



New South Wales Government
Independent Planning Commission

Mann Street Gosford
Central Coast Quarter
SSD 10114

Statement of Reasons for Decision

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Wendy Lewin

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State of New South Wales through the Independent Planning Commission 2020

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DEFINED TERMS

ABBREVIATION	DEFINITION
Applicant	SH Gosford Residential P/L as Trustee for SH Gosford Residential Trust
Application	SSD 10114
Commission	Independent Planning Commission of NSW
Council	Central Coast Council
DAP	City of Gosford Design Advisory Panel
DCP	Gosford City Centre Development Control Plan 2018
Department	Department of Planning, Industry and Environment
Department's AR	Department's Assessment Report
EIS	Environmental Impact Statement
EP&A Act	Environmental Planning and Assessment Act 1979
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FEAR	Further Environmental Assessment Requirement
FSR	Floor Space Ratio
GFA	Gross Floor Area
GSEPP	SEPP (Gosford City Centre) 2018
LGA	Local Government Area
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in Section 4.2
Minister	Minister for Planning and Public Spaces
Planning Secretary	Planning Secretary under the EP&A Act or nominee
Regulations	Environmental Planning and Assessment Regulation 2000
RtS	Applicant's Response to Submissions
SEPP	State Environmental Planning Policy
Site	Lot 469 DP 821073, Lots 2 - 7 DP 14761, Lot 1 DP 1235203 known as 26 and 32 Mann Street Gosford
SSD	State Significant Development

1 INTRODUCTION

1. On 9 July 2020, the NSW Department of Planning, Industry and Environment (**Department**) referred a development application for the *Central Coast Quarter* (SSD 10114) to the Independent Planning Commission (**Commission**) for determination under s 4.38 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The development application is for a concept proposal under s 4.22 of the EP&A Act (the **Application**).
2. The **Applicant** is SH Gosford Residential P/L The Trustee for SH Gosford Residential Trust. The Application seeks approval for a building envelope for a podium and three towers on land at 26 and 32 Mann Street Gosford (the **Site**). The Site is located in the Gosford City Centre within the Central Coast Local Government Area (**LGA**).
3. The development has a proposed capital investment value (**CIV**) of \$150 million. Under cl 15 of Schedule 2 of *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*, development that has a CIV of more than \$75 million on land identified in the Land Application Map of *State Environmental Planning Policy (Gosford City Centre) 2018 (GSEPP)* is State Significant Development. The Site is shown on the Land Application Map in the GSEPP.
4. The Commission is the consent authority under s 4.5(a) of the EP&A Act and cl 8A of the SRD SEPP as the Department received an objection to the development application from Central Coast Council (**Council**).
5. Mr Peter Duncan AM, Acting Chair of the Commission, nominated Mr Chris Wilson (Chair) and Ms Wendy Lewin to constitute the Commission determining the Application.

2 THE APPLICATION

2.1 Site and locality

6. The Site is located at the southern end of Gosford City Centre. The Site shares boundaries with Mann Street, Vaughan Avenue and a newly constructed public park, the Leagues Club Field. The Site is vacant and has an area of 8,884m². The Site is shown in **Figure 1**, over.

2.2 Background

7. Section 1.5 of the Department's Assessment Report (**Department's AR**) outlines the planning history of the Site and the adjoining Leagues Club Field project. The Leagues Club Field project is an open space upgrade by the Hunter and Central Coast Development Corporation (**HCCDC**), and is a major public domain improvement in Gosford City Centre.
8. Of relevance to the assessment of this Application is the role of the City of Gosford Design Advisory Panel (**DAP**). The Department's AR in Section 5.6.1 explains that:

The City of Gosford Design Advisory Panel (DAP) was established by the NSW Government in October 2018 to provide independent and expert design advice on development proposals in the Gosford City Centre. The DAP operates as the design review panel under Clause 8.4 of the Gosford SEPP to encourage design excellence. In accordance with Clause 8.4 of the Gosford SEPP, the DAP has reviewed the proposal on the following four occasions:

- *March and May 2019 prior to lodgement of the application*
- *November 2019 in response to the exhibition of the EIS*

- March 2020 prior to lodgement of the RtS.

2.3 Strategic context

9. Section 3 of the Department's AR sets out the strategic context for the Development under the *Central Coast Regional Plan 2036 (Regional Plan)*, the *Gosford Urban Design Framework (GUDF)* and the *Draft Somersby to Erina Corridor Strategy (Draft Corridor Strategy)*. These are State government policies.
10. The GUDF was prepared by the NSW Government Architect to support the implementation of the Regional Plan:

The project reimagines the heart of Gosford into an attractive regional capital and a series of great well-connected places. A city centre and places that will attract more people to live work visit and invest in the centre. [Source: GUDF website]



Figure 1: Aerial view of the Site (red outline) and surrounds.
Source: Figure 4 Department's AR.

11. The Council's strategies as outlined in section 3.4, 3.5 and 3.6 of the Department's AR are the Draft Central Coast Urban Spatial Plan (**USP**), Draft Gosford City Centre Transport Plan, and the Draft Central Coast Car Parking Study.
12. Section 3.12 of the Department's AR states that that the proposal supports the revitalisation of Gosford by supporting the delivery of goals in the Regional Plan, being:
 - Goal 1: A prosperous Central Coast with more jobs closer to home
 - Goal 2: Protect the natural environment and manage the use of agricultural and resource land

- *Goal 3: Well-connected communities and attractive lifestyles*
 - *Goal 4: A variety of housing choice to suit needs and lifestyles.*
13. The Department states that the proposal is consistent with the key design principles in the GUDF and recommendations/actions in the Draft Corridor Strategy. The Department's AR also concludes that the proposal is consistent with the Council's Draft USP. The draft Transport Plan and draft Car Parking Study were also considered in the Department's assessment.

2.4 The proposal

14. As described in Section 2 of the Department's AR, the proposal seeks concept approval for a building envelope comprising a podium with three towers, providing residential, hotel and commercial uses. This is shown in more detail in **Figure 2**, over.
15. As stated in the Environmental Impact Statement dated September 2019, prepared by Urbis P/L (**EIS**), consent is sought for:

- *Allocation of GFA across all three phases of development.*
- *Indicative building envelopes.*
- *Building heights; and*
- *Land uses.*

The concept proposal also includes new public plaza and through site link, with the detailed design of the public plaza to be included in a subsequent DA (p7 EIS).

16. The proposal includes the retention of a large Port Jackson Fig tree, located within the Site on the corner of Mann Street and Vaughan Avenue (identified in **Figure1**).
17. The proposal has three indicative stages, as identified in **Figure 2**, over. The Hotel (Eastern building) is intended to be the first stage.
18. A 'Reference Scheme' showing elevations and floor plans for buildings within the proposed envelope was submitted "...to demonstrate that future built form can comply with the applicable statutory policies (i.e. SEPP 65, Gosford SEPP) and accompanying guidance (i.e. ADG and Gosford DCP)" (p 25 EIS). This is described in section 2.2 of the Department's AR, which identifies that the Reference Scheme provides:
- 295 dwellings (85 x 1 bed, 157 x 2 bed, 53 x 3 bed)
 - 3,215m² commercial/retail GFA
 - 9,660m² hotel GFA (182 hotel rooms)
 - 380 car parking spaces.
19. The Application includes a Yield Table (*Proposal Concept Master Plan for Approval*, drawing TP606 Rev P2, prepared by DKO Architecture), showing the indicative Gross Floor Area (**GFA**) for each level of the Northern, Southern, and Eastern (Hotel) buildings in the proposed envelope. This is based on the Reference Scheme and reflects the maximum GFA sought.

Table 3 | Main components of the concept proposal

Component	Description
Site area	<ul style="list-style-type: none"> 8,884 m²
Building envelope	<ul style="list-style-type: none"> Building envelope including: <ul style="list-style-type: none"> Podium: maximum heights RL 14.7m and 21.6m Northern Tower: maximum heights RL 71.3m and RL 81.4m Southern Tower: maximum heights RL 52.6m, RL 58.8m and RL 65.1m Eastern Tower: maximum height RL 71.3m.
GFA, land use and floor space ratio (FSR)	<ul style="list-style-type: none"> Maximum 39,242 m² GFA comprising: <ul style="list-style-type: none"> 26,369 m² GFA for residential use 9,660 m² GFA for hotel accommodation 3,213 m² GFA for retail/commercial floorspace. FSR 4.42:1
Parking	<ul style="list-style-type: none"> Residential, hotel and commercial car parking in accordance with Roads and Maritime Guide to Traffic Generating Developments 2002 (RMS Guide) Bicycle and motorcycle parking in accordance with the GDCP rates
Landscaping	<ul style="list-style-type: none"> Concept landscape masterplan including: <ul style="list-style-type: none"> retention of the existing Port Jackson Fig tree creation of publicly accessible through site links between Mann Street, Vaughan Avenue and Baker Street public and private hard and soft landscaping.
Guidelines	<ul style="list-style-type: none"> Design guidelines (Design Guidelines) and design excellence strategy (DES) to inform the detailed built form design of the development
Indicative staging	<ul style="list-style-type: none"> The development is proposed to be constructed in three stages: <ul style="list-style-type: none"> Stage 1 (2020-2022) – Eastern Tower (hotel) and podium Stage 2 (2021-2023) – Southern Tower and podium (residential / commercial) and podium Stage 3 (2022-2025) – Northern Tower and podium (residential / commercial) and podium.
Jobs	<ul style="list-style-type: none"> 375 construction jobs 75 operational jobs
Capital investment value (CIV)	<ul style="list-style-type: none"> \$150,000,000

Figure 2: Description of the proposal
Source: Table 3 Department's AR

3 THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

3.1 Key steps in the Department's consideration

20. The Department advised that the Application was received by the Department on 19 September 2019 and was accepted on 3 October 2019.
21. As set out in section 5.1 of the Department's AR, the Application was exhibited from 11 October 2019 to 7 November 2019.

