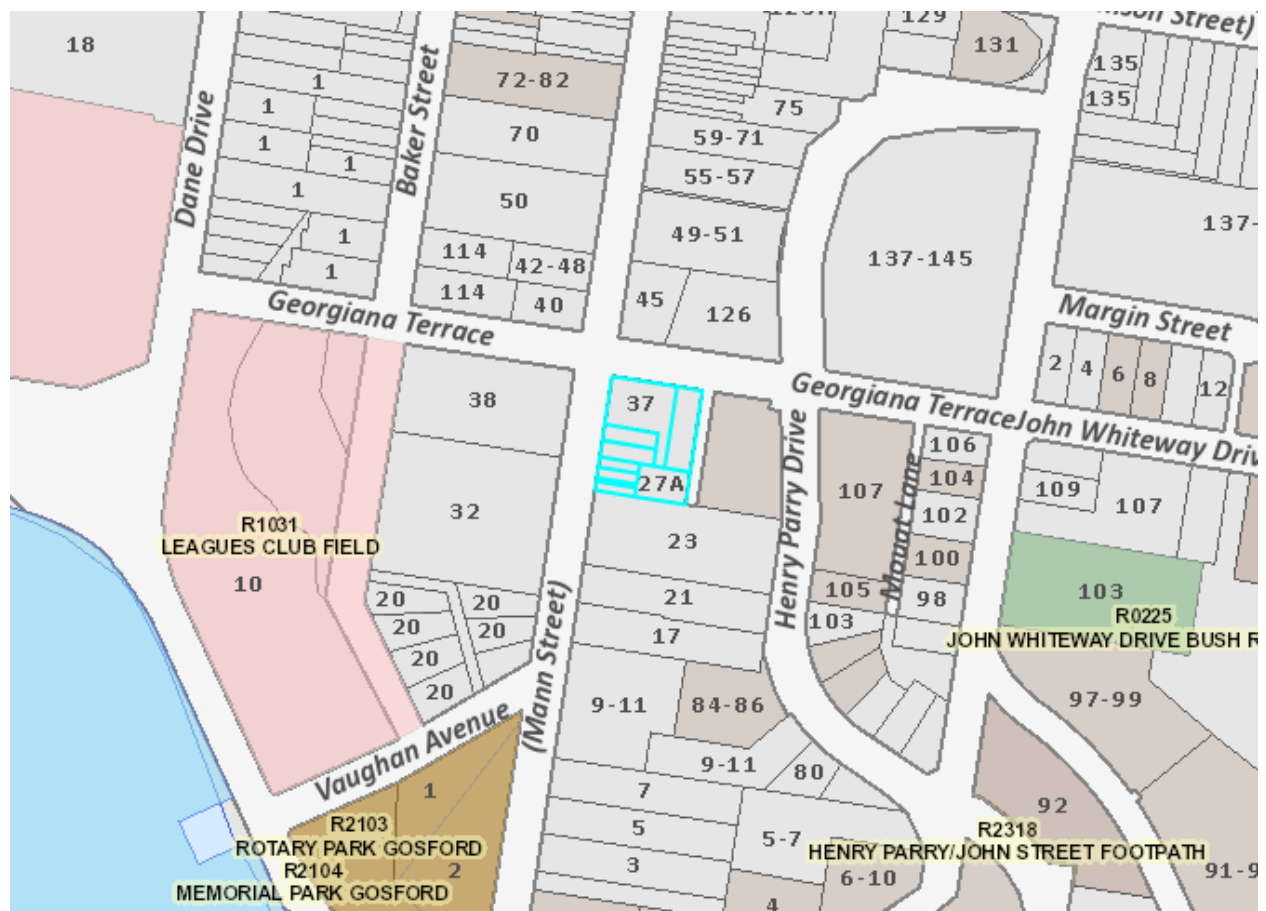


Figure 1: Site Map

1.2 The Locality

To the west is the former Gosford Public School site which is now partly redeveloped and includes a heritage building retained on the south-west corner of Mann Street and Georgiana Terrace, being the *Gosford School of Arts* (Item No. 36).

To the south is the former Gosford South Post Office (listed as a heritage item with local significance (Item No. 35) and Telstra depot. The site to the south has approval for 140 residential units under DA46272/2014 previously approved by the JRPP on 17 September 2015.

The eastern side of Parlour Lane is an 8 storey residential flat building known as “The Broadwater” Apartments. To the south of this building is a 15 storey residential flat building known as “Meridian”.

On the north-eastern side of Georgiana Terrace is the former courthouse and police station, now the Conservatorium of Music listed as a heritage item of local significance (Item No. 38).



Figure 2: Site location Aerial.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The applicant is seeking to modify the consent for Development Application 46209/2014 under section 4.55(2) of the EP&A Act including the following amendments:

- increased building height-the new scheme has a maximum building height at the lift overrun of RL75.95m compared to the approved scheme (RL72.08m), a 3.87m increase. The stepping in the top of the building in the approved scheme has been replaced by a primarily uniform building height;
- Increased FSR – the modifications include an increase in the approved GFA of 13,204.6sqm to 13,972sqm (767.4sqm). This increases the non-compliance with the FSR standard from the approved 23.12% to 28.6% (a 5.8% increase);
- Increased retail GFA from the approved 643.63sqm to 1,076sqm, a 432.37sqm increase;
- Increased parking from 209 to 217 spaces;
- changes to the building footprint and envelope including different apartment configurations and a total change to the external appearance of the development (see **Figures 3 and 4**);
- reduction in the number of apartments from 132 to 128 and the apartment mix;
- reduction in commercial GFA from the approved 644.4sqm to 310sqm (a decrease of 334.4sqm);
- changes to the communal open space including the provision of a new external swimming pool (see **Figure 4**);
- expansion of the basement and a significant reduction in the amount of deep soil area;
- changes to the treatment of the heritage item on the site ('Creighton Funeral Parlour');
- changes to the waste collection arrangements.



