

**REQUEST FOR EXEMPTION  
STATE ENVIRONMENTAL PLANNING POLICY (GOSFORD CITY  
CENTRE) (SEPP(GCC))2018**

**CLAUSE 4.6**

**EXCEPTIONS TO DEVELOPMENT STANDARDS**

**APPLICANT:** Coastplan Consulting  
**PROPOSAL:** Demolition of Existing Dwellings & Construction of a Residential Flat Building  
**PROPERTY:** Lot 6 & 7 DP 28807 No 93-95 Henry Parry Drive, Gosford  
**RELEVANT DEVELOPMENT STANDARD:** Clause 4.3 Height of Buildings

**Introduction**

This submission is a request for exemption to the development standard contained in Clause 4.3 of SEPP(Gosford City Centre) 2018, specifically, the 18m height limit under Clause 4.3(2) of the SEPP which applies to the subject land. This request, on behalf of the applicant, seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The submission seeks to enable council to be satisfied that-

- (i) this written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

**The Development Standard to which the request relates**

**1. Height of Buildings**

Clause 4.3 (2) of the SEPP Gosford City Centre states:

*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map.*

The respective map identifies the site as being within Category P2 which has a height limit of 18m.

### **The Objectives of the Development Standard**

The objectives of the development standard are:

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

### **The Nature of the Departure from the Development Standard**

The proposed residential flat building has a height of between 18.1m & 20.9m at the highest part of the roof of the building above natural ground level which exceeds the maximum height limit of 18m by up to 15%.

The extent of the encroachment is show on Drawing Number DA18 Amendment D prepared by Forty + Grant Architecture dated 13/10/20.

### **Why Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

The following reasons to demonstrate that compliance with the development standard is unreasonable or unnecessary are based on the relevant reasons summarised by the Chief Judge in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] ("*Wehbe*") and repeated in *Initial Action*[17]-[21]. The relevant matter is that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. In this regard the departure from the development standard is consistent with the objectives of the development in Clause 4.3 of the SEPP which are as follows-

- (a) to establish maximum height limits for buildings,

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

**Comment**

The height of the building that exceeds the building height does not result in the building achieving a high quality of urban form.

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

**Comment**

The height of the building that exceeds the required building height does not prevent the proposed building or any adjoining buildings and any public areas from receiving exposure to sky and sunlight. This is demonstrated by the shadow diagrams submitted with the development application.

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

**Comment**

The subject site is located on the edge of the B4 zone and adjoins the R1 Zone to the east. The maximum height required within the adjoining R1 zone to the east is RL54.7m AHD. This height control varies from the height control relating to the subject site in that it sets the maximum height by a reduced level rather than a height above ground level. The height control relating to the proposed development results in the development stepping up the site due the topography of the site with the front of the building being at RL 49.5 and the top of the building being at 56.7m AHD (level confirmed by Architect). Whilst part of the development exceeds the 18m height requirement in the middle of the building it is below the maximum height at the rear. The land to the east with the R1 zone is separated from the subject site by a 20m road reserve that contains an unmade road.

Therefore, the part of the building that exceeds the maximum height will result in the provision of an appropriate transition in built form and land use intensity.

Whilst the proposal exceeds the maximum height for part of the building, given its separation from the land to the east and the height control applying to the R1 zone there is a suitable transition in height between the proposal and any future development on the land to the east.

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

**Comment**

The part of the building that exceeds the height requirement does not affect the view corridors and view impacts and is located in a manner that is complementary to the natural topography of the area. The site enjoys views to the south over Brisbane Water. The buildings to the rear are elevated well above the subject site therefore their views are maintained. The excavation to allow basement parking is limited to footprint of the car parking area and the height exceedance doesn't impact on the natural topography of the area.

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

**Comment**

The shadow diagrams submitted with the application indicate that proposal predominantly overshadows Henry Parry Drive due to the north south orientation of the site and there is no excessive overshadowing of any open space areas within the locality. The unmade road to the east is not used for open space due to its slope. The proposal preserves any views to natural topographic features as it sits below the ridge to the north of the site.

Given the above, it is apparent that the objectives of the height limit controls in Clause 4.3 of the SEPP (Gosford City Centre) 2018 are satisfied on this occasion, notwithstanding the departure from the standard. As such, it is unreasonable and unnecessary that the standard be strictly applied in this instance.

**The Environmental Planning Grounds Which Justify Contravening the Development Standards in Clause 4.3(2) of SEPP (GCC)**

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion which include the following.

- The slope of the land which falls steeply from the rear to the front boundary results in the building being designed so it is stepped up the site to follow the contours of the site. As the land is steep small parts of the building encroach on the building height limit as the building steps which results in some parts of the building being below the height limit and some being below.

- The additional height of the building does not result in any significant loss of view or overshadowing impacts of the adjoining properties or the public domain.
- Lowering the height of the building by providing additional excavation will result in the lower floor levels of the building being impacted as a result of less direct sunlight and being located below ground level which will impact on the amenity of these units.
- The additional height of the building will still result in a development which is of comparable scale with the existing and future development in the locality. For a period of time, the Gosford LEP contained a clause that allowed for a bonus of 30% in gross floor area and height. The FSR and height controls in the GLEP at the time are similar to the controls in SEPP (GCC) 2018. The bonus in FSR and height will result in buildings of varying height and will be higher than the proposed development. Therefore, the proposal will not be out of keeping with other development in the locality.

**The Public Interest, Consistency with the Objectives of the Development Standard in Clause 4.3(2) and the objectives for development within the B4 Mixed Use Zone**

The proposed development is consistent with the objectives of the development standard that has been varied. The proposed development is also consistent with the objectives of the B4 Mixed Use zone which are set out below:

***Objectives of zone***

- *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 is consistent with the objectives of the zone in that:

- The development will provide a mixture of compatible land uses.
- The proposed residential development will be within an accessible location so as to maximise public transport patronage and encourage walking and cycling.
- The proposed development will protect and enhance the scenic qualities and character of the Gosford City Centre.
- The impact of the development on the scenic qualities and the character of the Gosford City Centre have been addressed in the Statement of Environmental Effects.

## **Conclusion**

The proposed development is consistent with the objectives of Clause 4.6 of the SEPP(GCC) 2018 in providing an appropriate degree of flexibility in the application of the development standards relating to the proposed development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. The proposed development is also consistent with the objectives of the development standards relating to the height of buildings and the objectives of the B4 zone.

A review of this proposal in accordance with the requirements of Clause 4.6 of SEPP(GCC) 2018 indicates that in this instance the written request has adequately addressed the matters required to be demonstrated by subclause (3), and the proposed development and will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Therefore, the justification for departure from the development standard in Clause 4.3(2) is worthy of support.



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Amended 13 October 2020