22. Nine submissions were received, of which seven were from government agencies. Table 9 in Section 5.3.1 of the Department's AR sets out the issues raised by the agencies. A submission of objection was received from Council which is summarised in Section 5.3.2 in Table 10 of the Department's AR.
23. One public submission was received during the notification period, from the Community Environment Network (**CEN**). Another public submission was received after the finalisation of the Department's AR and was also considered by the Commission.

Response to Submissions

24. The Applicant provided a Response to Submissions (**RtS**) on 23 March 2020. The Department's AR in Section 5.4.3 indicates that the RtS was placed on the Department's website and referred to Council and the relevant public authorities and that an additional three submissions were subsequently received from public authorities and one from Council. The issues raised by the agencies are shown in Table 11 of the Department's AR. Council maintained its objection and raised additional issues, as shown in Table 12 in the Department's AR.
25. As described in section 5.4.2 of the Department's AR, the RtS amended the envelopes for the three towers to reduce "bulk and scale and provide opportunities for articulation of the envelope". This is described in paragraphs 92 and 93 below and shown in **Figure 3**.

Request for Further Information

26. Section 5.5.2 of the Department's AR states that further amendments were submitted at the Department's request in June 2020. The Applicant's response (**RRFI**) amended the Design Guidelines and the Applicant agreed to increase the setback for the Northern Tower by an additional 3m. The amended envelope provided in the **Additional Information** package dated 25 June 2020 is discussed in paragraphs 96 and 97 below and is shown in **Figure 4** (Figure 24 in the Departments AR).

3.2 Key Assessment Issues

27. In section 6 of the Department's AR, the key issues in the assessment are identified as:
 - Design excellence
 - Density
 - Building envelopes
 - Open space and through-site links
 - Car parking and traffic
 - Public benefit
 - Other issues.

4 THE COMMISSION'S CONSIDERATION

4.1 The Commission's meetings

28. The Commission met with the relevant officers from the Department on 27 July 2020. The Commission sent a letter to the Department on 4 August 2020 requesting additional information/clarification of the issues including those raised at the meeting. The Department provided a written response to the Commission's letter on 12 August 2020 (**Department's Response to Commission**).
29. The Commission met with the Applicant on 28 July 2020. The Commission sent a letter to the Applicant on 4 August 2020 requesting additional information and clarification of aspects of the proposal, including those questions raised in the meeting. The Applicant provided a written response and additional drawings and visual material to the Commission on 12 August 2020 (**Applicant's Response to Commission**).
30. The Commission met with officers from Central Coast Council on 28 July 2020. The Council provided the Commission with a further submission on 6 August 2020 and a response to a further question from the Commission on 13 August 2020.
31. The Commission met with representatives of the community group, the CEN on 28 July 2020. The CEN had submitted an objection to the development. The CEN provided a letter to the Commission dated 27 July 2020 at the meeting.
32. As there were only two public submissions received during the formal exhibition of the proposal, the Chair of the Panel deemed it unnecessary to conduct a public meeting or provide additional time to allow for further public submissions.
33. All of the above meetings were held via Zoom, due to COVID-19 restrictions. The transcripts of the meetings were placed on the Commission's website, as well as the material presented at those meetings and the follow up responses from the Department, Applicant and Council.
34. The Commission visited the Site and various Gosford City Centre locations on 23 July 2020. The Site Inspection Notes were placed on the Commission's website.

4.2 Material considered by the Commission

35. In its determination, the Commission has carefully considered the following **Material**, the:
 - Secretary's Environmental Assessment Requirements (**SEARs**), issued on 2 July 2019
 - **Applicant's EIS** and appendices, dated September 2019, prepared by Urbis P/L. This includes the architectural package prepared by DKO Architecture
 - Applicant's RtS and appendices, prepared by Urbis P/L, dated 23 March 2020 (including amended Architectural Package prepared by DKO Architecture) (**RtS**)
 - Applicant's response to the Departments request for further information, the **Additional Information (RRFI)** dated 25 June 2020, prepared by DKO Architecture
 - Department's AR, dated July 2020, received by the Commission on 9 July 2020
 - Department's draft Development Consent for SSD 10114
 - Commission's meetings held with the:
 - Department on 27 July 2020, and presentation
 - Applicant on 28 July 2020, and presentation
 - Council on 28 July 2020
 - CEN on 28 July 2020, and letter dated 27 July 2020 and transcripts thereof.

- Responses to the Commission from the:
 - Department, dated 12 August 2020
 - Applicant, dated 12 August 2020
 - Council, dated 6 August 2020 and 13 August 2020.
- *City of Gosford Design Advisory Panel Guide for Proponents and Stakeholders*, prepared by the Department of Planning and Environment, undated.

4.3 Mandatory considerations

36. In determining this application, the Commission has taken into consideration the following relevant mandatory considerations, as set out in s 4.15(1) of the EP&A Act (**mandatory considerations**), the:

- provisions that apply to the land to which the Application relates of:
 - environmental planning instruments (**EPIs**)
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved)
 - development control plans (**DCP**)
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4
 - *Environmental Planning and Assessment Regulation 2000* (**EP&A Regulation**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act (none specifically applicable)
- likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- suitability of the site for development
- submissions made in accordance with the EP&A Act and Regulations
- public interest.

4.4 Relevant Environmental Planning Instruments

37. The Commission has taken into consideration the following EPIs:

- SRD SEPP (see paragraph 3 above)
- GSEPP
- State Environmental Planning Policy (Building Sustainability Index) 2004 (**BASIX**)
- State Environmental Planning Policy – Remediation of Land SEPP 55 (**SEPP 55**)
- State Environmental Planning Policy No. 65 Residential Apartment Development (**SEPP 65**) and Apartment Design Guide (**ADG**)
- State Environmental Planning Policy (Coastal Management) 2018 (**Coastal Management SEPP**)
- State Environmental Planning Policy (Infrastructure) 2007 (**ISEPP**).

4.4.1 Gosford City Centre SEPP

38. The Site is zoned B4 Mixed Use under the GSEPP and is permissible with consent.

39. The Department's AR addresses the development standards in the GSEPP in Section 4.67. The GSEPP contains maximum building height and Floor Space Ratio (**FSR**) standards. Table 5 in the Department's AR shows that the maximum height for the Site is RL48m, and the maximum FSR is 3.5:1. The proposed towers being at RL81.4m, RL65.1m and RL71.3m exceed the building height standards. The proposed GFA is 39,242m², which represents a FSR of 4.42:1 which exceeds the FSR control (from Table 3 in the Departments AR, see Figure 2 above). Clauses in the GSEPP that are of particular relevance to this DA are discussed below:

Clause 8.3 Design excellence

40. The objective of cl 8.3(1) of the GSEPP, is "to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Gosford City Centre." Clause 8.3(2) of the GSEPP provides that the design excellence clause applies to the "erection of a new building". Under cl 8.3(3), consent must not be granted unless the development exhibits 'design excellence'.
41. The Department addresses cl 8.3 in Sections 6.21 and 6.22 and in Table 23 in Appendix C (p 89) of the AR. It also provided an additional assessment on 12 August 2020 following a request from the Commission. In section 4.6.10 of the AR the Department states that "noting the advice of the DAP, the Department is satisfied that the proposal exhibits design excellence (**Section 6.2**)". In section 5.6.1 of the AR the Department explains the role of the DAP and in Section 6.2 of the AR the Department identifies *Design Excellence* as a Key Issue.
42. Furthermore, cl 8.3(4) requires the consent authority to have regard to specified matters (a) to (e) when determining whether the development exhibits design excellence. Clause 8.3(4) of GSEPP is as follows:

8.3 Design excellence

....(4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—*

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) *whether the development is consistent with the objectives of clauses 8.10 and 8.11,*
- (d) *any relevant requirements of applicable development control plans,*
- (e) *how the 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 relationship of the development with other development (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,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain.*
43. The Commission notes that some of the specified matters (e.g. cl 8.3(4)(a)) are more applicable to the assessment of a more detailed development proposal rather than a concept plan. Nevertheless, the Commission has considered the development against this clause in its determination.
44. The Commission considers that the Department has adequately addressed the various design excellence provisions. The Commission notes that the DAP has an advisory role under cl 8.4(4) of the GSEPP, as discussed in paragraph 46 below, but that cl 8.3 of the GSEPP requires the consent authority to determine if a development exhibits design excellence, prior to granting consent. The Commission's consideration as to whether the proposal exhibits design excellence is discussed in this Report throughout Section 5 and in particular in Section 5.8.