Figure 3 – Approved (left) and proposed (right) Mann Street view

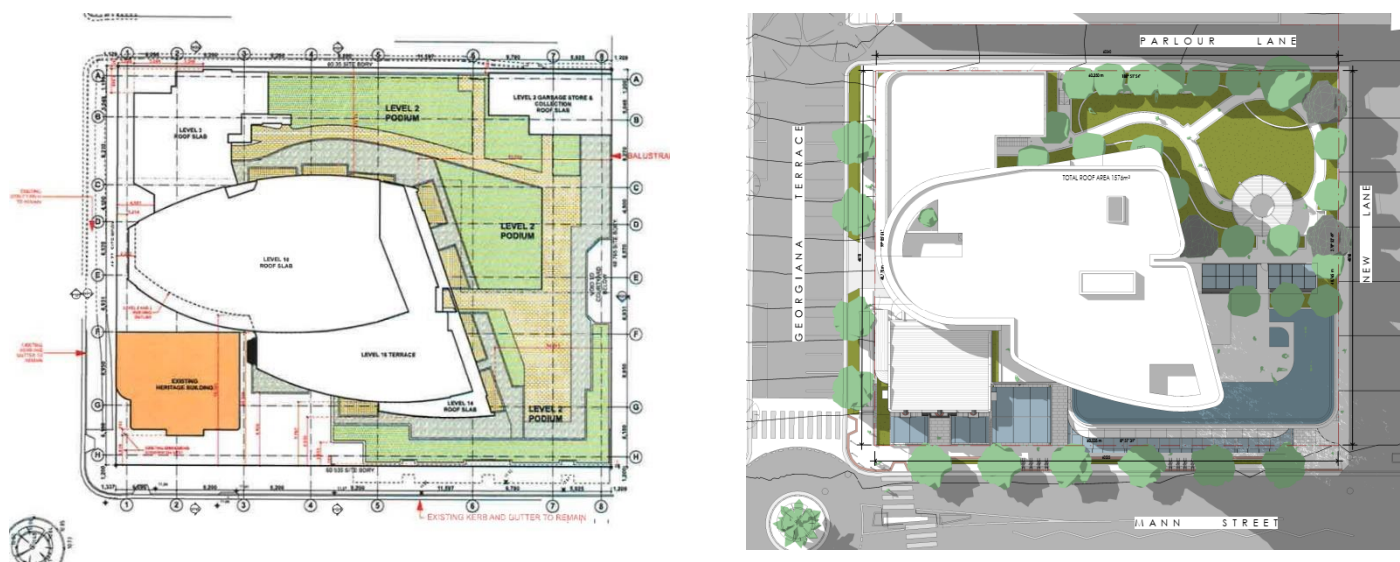


Figure 4 – Approved (left) and proposed (right) roof plan

2.2 Background

Consent was granted by the Joint Regional Planning Panel on 15 December 2016 for a Mixed Use - Retail, Commercial, Restaurant, Residential Development and Demolition of Existing Structures, subject to conditions.

An application (part 2) to modify the approved development plans was withdrawn on 17 January, 2018.

The consent granted was for two (2) years, and a 12 month extension was approved on 18 January 2018. The consent is now valid to 15 December 2019.

The consent (Part 3) was modified on 24 May 2019 to stage demolition works.

Council was advised that works under Condition 2.1 were commenced on 12 September 2019, including relocation of services, preparation of a construction management plan, demolition of two buildings, geotechnical investigation, and site survey. The development therefore has physically commenced.

The current modification application was lodged on 10 June 2022. A briefing of the Panel was held on 7 September 2022 where key issues were discussed, including referral to Panel to be investigated in regard to Gosford City Centre SEPP, physical commencement to be confirmed, comparison table to be provided to confirm that the modification is substantially the same as originally approved – requires a qualitative and quantitative analysis, management of waste collection to be outlined, driveway grade changes along Georgiana Terrace to be identified, clarification of GFA calculations required, additional car parking above DCP requirements is to be calculated as additional GFA– if relevant, urban design outcomes to be considered in assessment and identification of impacts arising from the change between approved and proposed development.

An appeal to the Land and Environment Court against the deemed refusal of the application was submitted on 6 December 2022.

A Section 34 Conciliation has commenced, and the applicant has submitted further information and amended plans as part of that process however as these are without prejudice they have not been taken into account in the subject assessment.

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in Section 4.55(2) and (3) of the EP&A Act which includes the following issues.

3.1 Section 4.55(2) of the EP&A Act

This section notes:

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) 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 and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

The relevant matters are discussed below.

Is the development proposed substantially the same as that approved?

The development to which the consent as modified relates is considered to be not substantially the same development as the development for which consent was originally granted having regard to the following:

- (a) The Proposal involves a significant increase in the approved building height (up to 14.73m), the approved GFA (at least 767.4sqm), retail floor space (around 432.37sqm) and car parking (an additional 8 spaces).
- (b) The Proposal involves a significant decrease in the amount of commercial floor space (around 334.4sqm); the amount of articulation of the Building having regard to building height and setbacks to site boundaries.
- (c) The retail floor space has increased from 643.63sqm to 1,076sqm (432.37sqm).
- (d) The orientation and layout of the apartments in the tower has significantly altered.
- (e) The appearance of the proposed building is different from the approved Building in terms of façade detail, fenestration, materials and colours.
- (f) The relationship to the heritage building has been altered as has the proposed internal and external changes proposed.
- (g) The amount of deep soil on the site has been significantly reduced from over 32% in the approved scheme to less than 5%.
- (h) The size of the basement has significantly expanded and whereas the approved scheme provided setbacks to site boundaries, the modified scheme provides no setbacks
- (h) Having regard to the above, the proposal is both quantitatively and qualitatively substantially different from the approved scheme.

Other authorities concurrence or GTA's

There was no requirement for concurrence and the approved DA was not integrated development.

Notification and consideration of submissions

Council notified the modification from 13 June 2022 to 22 July 2022. 8 submissions were received. The submissions raised the following issues, and a comment is provided in response:

Loss of solar access

Comment – some apartments in the building to the SE of the site will be the subject of additional overshadowing and this will result in non-compliance for solar access in the ADG. This is an unacceptable outcome, particularly given the non-compliances with height and FSR.

Loss of privacy

Comment – the proposal fails to meet the separation requirements of the ADG and will create unreasonable privacy impacts on the Broadwater apartments to the east.

Loss of views and outlook

Comment – the envelope of the tower is greater than permitted by the DCP and larger than approved. This will result in minor additional view impact and the building will be more visually intrusive.

Loss of airflow

Comment – additional impacts in this regard would be negligible.

Excessive height and scale

Comment – as noted above the proposal breaches the height and FSR controls more than the approved scheme and is considered excessive.

Acoustic impacts

Comment – the proposal will not notably alter the approved noise impacts. Conditions of consent could ensure that noise impacts from the external swimming pool and communal area are suitable mitigated.

Increased traffic impacts and safety impacts from vehicles

Comment – Council's expert has assessed this issue and advised further information is required.

Lack of parking

Comment – the proposal provides for the required parking with the exception of the non-residential bicycle parking which is unacceptably located in the public domain.

Increased costs to prevent access to existing visitor parking

Comment – the proposal provides for its own visitor parking.

Social impacts

Comment – the proposal will not have any unreasonable social impacts.

Construction impacts

Comment – the proposal will have similar construction impacts as the approved development, and these can be managed through appropriate conditions of consent.

Lack of a dilapidation report

Comment – dilapidation reports are required by existing conditions of consent.

Adverse heritage impacts

Comment – as noted above it is agreed that the modified scheme will have unacceptable heritage impacts.

3.2 Section 4.55(3) of the EP&A Act

Section 4.15(1) of the EP&A Act

The relevant provisions under s4.15(1)(a) are considered below.

Environmental planning instruments (s4.15(1)(a)(i))

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

The application was 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 65 (Design Quality of Residential Flat Buildings)

The Modification Application should be refused because the submitted documentation does not demonstrate that adequate regard has been had to the Design Quality Principles (DQPs) of SEPP 65 or the objectives of the Apartment Design Guide (ADG) contrary to the requirements of clause 30 of SEPP 65. In this regard:

- (a) The Proposal is contrary to the following DQPs:
 - i. Principle 1: Context and neighbourhood character – the Proposal removes the stepping of the top of the building which fails to reflect the local topography. The revised design results in a poor relationship with the heritage item on the site.
 - ii. Principle 2: Built form and scale and Principle 3: Density – the proposed increase in height and GFA results in a building that is excessively tall and bulky and will have a detrimental impact on the public domain and surrounding properties.
 - iii. Principle 4: Sustainability – the Proposal does not meet or exceed the minimum building sustainability and environmental performance standards including the solar access requirements of Section 4A of the ADG.
 - iv. Principle 6: Amenity – the Proposal does not meet the solar access requirements of Section 4A of the ADG and will have an unreasonable visual impact due to increased bulk and scale and poor design.
 - v. Principle 9: Aesthetics – the Proposal does not achieve a built form that has good proportions and a balanced composition of elements with a lack of differentiation between the podium and town and insufficient vertical and horizontal articulation to reduce building bulk. The proposed materials, colours and textures are inadequately varied and the palette excessively light in colour, exacerbating visual impacts.
- (b) The Proposal is not consistent with the following objectives of the ADG:
 - i. Objective 3B-1 – the proposed Building does not optimise solar access within the development and results in adjoining apartments in the adjoining building to the south-east failing to receive the minimum 2 hours solar access at midwinter;
 - ii. Objective 3F-1 – The building separation distance to the adjoining apartment building to the east is less than 24m contrary to the intent of Design Criteria 1 and the Proposal

exacerbates the existing non-compliance, thereby increasing potential privacy impacts. The internal separation between Apartments 307 and 309 is also inadequate.

iii. Objective 4A-1 – the Proposal does not achieve compliance with the 70% solar access requirements of Design Criteria 1. The submitted information is incorrect, for example many of the west facing apartments do not receive a reasonable amount of solar access to both living room windows and private open space at the specified times.

iv. Objective 4A-3 – there is inadequate shading and glare control on the northern and western elevations.

v. Objective 4B-3 – the number of apartments with natural cross ventilation is less than the 60% required by Design Criteria 1. The submitted information is incorrect as, for example, Apartments 303, 308 and 309 are not cross ventilated.

vi. Objective 4E-1 – the requirements of Design Criteria 1 are not met as some balconies have less area and/or dimensions than required.

vii. Objective 4G-1 – it has not been adequately demonstrated on the submitted plans that adequate, well designed storage is provided in each apartment in accordance with Design Criteria 1.

viii. Objective 4M-1 – the proposed building facades do not provide visual interest or respect the character of the local area.

ix. Objective 4N-1 – the proposed roof treatment is not suitably integrated into the building design and is excessively large and 'heavy' and will have an adverse visual impact on the streetscape and generally.

It is noted that Council has also sought an independent design review from Mr Ken Dyer which addresses the requirements of SEPP 65 and the ADG. Mr Dyer's report is provided at **Attachment A**. The summary of this assessment is noted and commented upon below.

The external appearance of the building is well considered and reasonably well articulated. The composition has a variety of building elements defining both vertical and horizontal elements. The façade has recessing and protruding elements that varies the scale and creates interest in the building. The proportions and arrangement of building elements are well resolved. Although there is comparative similarity between the previous DA approval and this proposed amendment, the two main variations being proposed (FSR & increased height) are quite significant in the overall context of the development.

Although it is stated that the proposed amended proposal is a minor numerical variation to the overall height, the increased bulk and mass of this variation has not been addressed. The previous roof features were two raking blade walls, that appeared open, lightweight, and recessive from a distance. The south-west corner of the previous design stepped down on the corner fronting Mann St (refer Appendix A).

The amended proposal effectively exceeds the previous roof height by an additional level. The current roof design protrudes over the lower building form to accentuate the increased height, bulk and form of the amended proposal from street level.

Citing "buildability" as the main issue is not a credible reason for increased height, as this should have been addressed in the previous design. The increased height/mass shows additional overshadowing on neighbouring buildings leading to loss of amenity.

Generally, the increase in the FSR is significant and linked to the increase in height, bulk, scale and mass of proposed amended design.

The residential portion of the development is increased by some 669m². This equates to some 39.3m²/level over all 17 levels. It should be noted that the topmost level is some 473m² – illustrating that the increase in FSR has directly contributed to the increase in non-conforming height. The amended proposal shows an increase of the approved footprint which can be directly attributed to the increase of FSR (ie 39.3m² per level).

The previous DA already exceeds previous/current allowable development density, so it is crucial that the proposed revised design stringently complies with the approved FSR and height requirements. More work is required to the proposed amended design to ensure compliance.

There are some additional items within the report that should be addressed by the applicant to ensure a better overall compliance with the ADG and other planning requirements.

Comment – whilst there is not strict agreement between the author and Mr Dyer on the specific non-compliances with the ADG and the extent to which the proposal needs to conform with the approved height and FSR, there is agreement that the increases in height and bulk are unacceptable.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of this SEE relates to vegetation in non-rural areas. Council's Landscape Officer has provided the following comments about tree removal:

As the Palm proposed to be relocated is listed on Council's Significant Tree Register, Council's preference is for it to remain in its current location and the development designed to avoid the tree. If the applicant wishes to stay with the current proposal to relocate the palm, then Council requires supporting documentation from a qualified Arborist well experienced in transplanting of large Palm trees with a statement from a tree transplanting company, to ensure the tree can be successfully transplanted.

State Environmental Planning Policy (Resilience and Hazards) 2021

The following provisions of this SEPP are relevant:

Chapter 2 Coastal management-the site is within the Coastal Environment Area and partly within the Coast Use Area pursuant to the relevant mapping (see **Figure 6**).

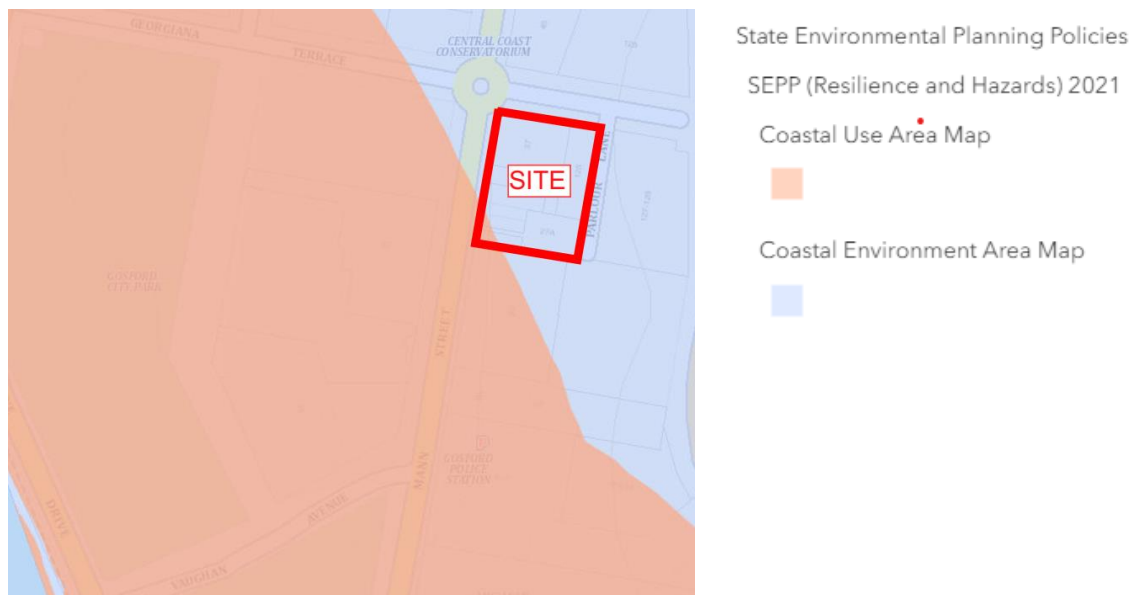


Figure 6 – Coastal Areas mapping

The proposal will not have any adverse impacts on the environment and therefore meets the objectives for the coastal environment area.