Clause 8.4 Exceptions to height and floor space in Zones B3, B4 and B6

45. Clause 8.4 of the GSEPP is an enabling clause that allows for a variation to the building height and FSR standards as shown on the Height of Building Map in cl 4.3 and the FSR Map in cl 4.4 of the GSEPP (the base controls). As the Site is in excess of 5,600m² in area, sub-clause (4) is applicable. As the consent authority, the Commission must take into account/be satisfied with regard to the matters in cl 8.4(4) prior to granting consent:

8.4 Exceptions to height and floor space in Zones B3, B4 and B6

- (1) *This clause applies to land in the following zones—*
 - (a)...
 - (b) *Zone B4 Mixed Use,*
 - (c)...
- (2) ...
- (3) ...
- (4) *Development consent may be granted to development that results in a building with a height that exceeds the maximum height shown for the land on the Height of Buildings Map, or a floor space ratio that exceeds the floor space ratio shown for the land on the Floor Space Ratio Map, or both, by an amount to be determined by the consent authority, if—*
 - (a) *the site area of the development is at least 5,600 square metres, and*
 - (b) *a design review panel reviews the development, and*
 - (c) *if required by the design review panel, an architectural design competition is held in relation to the development, and*

- (d) *the consent authority takes into account the findings of the design review panel and, if held, the results of the architectural design competition, and*
 - (e) *the consent authority is satisfied with the amount of floor space that will be provided for the purposes of commercial premises, and*
 - (f) *the consent authority is satisfied that the building meets or exceeds minimum building sustainability and environmental performance standards.*
- (5) ...
- (6) *In this clause, **design review panel** means a panel of 3 or more persons established by the consent authority for the purposes of this clause and approved by the NSW Government Architect.*
46. The Department addresses the provisions of cl 8.4(4) of the GSEPP in Section 4.69 in Table 6 in the AR. This states that the:
- site area meets the required area (cl 8.4(4)(a))
 - DAP has reviewed the proposal (cl 8.4(4)(b))
 - DAP did not require a design competition (cl 8.4(4)(c)).
47. With regards to cl 8.4(d), the Minutes of the Meetings of the DAP are in Appendix K of the Department's AR and additional minutes of workshops were provided to the Commission on 12 August 2020 by both the Applicant and the Department. The Department addresses the findings of the DAP in Section 6 of the AR, including in Section 6.4 *Building Envelopes*.
48. The Commission notes that 'design excellence' is not a criteria that needs to be met in order to obtain additional FSR/height under cl 8.4(4) of the GSEPP, but as identified in paragraph 40 above, all development subject to cl 8.3 must exhibit 'design excellence' in order to be approved.
49. Clause 8.4(4)(e), the quantum of commercial floor space in the development is addressed by the Department under *Other Issues* in Table 18 in Section 6.8 of the AR (pp74-75) and the Department states "the proposal meets the requirement of the Gosford SEPP". This is discussed in Section 5.10 of this Report.
50. The ESD provision in cl 8.4(4)(f) is addressed in Sections 4.6.15 to 4.6.20 of the Department's AR and in Section 4.69, Table 6 in the AR the Department states:
- As discussed at paragraphs 4.6.15 to 4.6.21, the future buildings are capable of being designed to achieve ESD. The Department has recommended FEARs requiring that future DA(s) demonstrate how ESD principles have been incorporated into the proposal, include the appropriate sustainability measures, achieve minimum and explore stretch sustainability targets*
51. The Department summarises compliance with cl 8.4(4) in Table 6 of the AR and concludes in Section 4.6.11 that:
- The Department is satisfied the proposal meets the criteria in clause 8.4(4) for the height and FSR development standard exception and therefore the exceedances of the height and FSR development standards can be considered.*

52. The Commission's consideration of the proposal's height and FSR is in Section 5.3 and 5.4 of this Report, and throughout the discussion on impacts of the proposal in Section 5 generally.

Other clauses in GSEPP

53. The Department has addressed other relevant clauses in the GSEPP in Appendix C including Table 23 of the AR. Key clauses addressed in Section 6 of the Department's AR are:

- cl 8.2 *Building height on Mann Street*
- cl 8.6 *Active street frontages*
- cl 8.10 *Solar access to key public open space*
- cl 8.11 *Key vistas and view corridors.*

54. The Commission is satisfied that clauses 8.2 and 8.6 of the GSEPP have been met. Consideration of clauses 8.10 and cl 8.11 is in Section 5.5 and 5.6 below.

4.4.2 BASIX

55. In Section 4.6.19 and Appendix C of the AR (p82), the Department includes a Further Environmental Assessment Requirement (**FEAR**) in its recommended draft consent which requires a BASIX assessment for future residential DA(s). The Commission agrees that this will address the requirements of the BASIX SEPP, and has imposed a FEAR to this effect.

4.4.3 SEPP 55

56. In Appendix C (pp 82 – 83), the Department's AR states:

The EIS includes a DSI, which provides a summary of previous investigations, likely contaminants, recommendations on further investigation, remediation and management and the suitability of the site for the proposed use. The DSI confirmed that the site has a history of educational use since 1954, including classrooms, offices and amenity buildings, with the remaining areas comprising a mix of concrete or asphalt pavements, gardens or grassed areas. Two chemical storage rooms were identified within the former school. As the proposal is for a Concept Proposal, the DSI did not undertake soil and ground water testing and a conclusive assessment of land contamination status cannot therefore be made at this stage.

The DSI reviewed previous contamination assessment reports relating to the site and identified potential site contaminants could include remnants of hazardous building materials, incidental spillage at chemical storage rooms, contamination in site fill and hazardous ground gas. The DSI states that the potential contaminants do not present an unacceptable health or environmental risk to the intended receptors with respect to the proposed development.

57. The Department states that the DSI concludes the Site can be made suitable for the proposed use, subject to requirements during excavation/construction, and recommends a FEAR requiring future DA(s) include a detailed site contamination investigation.

58. While the Commission concurs with the Department's conclusions that the site is suitable for the proposed uses, the historical review of the Site only as far back as 1954 may not provide sufficient certainty around earlier uses, and therefore should be supplemented by a more detailed investigation. A FEAR is therefore imposed to specify that a more detailed Stage 2 Detailed Investigation be provided. This is considered consistent with the requirements of SEPP 55 as the proposal is a concept only, setting envelopes, maximum GFA and identifying proposed uses while no actual physical construction is proposed.

4.4.4 SEPP 65 and ADG

59. The Department in Table 23 in Appendix C (p83) of the AR has addressed the 'aims and objectives' of SEPP 65. SEPP 65 in cl 28 (2) requires a consent authority to "...take into consideration...(b) the design quality of the development when evaluated in accordance with the design quality principles, and (c) the Apartment Design Guide [ADG]". Given that the proposal is a concept only, the Department has addressed the Design Quality Principles in Table 23 at a high level. The Reference Scheme (see paragraph 18) was assessed against the ADG in section 6.8 of the AR, and the Department concludes on pp 84-85 that:

it is acceptable in terms of apartment sizes, communal open space, solar access, natural ventilation and privacy. The proposal would result in minor inconsistencies with the building separation and deep soil amenity standards. However, the Department concludes this is acceptable as discussed at Section 6.8. The Department considers that the proposal is generally consistent with the aims and provisions of the ADG and the development is capable of addressing the ADG guidelines at future DA stages

The Commission's consideration of the proposal against issues relevant to SEPP 65 and the ADG is discussed in Section 5.13 of this Report.

4.4.5 Coastal Management SEPP

60. The Department's AR indicates that "The site is located approximately 100m north-east of the Brisbane Water foreshore and is separated from the foreshore by intervening parkland". In Table 22 in Appendix C (p85) of the AR the Department addresses the provisions of the Coastal Management SEPP, being clauses 13, 14 and 15. They are also discussed in the *Key Issues* section of the Department's AR. The Commission's consideration of specific issues referred to in the SEPP, such as views from public places to the foreshore and the bulk and scale of coastal development, is discussed in Section 5.5 of this Report.

4.4.6 ISEPP

61. The requirements of the ISEPP are discussed on page 82 in Appendix C of the Department's AR. This indicates that:

The proposal is of a relevant size / capacity under Schedule 3 of the ISEPP and therefore triggers the traffic generating development provisions (clause 104). The Department referred the application to TfNSW in accordance with the ISEPP and has considered TfNSW's submissions on the proposal (Sections 5 and 6). The Department has recommended conditions to manage and/or mitigate the impacts of the development (Appendix F).

The proposal is located adjacent to a road specified under clause 102 of the ISEPP. The application includes a NIA [Noise Impact Assessment]. The Department has considered construction and operational noise at Section 6.8 and concludes noise impacts can be managed and/or mitigated. The Department recommends a FEAR requiring future DA(s) consider construction and operational noise impacts.

62. The Commission agrees that the ISEPP has been addressed. Traffic and Parking is a Key Issue and is discussed in Section 5.11 of this Report. The Commission has also considered TfNSW's submissions on the EIS and the RtS.

4.5 Draft Environmental Planning instruments

63. The **Draft Remediation of Land SEPP** was exhibited in 2018. This is addressed in Appendix C (p83) of the Department's AR that states "As the proposal has demonstrated it can be suitable for the site, subject to future DA(s), the Department considers it would be consistent with the intended effect of the Remediation of Land SEPP". The consideration of the Commission in regards to contamination is in paragraph 58 above.

4.6 Gosford City Centre Development Control Plan 2018

64. In Table 4 in Section 4.6.2 the Department states:

Under clause 11 of the SRD SEPP, development control plans (DCPs) do not apply to SSD. Notwithstanding, consideration has been given to the relevant controls under the Gosford City Centre Development Control Plan (GDCCP) at Section 6.

65. In addition to discussion under the Key Issues in Section 6, the provisions of Gosford City Centre DCP 2018 (**DCP**) are considered in Appendix C (pp90-103) of the Department's AR. The DCP was prepared by the then Department of Planning and Environment to support the objectives of the GSEPP.
66. The Commission notes that the GSEPP calls up consideration of the DCP when determining if a development exhibits design excellence (see cl 8.3(4)(d) in paragraph 40 above). The Commission is of the view that the DCP therefore carries weight as a matter for consideration in this DA, and relevant clauses of the DCP are addressed throughout Section 5.

4.7 Other relevant section 4.15(1) considerations

4.7.1 Relevant planning agreements

67. The Department's AR states in Table 4 in Section 4.6.2 that "No existing planning agreements apply to the site".

4.7.2 The likely impacts of the development

68. The Department addresses cl 4.15(1)(b) of the EP&A Act in Table 4 in Section 4.6.2 of the AR and states that impacts are "Appropriately mitigated or conditioned as discussed in Section 6". The Commission's consideration of the likely impacts of the development are addressed in Section 5 of this Report.

4.7.3 The suitability of the site for development

69. The Department's AR addresses cl 4.15(1)(c) in Table 2 of Appendix B and states:

The site is suitable for the development as it comprises an existing urban development site and can accommodate the proposed development without significant adverse impacts on the surrounding area, as discussed in Section 6.

70. The Commission agrees that the Site is suitable for the development, as outlined in Section 5 of this Report.

4.7.4 Submissions made in accordance with the EP&A Act and Regulations

71. The Commission has considered the submissions made by the CEN, and the other objector and the Council. As noted in Section 4.1, further submissions were made to the Commission by the CEN and the Council as part of the meetings with the Commission. The Commission has made reference to the issues raised in these submissions under the relevant issue in Section 5 of this Report.

4.7.5 The public interest

72. The public interest is addressed in Section 5.14 below.

5 COMMISSION'S CONSIDERATION OF KEY ISSUES

Summary of Commission's findings

73. The Commission agrees that the Key Issues assessed in Section 6 of the Departments AR cover the range of issues relevant to the determination of this Application. The Commission has considered the Material relating to the Application, including the Responses to the Commission by the Applicant and the Department. It has also carefully considered all submissions received including the submissions and concerns of both Council and the CEN.
74. After considering the Material and visiting the Site and some key locations in Gosford and Point Clare from where the development will be prominent, the Commission generally supports the assessment and conclusions of the Department and considers that the DA should be approved. However, the Commission has residual concerns relating to the bulk and scale of the Southern and Northern towers and podium and has addressed these residual concerns through the imposition of conditions of consent.
75. The Department recommended amendments to the concept envelope in draft condition Modification B1, including reference to changes agreed to by the Applicant in the RtS and RFFI and further changes discussed in paragraph 93 below. These amendments do not fully address the Commission's concerns given the likely built form that will result from the proposed envelopes and as identified by the Reference Scheme.
76. The Department recommended a FEAR specifying a 'target volumetric fill' of the concept envelope, discussed further in Section 5.1 below. It is understood that the aim of the FEAR was to facilitate further improvements in built form through future development applications. However, the Commission is of the view that the FEAR is likely to be broadly interpreted, with subsequent buildings maximising space within the envelope, as shown in the Reference Scheme. The Commission's concerns in this regard are addressed throughout Section 5 below, in particular the need to ensure that any built form in the Southern and Northern towers and podium achieve a more slender outcome.
77. Consequently, the Commission has imposed condition Modification B1a) which requires an amendment to the proposed envelope to show the available building form at a maximum of 85% of the envelope, but allowing an additional 5% for articulation. This condition is supported by limits in GFA for both the Northern and Southern buildings and podium. It is not intended that the reduction apply to the height of the envelope and the heights can be maintained as outlined below. The intent of the condition is to reduce the bulk of built form able to be achieved and specifically ensure more slender buildings. For ease of drafting, the condition has been expressed as a change to the submitted envelope to be shown on an amended envelope plan and elevation.

78. The envelope for the hotel or Eastern building (including the GFA for the retail space) is maintained. The Commission notes that the Eastern Tower envelope is more 'slender' by Council's definition than the proposed envelope of the bulkier Northern and Southern Towers. Consequently, the Commission's Condition establishing the maximum GFA (as amended) has not reduced the GFA of the Eastern building envelope. The approved GFA for the Eastern building envelope remains at a maximum of 9,660m² plus 374m² retail floorspace.
79. The GFA sought by the Applicant was a maximum of 39,242m² in the Reference Scheme. This comprised 26,369m² residential GFA, 9,660m² hotel GFA and 3,213m² commercial/retail GFA. This will be reduced as a result of condition Modification B1a) to a total maximum GFA of 34,861m², comprising 22,414m² residential GFA, 2,787m² commercial/retail GFA and 9,660m² GFA for the hotel.

Commission's response to key issues

80. The Commission's consideration of the Application, including the reasons for the amendments to the proposal is set out in the following sections of the Report. Sections 5.1 - 5.8 consider issues specific to the proposed concept envelope including:
- Volumetric fill of envelope
 - Size of floor plate and massing of building envelope
 - Height
 - Density
 - Impacts of building envelope
 - Amenity of through-site links
 - Heritage
 - Design excellence.

The other relevant aspects of the concept proposal are discussed in Section 5.10 to 5.13:

- ESD
- Quantum of commercial floorspace
- Car parking and traffic
- Public benefits
- Other issues identified in the Department's AR.

Concept Envelope

5.1 Volumetric fill of envelope

81. The issue of the floor plate size and the volumetric fill of the building envelope is discussed in Section 6.4.42 – 6.4.47 of the AR:

6.2.42 The GDCP recommends tower floorplates be no greater than 750m². SEPP 65 and associated Apartment Design Guide (ADG) recommends that, as a starting point or rule of thumb, building envelopes should be 25% - 30% greater than the achievable floor area to allow flexibility in the building design. Council raised concern the Southern Tower envelope exceeds the GDCP recommended maximum tower floorplate (750m²).

6.4.44 The Applicant has clarified that the envelopes are a 'shrink wrap' of the indicative scheme, which was being prepared before the Gosford SEPP was gazetted in 2018 and was later presented to the DAP before a conceptual envelope was established. This results in a 'tight fit' within the proposed envelopes, providing the following maximum tower floorplate sizes and volumetric fill

82. The indicative or 'Reference Scheme' shows that the floor area in GFA of the:
- Northern Tower is 724m² GFA - 95.4% of the envelope
 - Southern Tower is 779m² - 97.5% of the envelope
 - Eastern Tower is 573m² - 98.7% of the envelope.
83. The Department in the assessment of the Controls in cl 5.2.5 of the DCP in Appendix C, stated that: "The Department includes FEAR C4.(c) requiring future DA(s) consider appropriate floorplate sizes and that building envelopes are limited to 85%":
- C4. Future development application(s) shall demonstrate consistency with the:*
- (a) ...
 - (b) ...
 - (c) *building efficiency target of 85% volumetric fill of the building envelope, unless*
 - (i) *future development application(s) can demonstrate that an increase above 85% would maximise building articulation and does not have an adverse architectural design, visual, amenity or heritage impact; and*
 - (ii) *the DAP has confirmed that a higher building efficiency volumetric fill is acceptable.*
84. The basis for this is explained in Section 6.4.47 of the AR:
- While noting that the envelopes are based on a 'shrink wrap' of the indicative scheme, there is no guarantee that the indicative scheme will be the final design submitted as part of future DA(s). Therefore, to ensure future developments do not unreasonably fill the building envelopes in their entirety (at the cost of appropriate building articulation), the Department recommends a FEAR establishing a maximum building envelope efficiency of 85%, in accordance with the aims / objectives of the ADG guidance, unless it can be demonstrated that a higher building efficiency can be achieved without causing adverse visual or architectural design impacts and where supported by DAP.*
85. The Department confirmed in the Meeting with the Commission that the application of this provision could reduce the GFA of the development but the extent could be increased 'subject to the DAP being satisfied' (p7 of Transcript of Meeting with the Commission).
86. In the package of information forming the Response to the Commission, the Applicant provided the Commission with its response to the recommended conditions of consent initially proposed by the Department. The *Response to Draft Conditions* letter prepared by Urbis and dated 25 June 2020 indicates that originally the Department proposed that the FEAR refer to a 75% volumetric fill. Following consideration of the Applicant's Response to the draft Conditions Letter, the final assessment and recommended FEAR proposed the less onerous 85% volumetric fill target. The Applicant's response was the basis for the Department's comments in paragraphs 81 and 84 above.
87. The Commission is of the view that the Reference Scheme would not satisfy the proposed FEAR, as up to 98.7% of the envelope is filled and the indicative facades are largely unarticulated. Consequently, the Commission has strengthened the Department's draft FEAR C4.(c), being the requirement for the future buildings to **potentially** not fill the envelope, and has imposed a definitive maximum envelope fill, by way of condition Modification B1a). This is to ensure residual concerns with bulk and scale can be addressed and design excellence achieved for built form associated with the Northern and Southern Towers (and podium). These issues are discussed in more detail below.

5.2 Size of floor plate and massing of building envelope

DCP control for slender towers

88. There are several references in the DCP to the need for development to provide 'slender' towers, including cl 5.2.5 *Slender towers with high amenity*, which states in Control 1:

For development within the B zones (B3, B4 and B6), the maximum floorplate size for towers is:

- a. 750sqm GFA for residential uses, serviced apartments and hotels.*

Note - This maximum floor plate control applies only to towers, and not to podium level development.

- 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 wall frontage, 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.

89. Control 1 a. refers to the size of the floorplate. Council in its submission and in the Meeting with the Commission advised that the area for each level of the Northern Tower was 900m² and the floorplate was therefore non-compliant. The Applicant and the Department rely on reference to 'GFA' in the Control meaning that the maximum 'floorplate' refers to the maximum GFA of a floor of a tower of a building.

90. The Commission sought clarification from the Council on this issue and the Council advised on 13 August 2020 that:

- The plate size is considered to comply with the DCP definition.*
- The plate size is approximately 900m². The exclusion of service cores and balconies from Gross Floor Area calculations does not prevent these elements from contributing to the overall bulk and scale of the development.*
- The width of the northern tower (north to south) is approximately 45 metres which also complies with the maximum length of 45 metres in any direction in the DCP.*

However, council reiterates its previous comments that mere compliance with the minimum standard does not demonstrate design excellence and does not justify any bonus in height and FSR. In particular, the 45 metre length of the northern tower emphasises the visual impact when viewed from the park, waterfront and entry to the city. Despite the fact the tower may comply with the definition of plate size it is not considered to be a slim tower.

91. The Commission agrees with the Council that compliance with the controls does not result in design excellence. It also agrees with the view that the floor plate of the towers does not appear slim, and this is emphasised by the close proximity of the towers to each other. As identified in paragraphs 48 and 120, exceedance of the base height and FSR controls is assessed on meeting cl 8.4(4) of the GSEPP and on merit, and is not contingent specifically on design excellence. Regarding the dimensions of the towers, the Northern and Eastern Towers comply with the 45m maximum building length, when taking the external dimensions. The Southern Tower does not, being 49.4m long on the Mann Street elevation.