The proposal will have an adverse visual impact on the coastal use area as the proposed height and FSR is excessive and results in a building form of inadequate articulation. This is contrary to the relevant provisions of Clause 2.11 of this SEPP which requires that development is 'designed, sited and will be managed to avoid an adverse impact' on, amongst other things, 'the visual amenity and scenic quality of the coast.'

Chapter 4 Remediation of land-the issue of contamination has been considered in previous assessments and the proposed modifications do not alter the relevant outcomes.

State Environmental Planning Policy (Precincts—Regional) 2021 (Regional Precincts SEPP)

Chapter 5 of this SEPP relates to Gosford City Centre, which includes the subject site. The relevant provisions are discussed below.

Clause 5.13 – this clause requires the consent authority to consider the objectives of the zone in which the development is located. The objectives of the MU1 zone are noted and commented upon below.

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities, social, education and health services and higher density residential development.*
- *To allow development in Point Frederick to take advantage of and retain view corridors while avoiding a continuous built edge along the waterfront.*

- *To create opportunities to improve the public domain and pedestrian links of Gosford City Centre.*
- *To enliven the Gosford waterfront by allowing a wide range of commercial, retail and residential activities immediately adjacent to it and increase opportunities for more interaction between public and private domains.*
- *To protect and enhance the scenic qualities and character of Gosford City Centre.*

The proposed development does not meet these objectives as it does not 'protect and enhance the scenic qualities and character of Gosford City Centre'.

Clause 5.25 Height of Buildings – the site is subject to 2 height controls, which the land to Mann Street having a limit of 36m and the land to Parlour Lane having a limit of 24m (see **Figure 7**).



Figure 7 – Building height controls

The assessment report for the approved building indicated a maximum height of 60.18m within that part of the site with a 35m height control (an exceedance of 67%) and a maximum height within the 24m height control area of 54.28m (a 126% exceedance). Whilst there was a proposed amendment to the LEP at that time that sought to clarify the application of 30% bonus provisions for height and FSR, this control did not technically apply. However the fact that other development in the area had been approved using the bonus provisions was a consideration in the assessment of the proposal.

The proposed modifications seek not only to increase the maximum height approved (by 3.87m) but to remove the stepping provided in the top part of the building. The lowest part of these stepped elements (in the SW corner of the building above Level 9) is increased in height by 14.73m. This loss of articulation increases the height, bulk and scale of the building and is contrary to the following height objectives:

- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity,*
- (e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area.*

The proposed height does not provide any notable stepping of the form that responds to either the topography of the site or the stepped nature of the height controls. This creates adverse impacts including increased overshadowing and view impacts.

Clause 5.26 Floor space ratio – the site is subject to 2 FSR controls that reflect the height controls noted above. In this regard that part of the site along Mann Street is subject to a 4:1 control and that part along Parlour Lane is subject to a 3:1 control. As the approved and proposed schemes do not have any real regard to the distribution of these controls, it is more helpful to compare the schemes in terms of how much GFA is permitted over the whole site. The approved scheme provided 13,972sqm of GFA, 23.12% more than that permitted. The proposal increases approved GFA by 767.4sqm, increasing the percentage of exceedance of the control to 28.6% (a 5.8% increase). This further increases the bulk and scale of the building and results in failure to achieve the following objectives of the FSR control:

- (b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
-
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,*

As discussed in detail elsewhere in this assessment, the proposal is not in keeping with the desired future character of the area, has adverse impacts on adjoining properties and is poorly modulated.

Clause 5.36 Heritage conservation – the proposal creates a poorer relationship with the heritage item than the approved scheme. As can be seen in the following comparison, the approved scheme provides a physical separation to the rear of the item on Georgiana Terrace and provides for a more sensitive distribution of built form, curving the tower form more generously away from the item than the proposed scheme.

Council's heritage expert has provided the following comments regarding heritage impacts:
The Modification Application should be refused because the Proposal detrimentally impacts the heritage item on the Site, contrary to the principles and controls in Section 10.1 of GCCDCP.
Particulars

(a) The heritage item on the Site, the Creighton Funeral Parlour and associated garage buildings (Item) provide a rare example of the Art Deco style and a rare example of this use & building type within NSW.

(b) The development approved by the Consent retains the Funeral Parlour and associated garage buildings, with the new Building behind and above the Item.

(c) The Proposal proposes an additional level of retail use above the garage buildings, with a proposed solid white masonry balustrade and glazed wall directly above the stone façade of the garage. These elements would result in the garage no longer appearing as an independent free standing heritage building, but as a flat façade stuck onto the Building, not retaining the legibility between the Item and its surrounding.

Comment – The above is contrary to the general principles in Section 10.1 of GCCDCP, that require:

i. Scale – sufficient curtilage around the heritage item to assist interpretation of its heritage significance,

ii Architectural Form – the basic architectural form of any new work needs to respect what exists



Figure 8 Approved and proposed relationship to heritage item

5.45 Design excellence – The proposal is contrary to these provisions as it does not:

- Achieve a high standard of architectural design, materials and detailing appropriate to the building type and location;
- Have a form and external appearance that will improve the quality and amenity of the public domain;
- Demonstrate consistency with the relevant requirements of Gosford City Centre DCP;
- Had appropriate regard for heritage issues;

- Create an appropriate relationship with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form;
- Have appropriate bulk, massing and modulation;
- Achieve an appropriate outcome in relation to overshadowing.

Clause 5.46 Exceptions to height and floor space in Zones B3, B4 and B6 – It is noted that the modification application does not indicate any need to rely on the provisions of this clause to allow approval to be granted. Whilst this may be legally correct, these provisions are still able to be considered in the assessment of the proposal.

The proposal is contrary to these provisions as a design review panel has not considered the development, the additional floor space and height is not solely attributable to commercial use, and it has not been demonstrated that *'the building meets or exceeds minimum building sustainability and environmental performance standards'*.

Clause 5.47 Car parking in Zones B3 and B4 –The proposal provides the parking by this clause.

Clause 5.48 Active street frontages -the proposal meets the requirements for active frontages detailed in this clause.

Clause 5.52 Solar access to key public open spaces – the proposal does not increase impacts on public open space beyond that already created by other approved development.

Clause 5.53 Key vistas and view corridors - the proposal does not increase impacts on any key vistas of view corridors.

Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are no draft EPI's of relevant to this assessment.

Provisions of any Development Control Plan (s4.15(1)(a)(iii))

Gosford City Centre Development Control Plan 2018

The relevant provisions are discussed below.

Section 3.4 City South Character Area – the proposal is not inconsistent with the objectives for this area with the exception that it does not adequately 'conserve significant local heritage buildings and landscapes which contribute to the character of the City South', as noted above.

Section 4.3 Solar access to key public spaces – as noted above the proposal does not increase impacts on public open space beyond that already created by other approved development.

Section 5.2.1 Street setbacks and rear setbacks – the proposal is generally consistent with these requirements and does not significantly alter the approved setbacks.

Section 5.2.2 Street wall heights and upper podium - the proposal is generally consistent with these requirements and does not significantly alter the approved podium heights and setbacks.

Section 5.2.3 Active street frontages and street address - the proposal is generally consistent with these requirements and does not significantly alter the approved arrangements. The amount of retail space proposed is increased in the modified scheme.

Section 5.2.5 Slender towers with high amenity – the proposed residential tower has a floorplate of around 825sqm which exceeds the 750sqm maximum permitted and is greater than the approved building. The widest part of the building North/Western Elevation is slightly greater than the 45m maximum width permitted but is commensurate with the approved building. The tower is setback less than 8m to the street in some cases, but this is balanced by much greater setbacks elsewhere.

As the tower length/width is over 30m it is required to be:

- a. expressed as two vertical forms*
- b. include a clear 'break' of minimum 1m width and 1m depth*
- c. include a stepped height difference of minimum two storeys*

The proposal excessively emphasises the horizontal elements and does not clearly express two vertical forms as required by the DCP and shown in **Figure 9** below. It also fails to provide a step in the top of the building as required. The approved building included some stepping albeit not as indicated in the DCP. Notwithstanding, the lack of any notable stepping emphasises the bulk and scale of the building and creates an unacceptable design outcome which is at odds with the objectives of the DCP for 'slender towers'.

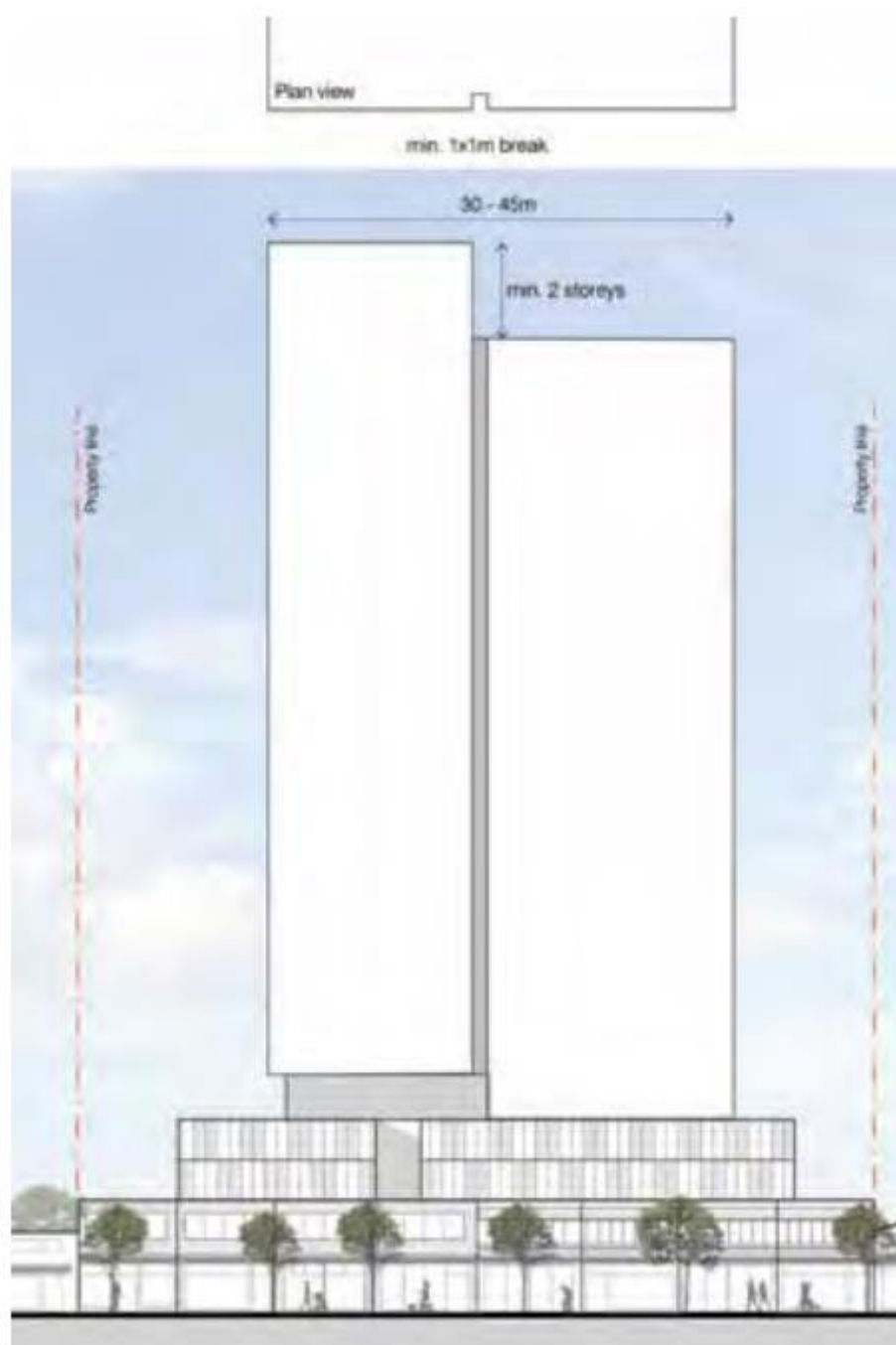


Diagram showing breaking down of bulk on long tower facades

Figure 9 Extract from DCP

Section 5.2.6 Fine grain frontages – the podium has a length of more than 40m however it is sufficiently broken up as it responds to the existing heritage buildings on the side to the Mann Street frontage. The proposed modifications are generally acceptable in this regard.

Section 5.2.14 Site cover and deep soil zones – the approved scheme complied with the 75% site cover limit and 32.6% of the site as deep soil area. The modified scheme does not provide any details of the compliance with these controls however as the basement has expanded to the site boundaries (except beneath the heritage item) the deep soil area is

drastically reduced and is now limited to a small strip on Georgiana Terrace adjoining the heritage building. Whilst this is partly offset by public domain planting, the significant reduction has not been adequately justified by the applicant.

Section 5.2.17 Building Exteriors – the modifications are not consistent with the requirements of this section as follows:

1. Adjoining buildings (particularly heritage buildings) are to be considered in the design of new buildings in terms of:

- a. appropriate alignment and street frontage heights,*
- b. setbacks above street frontage heights,*
- c. appropriate materials and finishes selection,*
- d. facade proportions including horizontal or vertical emphasis.*

Comment – As noted above the proposal is considered to have a less desirable relationship with the heritage item than the approved scheme.

6. To assist articulation and visual interest, expanses of any single material is to be avoided

Comment – white painted rendered concrete dominates the façade and results in a building that appears overly bulky.

Section 7.4 On-Site Parking – the proposal provides for the additional parking required by the modifications. However in relation to the bicycle parking for the non-residential component, this is proposed to be located within the public domain on Mann Street. This is not acceptable and such parking should be relocated within the site.

Sections 8.2 Energy Efficiency and Conservation and 8.3 Water Conservation – whilst a BASIX certificate has been provided, the requirements relating to non-residential development have not been addressed by the proposal.

Section 8.6 Waste and recycling – internal comments from Council Waste Officer indicated that further information is required to address the proposed changes to the approved waste arrangements.

Section 10.1 Heritage items – as noted above the proposal results in a poorer relationship with the heritage item than the approved scheme and is inconsistent with the following provisions of this section:

- 1. Scale. The scale and bulk of any new building or work must be in scale with the original building and new development must not obstruct important views or vistas of the item.*
- 3. Architectural form. The basic architectural form of any new work needs to respect what exists. Issues to consider are the roof form, proportion and location of windows and doors.*
- 5. Materials and finishes. Existing materials should be reused where possible. New materials and detailing must be compatible with the original and consideration must be given to the colour, texture and type of materials and finishes*

11. Reduced curtilage. This curtilage is less than the lot boundary of the property and it arises where the significance of the item and its interpretation is not dependant on having a large curtilage extending to a lot boundary. For examples are a large estate with sufficient land on the lot that can be subdivided independent of the heritage significance of any item on that land, or a new dwelling adjacent but not impacting on the existing heritage item on that land. In such cases, it is necessary to identify a curtilage that enables the heritage significance of the item to be retained.