Amendments made by the Applicant to the concept envelope

92. The Commission notes that during its assessment of the proposal, the Department requested the Applicant to make several amendments to the proposal, as quoted in the Dot Points shown in the Applicant's RtS in Table 2 on pp17-24. The requested amendments are summarised as including:
- reducing the mass and bulk of the Southern Tower envelope to present a more slender form to reduce its visual dominance (Dot Point 7)
 - reduce the height of the Southern Tower to be more sympathetic to Gosford's natural setting and improve solar access to key open spaces (Dot Point 8)
 - relocate the Southern Tower envelope to be setback further from the southern corner of the site, as well as at Vaughan Avenue and Baker Street (Dot Point 9)
 - reduce the height, mass and bulk of the Northern Tower envelope and refine the tower setback to "improve its relationship to Gosford's natural setting (including the ridgeline backdrop)", and reduce its visual dominance from key vantage points, and to reduce its solar impacts to Leagues Club Field (Dot Point 13).
93. The amendments made by the Applicant in the RtS included the following amendments as shown in Figures 17 and 18 of the Department's AR (Figure 18 in the AR is **Figure 3** below):
- *amend the Southern Tower envelope to reduce its bulk and scale and provide opportunities for articulation of the envelope, including (Figure 17):*
 - o provide a stepped tower form, with heights of RL 52.6m, RL 58.8m and RL 65.1m (originally, a uniform tower height of RL 65.1m)*
 - o introduce vertical separation gaps between the stepped components of the building envelope to articulate the facades*
 - o bring the tower down to street level at the corner of Baker Street and Vaughan Avenue*
 - o relocate the Eastern Tower building envelope (above the podium level) westwards (or further away from Mann Street) by 2.89m (Figure 18)*
 - *amend the Northern Tower building envelope to include an expansion mid-way along the eastern elevation measuring 3 m deep and 6.2 m wide.*

The amendments also introduced the *Central Coast Quarter Design Guidelines (Design Guidelines)*, prepared by DKO Architecture (currently Rev C dated 17 June 2020) and the *St Hilliers Gosford Design Excellence Strategy* prepared by Urbis (**DES**) to guide future development.

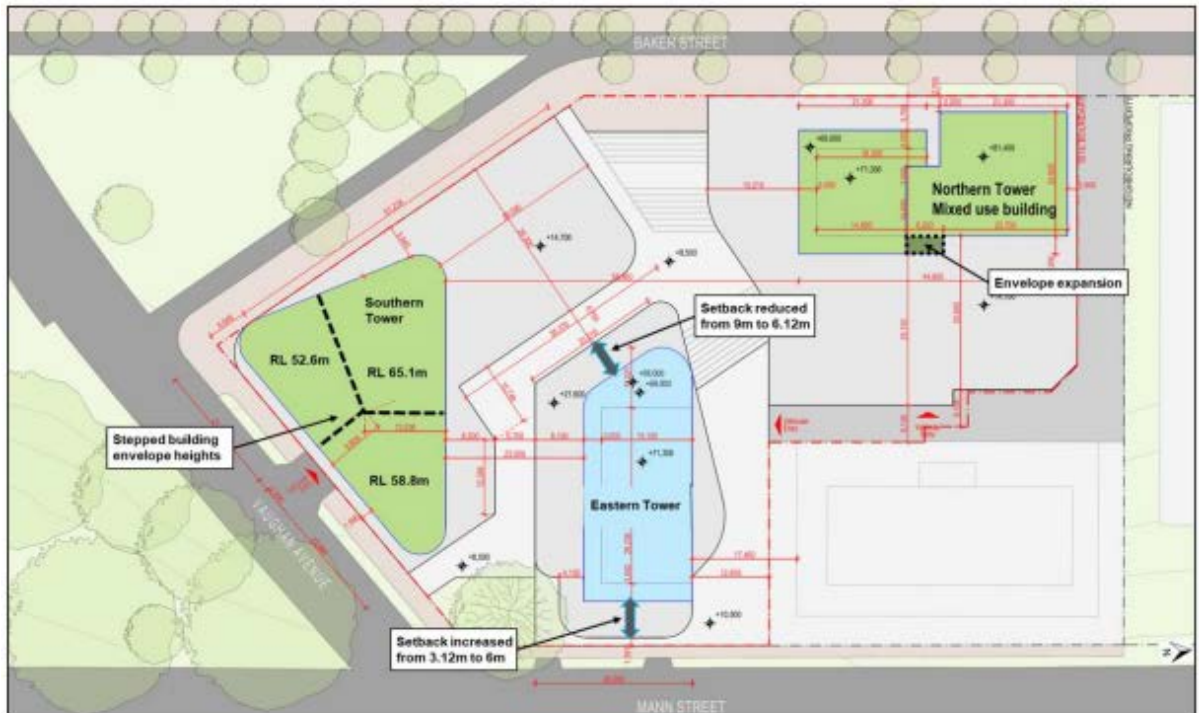


Figure 18 | Proposed building envelope layout, showing stepped building heights of Southern Tower, setbacks to Eastern Tower and expansion of the Northern Tower (Base source: Applicant's RtS)

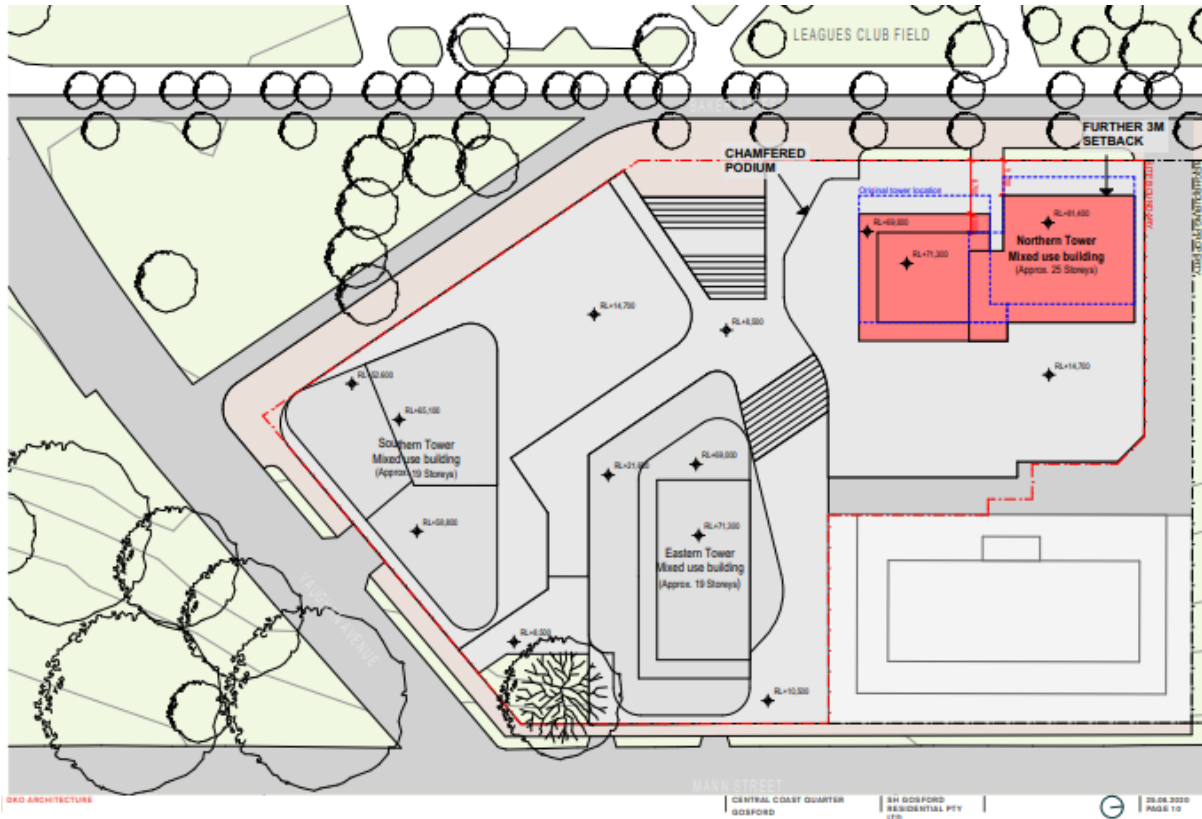
Figure 3: Proposed Building Envelopes as amended in RtS

Source: Figure 18, Department's AR

94. Whilst the Commission supports these amendments (and the amendments to the Design Guidelines), it is of the view that these amendments do more to alter the perceived bulk, as opposed to the actual bulk and do not fully address the issues raised by the Department. For example, the bulk and mass of the Southern Tower was not reduced and the vertical break line (shown in the sketch in Figure 17 on p30 of the Department's AR) in the Commission's view is an inadequate response to break up the mass of the envelope/building. The break is also not apparent in plan or elevation of the actual envelope and neither are the vertical breaks on the Northern Tower shown in the sketch in Figure 6 of the RtS (p6).
95. The Commission notes that the above amendments were supported by the DAP. However, with reference to Figures 21, 22 and 23 of the Department's AR, the Commission does not agree with the Department and the DAP that the proposed amendments to the Northern and Southern Towers will result in more slender envelopes and reduce the visual impact as stated in Section 6.4.21 of the Department's AR:
- The DAP confirmed it supports the amendments to the Southern Tower building envelope, which presents as a more slender tower form, reduces its visual dominance from key vantage points and enhances views through the site.*
96. In the further amendment made in the RFFI as explained in Section 5.5.2 of the Department's AR, the Applicant:
- *provided amended Design Guidelines to reflect specific suggestions from the Department (see Section 6.2)*

- confirmed its agreement to increase the Northern Tower setbacks by an additional 3m (Figure 24).

97. The amended envelope provided in this Additional Information package dated 25 June 2020 is shown in **Figure 4** below (also shown in Figure 24 in the Departments AR).