13. Infill development..... Unsympathetic infill development will disrupt the unity of a group of buildings and may spoil the existing character.

Provisions of Regulations (s4.15(1)(a)(iv))

There are no matters under the 2021 EP&A Regulation that are of relevance to the proposal.

Likely Impacts of Development (s4.15(1)(b))

The likely impacts of the development have been addressed elsewhere in this report.

Suitability of the site (s4.15(1)(c))

The site is not suitable for the proposal as it not large enough to accommodate a building of the size proposed. This creates an overdevelopment which has numerous adverse impacts as discussed elsewhere in this report.

Public Submissions (s4.15(1)(d))

The 8 submission that were made are considered in Section 3.1 of this report.

Public interest (s4.15(1)(e))

The proposal is not in the public interest as it provides for further breaches of the height and FSR controls that were already significantly exceeded by the approved development. The additional height and FSR has adverse impacts as discussed in this report including impacts on the public domain such as visual impacts.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

There are no agency referrals required for the subject modification application.

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **the following table.**

Table: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted information and indicated that additional information was required in relation to: Compliance with driveway, car park and access design standards; Compliance with access standards for waste vehicles; Updated plans to reflect the above.	N
Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised no objections.	Y
Water & Sewer	Supported, subject to conditions	Y
Building	NA	
Health	NA	
Waste	The Waste Officer raised concerns with waste vehicle access and garbage disposal	N
Heritage	Council's Architect has provided heritage comments through out the DA's history. There are no issues specifically in relation to the heritage item other than acknowledgement that the amended design will further dominate the funeral parlour	Y

4.3 Notification and Community Consultation

The 8 submission that were made are considered in Section 3.1 of this report.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

- 5.1 *Excessive height* - The proposed built form is considerably higher than the approved built form which is already 67-126% greater than permitted by Clause 5.25 of State Environmental Planning Policy (Precincts—Regional) 2021. The approved stepping of the top of the building has been removed, creating a form which is not a sympathetic response to the existing and desired future context and one that has adverse impacts on neighbours and the scenic quality of the area.
- 5.2 *Excessive bulk and scale* - The proposed built form has 5.8% more GFA than the approved built form (which is already 23% greater than permitted by Clause 5.26 of State Environmental Planning Policy (Precincts—Regional) 2021). The approved stepping of the top of the building has been removed, creating a form which is not a sympathetic response to the existing and desired future context and one that has adverse impacts on neighbours and the scenic quality of the area. The lack of

appropriate articulation and the monotonous use of white rendered concrete also adds to the visual bulk of the building.

- 5.3 *Inconsistency with SEPP 65 and the ADG* – The above and other issues result in the proposal being inconsistent with the Design Quality Principles of SEPP 65 and failure to meet many of the objectives of Parts 3 and 4 of the ADG. The submitted Design Verification Statement is not in accordance with Clause 102 of the EP&A Regulation.
- 5.4 *Inconsistency with the provisions of Gosford City Centre DCP* – the proposal is inconsistent with the built form requirements of Section 5.25, the deep soil requirements of Section 5.2.14, the building exterior requirements of Section 5.2.17, the bicycle parking requirements of Section 7.4, the energy efficiency and water conservation requirements of Section 8.2 and 8.3 respectively, the waste management requirements of Section 8.6 and the heritage requirements of Section 10.1.
- 5.5 *Inappropriate treatment of the existing heritage item* – the proposal is inconsistent with the requirements of Clause 5.36 of State Environmental Planning Policy (Precincts—Regional) 2021 and Section 10.1 of the Gosford City Centre DCP as it provides a poorer interface with the heritage item at the Georgian Terrace frontage than the approved scheme.
- 5.6 *Impact on trees* – the proposal includes relocation of an existing Palm Tree however the submitted details are inadequate.
- 5.7 *Parking, Access and Waste* - the submitted details are inadequate to make a proper assessment.
- 5.8 *Not substantially the same development* - having regard to the above and the detailed discussions in this assessment, the proposal is both quantitatively and qualitatively substantially different from the approved scheme.
- 5.9 *The proposal is inconsistent with the reasons given by the consent authority for the grant of the consent* - The JRPP provided a Statement of Reasons for their decision to grant the consent on 15 December 2016 (see copy at **Attachment A**). As discussed in detail the proposal is at odds with some of these reasons including the proposed increase in height and FSR and the relationship to the heritage item.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported for the reasons outlined in the recommendation below.

7. RECOMMENDATION

It is recommended:

- That the Modification Application [MOD/DA No DA46209/2014/D] for Mixed Use

Development - Retail, Commercial, Restaurant, Residential Development and Demolition of Existing Structures at 27-37 Mann St and 125 Georgiana Terrace Gosford be REFUSED pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* detailed in the reasons for refusal attached to this report at Attachment A; and

- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided [as relevant to the application]:

- Attachment A: Draft Reasons for refusal
- Attachment B: JRPP Reasons for Approval of Original DA
- Attachment C: Urban Design Assessment by Mr Ken Dyer
- Attachment D: Architectural Plans
- Attachment E: Statement of Environmental Effects

Attachment A

Reasons for refusal

1. The Modification Application must be refused, as contrary to Section 4.55(2)(a), the development to which the consent as modified relates is not substantially the same development as the development for which consent was originally granted. In this regard:
 - (a) The Proposal involves a significant increase in the approved building height (up to 14.73m), the approved GFA (at least 767.4sqm), retail floor space (around 432.37sqm) and car parking (an additional 8 spaces).
 - (b) The Proposal involves a significant decrease in the amount of commercial floor space (around 334.4sqm); the amount of articulation of the Building having regard to building height and setbacks to site boundaries.
 - (c) The retail floor space has increased from 643.63sqm to 1,076sqm (432.37sqm).
 - (d) The orientation and layout of the apartments in the tower has significantly altered.
 - (e) The appearance of the proposed Building is different from the approved Building in terms of façade detail, fenestration, materials and colours.
 - (f) The relationship to the heritage building has been altered as has the proposed internal and external changes proposed.
 - (g) Having regard to the above, the proposal is both quantitatively and qualitatively substantially different from the approved scheme.

2. The Modification Application should be refused pursuant to Section 4.55(3)(a) of the EPA Act as the proposed changes to the development are inconsistent with the reasons given by the JRPP for the grant of the Consent. In this regard:
 - (a) The JRPP provided a Statement of Reasons for their decision to grant the Consent on 15 December 2016 (**Reasons**).
 - (b) The Reasons explain why significant exceedances of the applicable height and FSR development standards were supported. The height and FSR development standards that applied then are the same as currently apply. One reason that the JRPP supported the exceedance was due to application of a 30% “bonus” provision in draft clause 8.9 of the *Gosford Local Environmental Plan 2014*, that, if made, the JRPP considered would apply to the Site and change the likely future character of the area.
 - (c) The draft bonus provisions that the JRPP relied on are not in force. Given the Proposal involves significant increases in height and FSR, additional exceedances are not considered appropriate, having regard to the JRPP’s partial reliance on bonus provisions that do not apply.
 - (d) The Reasons noted in relation to heritage issues that, *“the public domain was appropriately incorporated into the retained building /recessed “garage” and the new building was separated from the retained building, with its curved shape helping to reduce the visual impacts of the proposed bulk and scale.”* The Proposal would significantly alter this element so that the Building has minimal separation from the heritage item.