*Figure 4: Building envelope showing further agreed amendment to Northern Tower
Source: DKO Architectural Design package dated 25 June 2020*

98. Further potential amendments to the envelope are discussed in the Department's AR in Section 6.5.10 – 6.5.19 *Design and amenity of through-site links* which includes the chamfering of the south-western corner of the Northern Tower as identified in Figure 28 of the AR in order to increase sunlight into the southern through-site links.
99. The Department recommended conditions in Modification B1 to:
- setback the norther tower envelope by an additional 3m
 - chamfer the south-west corner of the Northern Tower podium
 - 'explore opportunities' to further increase solar access to the southern through-site link.
100. The Commission has imposed these conditions in Modification B1 b), c) and d) and the amendments required in Modification B1.d) are to be pursued rather than just 'explored'.

5.3 Height

101. With regards to height and density, the Commission agrees with the Department's response to the Commission on 12 August 2020 that:

It should be noted that Clause 8.4(4) of the Gosford SEPP allows exceedances of the mapped height and floor space ratio, or both, by an amount to be determined by the consent authority, where it meets the criteria. In practical terms, this means that if the Commission are satisfied that the proposal meets the criteria, the building height and floor space development standards do not apply to the development.

The Department has therefore assessed the merits and potential impacts of the proposed envelope form as a whole, rather than just the exceedance above the numerical development standard. The Department's reasons for supporting the proposed building height (and floor space) are clearly articulated within the Department's Assessment Report.

102. In relation to the height of the proposed towers, the Department's assessment concludes that the proposal is acceptable as summarised in Sections 6.4.11, 6.4.12 and 6.4.18 of the AR, the Department concludes:

The Department has carefully considered the appropriateness of the proposed maximum tower building envelope heights. The Department recognises that in isolation the proposed variation to the Mann Street, height controls of up to 34.4m (being an increase of 69%) is numerically significant. However, while the proposal is at the upper limits of what could be supported, the site is capable of accommodating the proposed building heights...

The AR then goes onto list the reasons (in dot points) as to why the heights are acceptable.

GSEPP exceptions clause 8.4(4) – building height

103. As identified in paragraph 45 above, the Commission agrees that a building height above the base control of RL48 is able to be considered as the criteria in cl 8.4(4) of GSEPP have been met.

Proposed height in context of the existing and future development

104. The Department's assessment concludes that the proposed building height is justified because as identified in the second dot point of 6.4.18 of the Department's AR, the existing context of approvals provides a basis for buildings in the Gosford CBD with similar heights:

The emerging character of Gosford, as established by planning policy and recent planning approvals, includes the provision of tall buildings either side of Mann Street within the Gosford City Centre, City South precinct. (Section 1.5).

105. The location of and images of high density buildings approved near the Site are shown in Section 1.5.7 and in Table 2 and Figures 9 - 11 of the Department's AR. The Commission sought information from the Council regarding the status of these approvals. The Council in the Meeting with the Commission advised that the Council's controls in 2014 allowed a 30% FSR bonus for development in the City Centre, and that this had resulted in the subject development pattern. From the information provided by the Council, all of the projects identified in Table 2 of the Department's AR have physically commenced (see pp3-6 of the Transcript of the Meeting of Council with the Commission). The Department also identifies that the proposal is lower than other approved developments (fourth dot point in Section 6.4.18 of the Department's AR).
106. The Commission agrees with the Department that the proposed heights are in context with other past and likely future approvals for Gosford and that this type of development is generally consistent with that envisaged by the controls in the GSEPP and DCP.

Variation to tower heights

107. The DCP requires tower heights to have "a minimum of 15% variation between each tower (e.g. with three towers, the tallest should be a maximum of 30% taller than the shortest" (Control 6 in cl 5.3.5 *Slender towers with high amenity*). The assessment of the DCP in Table 24 in Appendix C of the Department's AR states:

The maximum height of the tower building envelopes are varied. The highest point of the northern tower (RL 81.4 m) is 35.4% taller than the shortest point of the southern tower (RL 52.6 m). The proposal therefore exceeds the 30% height variation requirement across the site.

108. The Department in the third dot point of Section 6.4.18 of the AR finds that the proposed heights are acceptable as the towers are stepped. The Commission also supports the amendment made to the proposal in the RtS that improved the profile of the envelope of the Southern Tower, by stepping down the eastern and southern corners of the building (see paragraph 93 and shown in Figure 3 above). This is referred to in Section 6.4.15 and Figures 18 and 22 of the Department's AR (reproduced as Figure 3 in this Report).
109. The Commission also agrees that the towers have varied height and do not match the other Mann Street approvals in height (Section 6.4.15 of the Department's AR).
110. The Council in its original submission on the Application indicated that "The northern tower should be at least 15% lower than the eastern tower, and the southern tower should be at least 30% lower than the eastern tower". This would require a significant reduction in the maximum height overall, and then a lower proportionate height for the other two towers. In its meeting with the Commission, Council explained that its reasons for requesting a height reduction were based on: likely visual and overshadowing impacts from the proposed development on its immediate and broader site context; concerns regarding the height relative to the ridgeline to the east of the site (Rumbalara Reserve); the visual bulk; the FSR; and the overshadowing impacts (see Meeting Transcript pp 6-7).
111. The CEN also raised concerns regarding the proposed height in its Letter to the Commission and in the Meeting with the Commission:

The overwhelming impact of the proposed development is the result of a number of factors:

- *The height of the three towers obscures the ridgeline of Rumbalara even from viewpoints that are quite far away, e.g. Brian McGowan Bridge and the middle of Brisbane Water.*
- *The bulk of the three towers, especially the Northern and Southern Towers, and their minimal separation results, in effect, in a wall of buildings along the eastern side of Leagues Club Field.*
- *The through-site links are not wide and have quite high buildings behind them, e.g. the Merindah Apartments and the proposed Creighton building.*
- *Furthermore, the proposed Waterside development would add even higher buildings at the northern end of the visual wall.*

112. The Commission's response to these issues is in Section 5.5 below.

113. While the Commission supports the tower heights as recommended, it does not agree with the justification for the proposed heights as outlined in Section 6.4.18 of the Department's AR (dot points 5, 7 and 8) reproduced below:

- *if the building envelopes were reduced to RL 48m (height compliant) it is likely they would appear squat, inelegant, relate awkwardly to surrounding open space, adjoining Mann Street DA approvals and jeopardise the attainment of design excellence*
- *the height of the tower envelopes will result in the provision of tall slender towers. The Department supports this approach as it improves opportunities for solar access, building separation, ventilation, view sharing, reduce the appearance of bulk and promotes higher amenity for the public domain*
- *the proposal does not have adverse view, overshadowing or heritage impacts as discussed within the following sections.*

114. The Commission is of the view that the towers as currently represented by the existing envelope, specifically the Northern and Southern Towers, do not represent 'tall, slender towers', as also discussed in Sections 5.1 and 5.2 above.

5.4 Density

115. Under the discussion of *Density*, the Department states in Section 6.3.1 of the AR that:

The proposal seeks approval for 39,242 m² of residential, hotel and retail/commercial floorspace (a FSR of 4.42:1). The proposal exceeds the Gosford SEPP FSR development standard (3.5:1) by 8,148 m². This represents a 26% increase above the FSR control. As summarised at Section 4.3, clause 8.4(4) allows developments to exceed the base FSR control when the exception criteria have been met.

116. The Applicant's justification for the density and the concerns of the Council and the CEN in relation to this aspect of the development are summarised in Sections 6.3.2 and 6.3.3 of the Department's AR.

GSEPP exceptions clause 8.4(4) - FSR

117. As identified in paragraph 45, the Commission agrees that an FSR above the base control of RL48 is able to be considered as the criteria in cl 8.4(4) of GSEPP have been met.

Merits of proposed density

118. The Commission notes that an increase in height could support a variation to increase the FSR, and agrees with the Department that “an acceptable density is informed by the appropriateness of the built form and having regard to potential impacts of the floorspace, such as traffic generation, amenity impacts and demand on existing/future infrastructure” (Section 6.3.4, Department’s AR).
119. However, the Commission does not agree that the density as proposed is acceptable and in particular does not agree with a number of the reasons justifying the proposed FSR in Section 6.3.6 of the Department’s AR and as reproduced below, that:
- *The proposal achieves design excellence and has been reviewed, and supported, by the independent DAP (Section 5.5)*
 - *the building height and scale is appropriate within its context and compatible with the emerging character of the Gosford City Centre (Section 6.4)*
 - *the building envelopes have acceptable amenity impacts (Section 6.4) in relation to:*
 - o *visual or heritage impacts*
 - o *amenity impacts in terms of overshadowing, overlooking or view loss*
 - *future developments will be designed in accordance with ESD principles and meet appropriate sustainability targets, including exploring stretch-targets (Section 4.6)*
 - *traffic impacts can be managed and mitigated and future DA(s) will undertake detailed assessments to determine the appropriate on-site car parking provision (Section 6.6)*
 - *future developments will include publicly accessible through-site links, which represent a public benefit (Section 6.5)*
 - *future DA(s) would include an appropriate amount of commercial floorspace as a proportion of the total GFA provided within the development (Section 6.7)*
 - *future DA(s) will consider the inclusion of additional appropriate public benefits and pay development contributions in accordance with the State and local requirements (Section 6.7).*
120. Whilst the Commission accepts that the proposal has been the subject of ongoing consultation with the DAP, the Commission does not share the view that all of the provisions of cl 8.3 of GSEPP have been adequately met, and that it is obvious from the development envelope as currently proposed that design excellence has been achieved (see Section 5.8 below).
121. Whilst the building heights are acceptable having regard to their context (Section 5.3 above), the Commission does not support the proposed bulk and scale of the Northern and Southern Towers, specifically in terms of impacts on views, overshadowing, the amenity of the through site links and impacts on the adjoining public realm. This is discussed in Sections 5.5 and 5.6 below. The Commission does conclude however, that with the amendment proposed to the envelope by the Commission, that design excellence can be achieved for future built form.