3. The Modification Application should be refused because the Proposal detrimentally impacts the heritage item on the Site, contrary to the principles and controls in Section 10.1 of GCCDCP. In this regard:

- (a) The heritage item on the Site, the Creighton Funeral Parlour and associated garage buildings (**Item**) provide a rare example of the Art Deco style and a rare example of this use & building type within NSW.
 - (b) The development approved by the Consent retains the Funeral Parlour and associated garage buildings, with the new Building behind and above the Item.
 - (c) The Proposal proposes an additional level of retail use above the garage buildings, with a proposed solid white masonry balustrade and glazed wall directly above the stone façade of the garage. These elements would result in the garage no longer appearing as an independent free standing heritage building, but as a flat façade stuck onto the Building, not retaining the legibility between the Item and its surrounding. This is contrary to the general principles in Section 10.1 of GCCDCP, that require:
 - i. Scale – sufficient curtilage around the heritage item to assist interpretation of its heritage significance,
 - ii. Architectural Form – the basic architectural form of any new work needs to respect what exists.
4. The Modification Application should be refused because the proposed Building significantly breaches the applicable 24m and 36m height controls under Clause 5.25 of the Regional Precincts SEPP, fails to meet the objectives of the clause and does not satisfy the requirements for breaching the height control detailed in Clause 5.46 of the Regional Precincts SEPP. In this regard:
- (a) The Proposal increases the degree of exceedance of the height control compared to the approved building. The exceedance is increased by up to 14.73m.
 - (b) The form of the top of the Building is changed from a 'stepped' form to one that is primarily uniform. These parts of the building (in both proposed and approved schemes) are above the height control and the increase in the height exceedances creates an excessively tall and bulky appearance.
 - (c) The Proposal will fail to meet the following objectives of clause 5.25(1):
 - (b) *to permit building heights that encourage high quality urbanform,*
 - (c) *to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight.....*
 - (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.*
 - (d) The Proposal will not satisfy the requirements of Cause 5.46(3) as it has not been demonstrated that the building meets or exceed the minimum building sustainability and environmental performance standards.
5. The Modification Application should be refused because the proposed Building significantly breaches the applicable 3:1 and 4:1 FSR controls under Clause 5.26 of the Regional Precincts SEPP and fails to meet the objectives of this clause. In this regard:
- (a) The Proposal increases the degree of non-compliance with the FSR control compared to the approved building. The permitted GFA on the site is 10,725sqm. The approved GFA was 13,204.6sqm. This is 2,479.6sqm (23.12%) above that permitted. The proposed GFA is at least 13,972sqm. This is 3,067sqm (28.6%) above that permitted and 767.4sqm greater than approved (a 5.8% increase).

- (b) The increase in GFA increases the bulk and scale of the proposed Building and reduces articulation, resulting in an overly bulky and dominating appearance when viewed from the public domain and surrounding development.
- (c) The Proposal will fail to meet the following objectives of clause 5.26(1):

- (b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

6. The Modification Application should be refused because the Proposal does not achieve design excellence having regard to the requirements of Clause 5.45 of the Regional Precincts SEPP. In this regard:

- (a) The Proposal has not adequately demonstrated that design excellence is achieved in regard to the provisions of clause 5.45(4)(a), (b), (c), (d), (e)(i), (e)(ii), (e)(iii), (e)(iv), (e)(v), (e)(vi), (e)(vii), (e)(viii), (e)(ix), (e)(x).
- (b) The Proposal fails to meet the objective of clause 5.45 to: *ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Gosford City Centre.* The design of the Proposal will result in a poor outcome in relation to the visual and built character of the City Centre.

7. The Modification Application should be refused because the submitted 'Design Verification Statement' (**DVS**) does not meet the requirements of the EPA Reg. In this regard:

- (a) The DVS does not:
 - (b) verify if the qualified designer designed, or directed the design of, the development for which the original development consent was granted (the original development);*
 - (c) explain how the development addresses—*
 - (i)*
 - (ii) the objectives in the Apartment Design Guide, and*
 - (d) verify that the modification does not—*
 - (i) diminish or detract from the design quality of the original development, or*
 - (ii) compromise the design intent of the original development.*

8. The Modification Application should be refused because the submitted documentation does not demonstrate that adequate regard has been had to the Design Quality Principles (**DQPs**) or the objectives of the Apartment Design Guide(**ADG**) contrary to the requirements of clause 30 of SEPP 65. In this regard:

(a) The Proposal is contrary to the following DQPs:

- i. Principle 1: Context and neighbourhood character – the Proposal removes the stepping of the top of the building which fails to reflect the local topography and results in an inappropriate relationship with the heritage item on the site.
- ii. Principle 2: Built form and scale and Principle 3: Density – the proposed increase in height and GFA results in a building that is excessively tall and bulky and will have a detrimental impact on the public domain and surrounding properties.
- iii. Principle 4: Sustainability – the Proposal does not meet or exceed the minimum building sustainability and environmental performance standards including the solar access requirements of Section 4A of the ADG.
- iv. Principle 6: Amenity - the Proposal does not meet the solar access requirements of Section 4A of the ADG and will have an unreasonable visual impact due to increased bulk and scale and poor design.
- v. Principle 9: Aesthetics – the Proposal does not achieve a built form that has good proportions and a balanced composition of elements with a lack of differentiation between the podium and town and insufficient vertical and horizontal articulation to reduce building bulk. The proposed materials, colours and textures are inadequately varied and the palette excessively light in colour, exacerbating visual impacts.

(b) The Proposal is not consistent with the following objectives of the ADG:

- i. Objective 3B-1 – the proposed Building does not optimise solar access within the development;
- ii. Objective 3F-1 – The building separation distance to the adjoining apartment building to the west is less than 24m contrary to the intent of Design Criteria 1 and the Proposal exacerbates the existing non-compliance, thereby increasing potential privacy impacts. The internal separation between Apartments 307 and 309 is also inadequate.
- iii. Objective 4A-1 – the Proposal does not achieve compliance with the 70% solar access requirements of Design Criteria 1. The submitted information is incorrect, for example many of the east facing apartments do not receive a reasonable amount of solar access to both living room windows and private open space at the specified times.
- iv. Objective 4A-3 – there is inadequate shading and glare control on the northern and western elevations.
- v. Objective 4B-3 – the number of apartments with natural cross ventilation is less than the 60% required by Design Criteria 1. The submitted information is incorrect as, for example, Apartments 303, 308 and 309 are not cross ventilated.
- vi. Objective 4E-1 – the requirements of Design Criteria 1 are not met as some balconies have less area and/or dimensions than required.
- vii. Objective 4G-1 – it has not been adequately demonstrated on the submitted plans that adequate, well designed storage is

- provided in each apartment in accordance with Design Criteria 1.
- viii. Objective 4M-1 – the proposed building facades do not provide visual interest or respect the character of the local area.
 - ix. Objective 4N-1 – the proposed roof treatment is not suitably integrated into the building design and is excessively large and 'heavy' and will have an adverse visual impact on the streetscape and generally.
9. The Modification Application should be refused because inadequate regard has been had to the provisions of the DCP detailed below, and the Building does not achieve the objectives of the controls. In this regard:

- (a) The Proposal does not achieve the following objectives and controls of 5.2.5 Slender towers with high amenity of GCCDCP:

Objectives

...

C Achieve an attractive city skyline which is sympathetic to the topography and context.

D Allow for high internal amenity to development, including natural light and ventilation

E Mitigate potential adverse impacts that tall and bulky buildings might have on the public domain

F Reduce the apparent bulk and scale of buildings by breaking up expanses of building wall with modulation of form and articulation of facades.

...

Controls

...

3. The maximum building length for towers in any direction is 45m.

4. All tower forms must be set back a minimum 8m from the street wallfrontage, however reductions may be accepted (from 8m to 6m) on some sites where it is demonstrated that this control would compromise the ability to design the podium or tower appropriately. All building frontages for a tower with a length over 30m should be:

a. expressed as two vertical forms

b. include a clear 'break' of minimum 1m width and 1m depth

c. include a stepped height difference of minimum two storeys

...

The proposed building design elements, including the façade, are not consistent with the above and are monotonous and insufficiently articulated and lack a suitable variety of materials, finishes and colours.

- (b) The Proposal does not achieve the following objectives and controls of 5.2.14 Site cover and deep soil zones of the GCCDCP

Objectives

A To provide an area on sites that enables soft landscaping and deep soil planting, permitting the retention and/or planting of trees that will grow to a large or medium size.

B To limit building bulk on a site and improve the amenity of developments, allowing for good daylight access, ventilation, and improved visual privacy.

C To provide passive and active recreational opportunities.

Controls

1. The maximum site cover for mixed used development in the B4 zone is development is 75%.

2. All developments with a residential component in all zones except the Commercial Core must include a deep soil zone.

3. The deep soil zone shall comprise no less than 15% of the total site area (or proportionate to the percentage of residential uses in a mixed-use development). It is to be provided preferably in one continuous block but otherwise with no dimension (width or length) less than 6 metres.

...

5. Where deep soil zones are provided, they must accommodate existing mature trees as well as allowing for the planting of trees/shrubs that will grow to be mature plants.

6. No structures, works or excavations that may restrict vegetation growth are permitted in this zone (including but not limited to car parking, hard paving, patios, decks and drying areas).

The Proposal increases the site cover of the approved development, particularly at the street frontage in the vicinity of the heritage building where there is the opportunity for additional deep soil planting.

- (c) The Proposal does not achieve the following objectives and controls of 5.2.17 Building Exteriors of GCCDCP:

Objectives

To ensure that new buildings in Gosford:

A Contribute positively to the streetscape and public domain by means of high quality architecture and robust selection of materials and finishes,

B Provide richness of detail and architectural interest especially at visually prominent parts of buildings such as lower levels and roof tops,

C Present appropriate design responses to nearby development that complement the streetscape,

D Clearly define the adjoining streets, street corners and public spaces and avoid ambiguous external spaces with poor pedestrian amenity and security,

E Maintain a pedestrian scale in the articulation and detailing of the lower levels of the building, and

F Contribute to a visually interesting skyline.

Controls

1. Adjoining buildings (particularly heritage buildings) are to be considered in the design of new buildings in terms of:

a. appropriate alignment and street frontage heights,

b. setbacks above street frontage heights,

c. appropriate materials and finishes selection,

d. facade proportions including horizontal or vertical emphasis.

...

3. *Articulate façades so that they address the street and add visual interest.*

...

6. *To assist articulation and visual interest, expanses of any single material is to be avoided.*

The proposed building design elements, including the façade, are not consistent with the above and are monotonous and insufficiently articulated and lack a suitable variety of materials, finishes and colours.

The roof design is excessive in scale, adds to the overall bulk of the building, emphasising visual bulk and scale and dominates the top part of the building.

10. The Modification Application should be refused due to the proposal to relocate the existing Cabbage Tree Palm adjacent to Georgiana Terrace. In this regard:

- (a) The *Livistona australis* (Cabbage Tree Palm) located on the Site, adjacent to Georgiana Terrace, is listed in the Central Coast Council Significant Tree Register.
- (b) The Proposal proposes the relocation of the Cabbage Tree Palm approximately 4m to the west of its existing location. Given the significance of the tree the relocation is not supported.
- (c) Further, no report from a qualified arborist, or a statement by from an experienced tree transplanting consultant has been provided to demonstrate that the tree is capable of being successfully transplanted.

11. The Modification Application should be refused because it has not been demonstrated that vehicles (including waste vehicles) can safely access and enter the Site. In this regard:

- (a) The Turning Path Assessment at Appendix E of the Traffic and Parking Assessment Issue B prepared by TTPA dated April 2022 shows waste vehicles turning right from Georgiana Terrace to enter the Site, and turning left onto Georgiana Terrace to exit the Site.
- (b) For the vehicle to subsequently access the properties further east up Georgiana Terrace, and in Parlour Lane, the waste vehicle will first be required to make a 180 degree turn around the roundabout at the intersection of Mann Street and Georgiana Terrace. Swept path analysis is required to show that waste vehicles can complete this turn.
- (c) The Proposal does not provide a swept path analysis to show that waste vehicles can enter the Site using a left turn while travelling east on Georgiana Terrace.
- (d) The Turning Path Assessment adopts a turning radius of 9.95m, rather than 12.5m as required by Control 4 of Section 7.5 of the Gosford City Centre Development Control Plan 2018
- (e) Updated Traffic/access Assessment (post TTPA Traffic and Parking Assessment S4.55 Application Ref 22.50 Issue B April 2022) and plans from a suitably qualified and experienced consulting engineer who shall certify that the designs are in accordance with Australian

Standard 2890. The assessment and plans must include manoeuvring template paths (include 300mm clearances from structures and landscaping) for AS2890.2 12.5m HRV (garbage truck), all vehicles to enter/exit site in a forward direction, provide for pedestrian Sight triangles (wholly within the site) in accordance with Fig 3.3. All proposed access roadways, ramps, curve radii and car parking dimensions to be shown. Plans to include the surveyed extents of the road reserve, footways, existing road pavement, parallel & 90degree car parking and extent of existing car parking affected on both sides of Georgiana Tce. The design is to ensure the swept turning paths of the AS2890.2:2018 12.5m HRV is within the extents of the existing Georgiana Tce. road pavement.

- (f) Updated driveway access design based on survey data/levels (that has a width to cater for swept turning paths of the AS2890.2:2018 12.5m HRV in Georgiana Terrace) along centre line and both edges long sections and cross sections design from the centreline of Georgiana Terrace to the Waste servicing area and car parking spaces in accordance with Australian Standard 2890 and Council's Design Specification to include reduced levels (RL), chainages / distances along the driveway/car parking spaces and grades expressed as percentages. Notes: The design RL level at the back of the layback is 50mm below the top of kerb RL. The vehicle crossing shall not encroach north of the kerb and gutter into the road pavement. The grade of the vehicle crossing along its eastern edge shall be +2% from the rear of the gutter crossing to the property boundary. The grade of the vehicle crossing along its western edge shall be +5% from the rear of the gutter crossing to the property boundary. Provide pedestrian Sight triangles (wholly within the site) in accordance with Fig 3.3 of Australian Standard 2890. Dimension sight triangles.