122. Furthermore, whilst accepting the fundamental desire to reinvigorate the Gosford CBD, the 26% additional FSR that would be achieved above the base FSR control in the GSEPP (referred to in the last dot point in paragraph 119 above) is not adequately supported by the delivery of tangible public benefits (refer to Section 5.12). Issues relating to ESD, Traffic and Parking and quantum of commercial floor space are discussed in Sections 5.9, 5.10 and 5.11 below.

5.5 Impacts of building envelope

123. Section 6.4.10 *Building envelopes* of the Department's AR states that the key issues for consideration are height (discussed generally in Section 5.3 of this Report above), bulk and scale (including impact on views), overshadowing of public open space, private view loss and heritage. As already identified, the Commission is not satisfied that the bulk of the building envelope - specifically, the bulk of the Northern and Southern Towers as proposed is acceptable.

The compliant scheme

124. At the request of the Department, the Applicant's RtS (see section 2.2.3), provided a 'notional FSR and height compliant' scheme that achieved both the base FSR or 3.5:1 and the maximum building height of RL48, for analysis of visual impacts. This shows massing of four towers on a podium. The Applicant's montages showing the proposal and the 'notional FSR and compliant scheme' are shown in **Figure 5** and in **Figure 6** below.
125. In its meeting with the Commission, the Council stated that the compliant scheme was unrealistic and shows "three very large slab sided buildings" and "...the reality is...if they cut – reduce the height, they could still build ...slender towers" (p7 of Transcript of meeting with the Commission). It is also noted that in Figure 5 below, the 'compliant' envelope is shown as being solid, thus emphasising its bulk, compared to the proposed envelope that is shown as transparent, allowing a view to the ridge behind.
126. The Commission agrees with the Council's view that the proposed 'compliant' scheme is unrealistic, and subsequently requested that the Applicant provide alternative 'complying' envelopes, showing:
- (1) the current configuration of the envelope but to maximum height, RL 48
 - (2) the current configuration of the envelope but at the maximum FSR
 - (3) more detailed drawings of the Applicant's 'compliant' scheme.
127. These Envelopes were provided by the Applicant to the Commission on 12 August 2020. The Applicant indicated in its Letter in Response to the Commission (p9) that:

*In accordance with the IPC's request, these drawings have been prepared for analysis purposes. The options presented in the DKO Design Analysis are purely theoretical/analytical and provided in response to the IPC's request for information. **These concepts are not commercially viable and could not be delivered by the applicant**, as the design and coordination of the overall masterplan has been developed through a very strategic response to the Gosford SEPP and sought to provide a very specific land use quantum and mix based on commitments made with a preferred hotel operator, potential retail and commercial tenants and also various public benefits being provided by the applicant.*



Figure 19 | View east from Brian McGowan Bridge towards the site showing the existing/proposed development (top) and a notional FSR and height compliant development (bottom) (Base source: Applicant's RTs)

*Figure 5 Views of proposed envelope and 'compliant' scheme from Brian McGowan Bridge
Source: Figure 19, Department's AR*



Figure 20 | View north-east from Brisbane Water towards the site showing the existing (top) and proposed development (bottom) with existing DA approvals (**Section 1.5**) shown in red (Base source: Applicant's RtS)

*Figure 6 Views of proposed envelope and compliant scheme from Point Clare
Source: Figure 20, Department's AR*

128. **Figure 7** below shows the Baker Street elevation of Complying Envelope (1), with the buildings at RL48. The wire frame of the ridgeline is seen in the background.

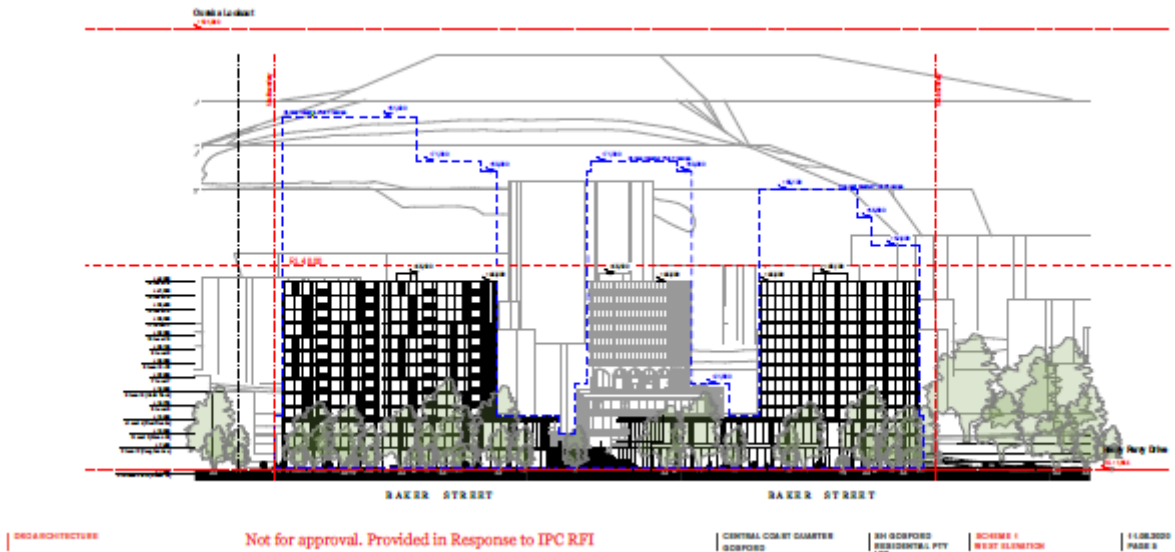


Figure 7. Extract from Envelope Analysis Scheme 1 showing elevation from Baker Street
Source: Applicant's Response to Commission

129. Figure 7 represents information submitted at the request of the Commission whilst **Figure 8** below, reflects information provided in the Applicant's site control analysis in the EIS. It is clear that Figure 7 provides a more accurate representation of a proposal that complies with the GSEPP base controls than the representations shown in Figure 8, and as such has assisted the Commission in its considerations, particularly in relation to view loss, key vistas, and the bulk and scale of the proposed envelope. The Commission was of the view that the Applicant's graphic representations and conclusions relating to compliant massing of the SEPP, as set out in Step 1 and 2 in Figure 8, lacked sufficient accuracy to adequately inform the merit assessment of the proposal.

Built Form & Urban Design
Massing Development and Approach



Figure 8: Applicant's Massing Development and Approach diagrams
Source: Extract from Architectural package in EIS, DKO Architecture, September 2019, p23

Views from the public domain

130. Clause 8.11 of the GSEPP states that:

8.11 Key vistas and view corridors

(1) The objective of this clause is to protect and enhance key vistas and view corridors in Gosford City Centre.

(2) Development consent must not be granted to development unless the consent authority is satisfied that the development is consistent with the objectives of this clause.

131. In addition, cl 8.3(4) of the GSEPP requires the consent authority to have regard to subclauses:

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain;

(c) whether the development is consistent with the objectives of clauses 8.10 and 8.11

d) any relevant requirements of applicable development control plans

132. The important view corridors affected by the development are:

- Brian McGowan Bridge, directly to the west of the site, a gateway to Gosford
- Point Clare, across Brisbane Water
- Memorial Park and Poppy Park, open space to the west
- Rumbalara Reserve, the prominent ridge that forms the background to Gosford, to the east of the Site.

133. The Commission viewed the site from the first three vantage points and observed that the Rumbalara Reserve Ridge is prominent from the other viewpoints, as illustrated in **Figures 5 and 6** above.

134. In Section 6.4.22 of the AR, the Department acknowledges (in terms of views from Brian McGowan Bridge and Brisbane Waters) that “the proposed building envelopes reduce current views towards Rumbalara Reserve”. However, the Department considers that this is acceptable as the proposal establishes view corridors between towers, which continue to allow the height, slope and forested nature of the reserve to be appreciated from key views as follows:

- *views of the reserve would continue to be possible to the north and south of the site*
- *emerging character of Gosford City Centre establishes clusters of tall buildings within the South Precinct along the Mann Street spine, and therefore maintaining the visual dominance and integrity of the natural topography and landscape*
- *subject to the Department’s recommended FEARs and the updated Design Guidelines, future developments would provide slender, well-articulated towers with high amenity*
- *notional height compliant development option explored by the Applicant has significant undesirable built form impacts (Figure 19) and would not improve views through the site.*

135. The Commission does not agree that the reduction in the view to Rumbalara Reserve will be offset by views from elsewhere. The second dot point in paragraph 134 above is relevant to the height of buildings, not the bulk, and the proposal does obscure the natural topography, as is evident in Figure 6. The Department's proposed FEARs including C4 c), are discussed in paragraphs 83 to 87 above.
136. Primarily, the Commission does not agree with the assessment of the Department in Section 6.4.38 of the AR that "the proposed articulation of the building envelopes ensure future towers would appear slender". This is also cited in Section 6.4.18 (in the final dot point) of the Department's AR, see paragraph 113 above.
137. Besides the visual bulk of the towers from the long view lines, the Commission also considers that the scale of the Northern Tower at 25 storeys and setback 5.7m – 8.7m from the boundary will be overwhelming for the recreational users of the new Leagues Club Field. The likely imposing presence of the Northern Tower for users of the Park is evident in the montage in Figure 23 of the Department's AR.

Views from Mann Street to the waterfront

138. Clause 6.7: *Key Site 6 26 - 32 Mann Street* of the DCP in Principle 2 states "The provision of visual connections and pedestrian links between Mann Street and Baker Street (to Leagues Club Field) are priorities for development of this site"; and in Principle 3: "Publicly accessible podium open space above Baker Street, at the level of Mann Street and overlooking the waterfront should be considered and integrated into development of the site."
139. In the discussion in 5.6.12 of the Department's AR on the *Design and amenity of through site links*, the Department states that (in relation to the northern through-site link) "the through-site link is orientated east-west and in the most appropriate location to provide a strong visual and physical connection between Mann and Baker Streets and Brisbane Water".
140. The location of the northern through-site link within the Site may be appropriate, however the Commission has no evidence that when standing on the footpath at the boundary of the Site in Mann Street, a 'strong visual connection' though to Brisbane Water will be achieved and maintained. The Applicant was requested to address this in its Meeting with the Commission and in response provided the montage already submitted with the Application, showing an indicative perspective of the view from within the Site. The Commission therefore imposes a Condition requiring that a clear view from Mann Street west across the Site to the Leagues Club Field/waterfront be provided. This may require further amendment to the building envelope.

Private views

141. Sections 6.4.55 to 6.4.69 of the Department's AR identify that there are three existing residential apartment buildings and one approved building nearby that could have views to Brisbane Water affected by the proposal. The Commission agrees with the Department's analysis of the view impacts based on the information provided in the EIS and using the test in the Land and Environment Court 'Tenacity' principle for considering views.
142. The view loss will be 'moderate' for some apartments in all four buildings. However, for the *Broadwater* at 127 to 129 Georgina Terrace - "The proposal would reduce the south-west view of Brisbane Water and the foreshore. Affected views relate to living room and balconies from south-west facing apartment. The impact is considered to be **severe**" (Table 14 in Section 6.4.61 of the Department's AR).

143. The Department's AR justifies this impact in Sections 6.4.62 to 6.4.67:

6.4.62 The fourth step of the Tenacity planning principles is to assess the reasonableness of the proposal that is causing the impact. The Department has also taken into account the height and location of buildings in the surrounding area and the site's 'key site' designation. The Department notes that the proposal meets the Gosford SEPP exception criteria to exceed the height of building development standards and the Department has concluded the heights are acceptable and proposal exhibits design excellence (Sections 6.2 and 6.4).

6.4.63 Even when a proposal complies with all relevant planning controls, the Tenacity planning principles require the question be asked whether a more skilful design could provide similar development potential and amenity while reducing the impact on views from neighbours. The Applicant argues the view sharing is acceptable noting the transition of the Gosford City Centre to higher densities and the inevitability of the interruption of existing views in this context.

6.4.64 The Department notes the proposal establishes view corridors between the tower building envelopes which ensure neighbouring properties maintain views through to Brisbane Water and the foreshore and this approach is representative of the aim of view sharing principles.

144. The Commission agrees with the approach of considering the view loss in the context of the development potential of the site, noting that this Site has been designated for consideration for increased height and FSR under cl 8.4(4) of GSEPP. However, as outlined in the Summary to this Section above, the Commission does not support the bulk of the envelopes as proposed. More slender Northern and Southern Towers would assist in reducing the impact of the development on both private and public views. It is also appropriate that future development applications assess public and private view impacts, and demonstrate "how consideration has been given to minimising such impacts, where feasible."

Overshadowing impacts to open space

Leagues Club Field

145. As stated in Sections. 6.4.49 and 6.4.50 of the Department's AR:

6.4.49 Clause 8.10 of the Gosford SEPP and Section 4.3 of the GDCP states that developments should ensure at least 70% of the Leagues Club Field receives four hours of sunlight between 9 am and 3 pm at the winter solstice. The GDCP also recommends solar access should be contiguous and impacts should be considered cumulatively between all developments.

6.4.50 Council objected to overshadowing impacts and recommended solar access be maintained to the Leagues Club Field.

146. The Department states that the Applicant's analysis shows that the proposal meets the above control for the Leagues Club Field and that the open space would continue to receive between 85% and 96% of direct sunlight for four hours in mid-winter between 11am and 3pm.

147. The Commission concurs with the above assessment and with the Department's conclusion in Section 6.4.53 of the AR that the proposal complies with the control in cl 8.10 of the GSEPP.

Poppy Park and Memorial Park

148. With regards to Poppy Park and Memorial Park, cl 4.3 of the DCP in Control 5 states:

For other existing public open spaces, such as Burns Park, Memorial Park and Gosford Rotary Park (Poppy Park), including Gosford City Park, buildings must be designed to ensure that at least 50% of the open space receives a minimum of 4 hours of sunlight between 9am and 3pm on 21 June.

149. The assessment in Section 6.4.53 (dot point four) of the Department's AR states:

...additional overshadowing of Poppy Park is limited to between 10am and 11am. The remainder of War Memorial Park experiences additional overshadowing between 10am and 3pm. However, it is noted that the remainder of the park is already heavily overshadowed by dense tree planting.

150. Retaining sun on the area in front of the Cenotaph in Memorial Park is important to the community as identified by the CEN in its letter to the Commission dated 27 June 2020:

The Assessment Report considers the potential overshadowing of the Rotary Park and includes diagrams which indicate that the Park would have satisfactory solar access. However, the consideration of the potential overshadowing of Memorial Park is superficial and dismisses solar access on the basis that there are several trees in and around the Park.

An examination of aerial photographs reveals that there is a significant clearing around the War Memorial in the centre of the Memorial Park and it has direct sunlight at least part of the day. The shadow diagrams exhibited as part of the St Hilliers EIS indicate that the centre of the Memorial Park would be overshadowed by the Southern Tower in the proposed development for at least two hours in the middle of the day at the Winter solstice.

The Assessment Report, therefore, should have undertaken a more rigorous investigation of this issue and considered possible modification of the proposed Southern Tower to mitigate the potential impact on the Memorial Park.

151. From visiting the Site, the Commission understands that Poppy Park is the lower level area of open space fronting Vaughan Avenue (where a sculpture depicting poppies is located). It also understands that the available area for solar access is located away from the dense canopy of fig trees in the eastern corner. The Applicant's shadow diagrams in Figure 5 on p48 of the Department's AR show that Poppy Park will be overshadowed in part at 9am, 10am and 11am in mid-winter. The 9am shadow appears to be less than 50% of the park, complying with the control. However, the overshadowing at 9am is significant and a more slender Southern Tower is likely to decrease the amount of overshadowing at this time.
152. The Commission notes that with respect to the overshadowing to Leagues Club Field, the height of the building as seen in Complying Scheme (1) (an envelope at RL48 referred to in paragraph 128 and in Figure 7 above), does not affect compliance with the DCP control, as the buildings at the base control height overshadow approximately to the same extent. The issue that is highlighted in these Schemes is not so much the impact the proposed building heights have on overshadowing adjacent public spaces, but the width and profiles of the tower envelopes, the profile and height of the northern podium and the distance between the towers. This is evident in the shadow diagrams in the analysis of the alternative Complying Schemes provided by the Applicant in the Response to the Commission.

5.6 Amenity of through-site links

153. The design excellence criteria in cl 8.4(4) of the GSEPP requires the consent authority to have regard to the following:
- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain;*
 - (c) *whether the development is consistent with the objectives of clause 8.11,*
[The objective of cl8.11 is "to protect and enhance key vistas and view corridors in Gosford City"]
 - d) *any relevant requirements of applicable development control plans...*
154. The proposal provides a northern and southern through site link described in Section 6.5.1 of the Department's AR:
- The key public domain / landscaping features of the site is the establishment of two publicly accessible through-site links connecting Mann Street in the east to Baker Street and the Leagues Club Field in the west. There is a significant (approximately 8 m) fall in levels across the site and consequently the links are arranged in terraces.*

Overshadowing

155. The Department acknowledges that the through- site links would be "largely overshadowed in mid-winter" (Section 6.5.12 of the AR). The extent of overshadowing was raised by the Council as an issue, and the Council also expressed the view that the links were poorly integrated into the site.
156. The Applicant has presented the north-south link as an 'Eat Street' with an 'urban character', similar to the laneways of Melbourne or Angel Place in the City of Sydney (see the images in the Applicant's Presentation to the Commission).
157. The Department concludes that the overshadowing of the east-west arm is "on balance acceptable" - "including that the through-site link is orientated east-west and in the most appropriate location to provide a strong visual and physical connection between Mann and Baker Streets and Brisbane Water".
158. For the north-south link, the morning overshadowing is a result of the development at 32 Mann Street. The Department's amendments to potentially chamfer the Northern Tower, and the additional set back from Baker Street as shown in Figure 28 of the AR would assist with increasing solar access to the north south link, and are supported.
159. The Commission maintains the through-site links as proposed do not deliver desirable outcomes. They will be the tangible public benefits that result from this development and need to be consistent with the public space objectives of the Gosford Urban Design Framework.
160. The Commission concludes that the through-site links need to receive more sunlight and be wider and better integrated into the surrounding public realm. The Commission's amendment to the building fill within the Northern and Southern part of the envelope, together with the amendments recommended by the Department and imposed by the Commission will increase solar access.

Accessibility of the links

161. The link from Mann Street to the Leagues Club Field is a series of terraces and steps and the Commission considers that all abilities access should be provided. The Applicant confirmed in the Meeting with the Commission (see p15 of the Transcript) and in the Applicant's Response to the Commission that the all abilities access would be via lifts. The Commission imposes a FEAR that the landscape plan for the future development must show that that publicly accessible areas will have all abilities access (in accordance with the *Disability Discrimination Act 1992*). This is consistent with the need to have considered cl 8.3(4) "(ix) pedestrian, cycle, vehicular and service access, circulation and requirements, in order to exhibit design excellence", and DCP provisions:

- cl 4.1 Pedestrian Network "Gosford City Centre's streets, lanes, arcades, through site links and public open spaces should form an integrated pedestrian network providing choice of routes and accessibility for all people"
- cl 7.2 Pedestrian Access and Mobility:
Any new development must be designed to ensure that safe and equitable access is provided to all, including people with mobility problems and disabilities. This is of particular concern in Gosford where a significant percentage of the population is 55 years or older and the topography can be difficult to negotiate on foot
- cl 7.2 Control 5: "All development must provide continuous access paths of travel from all public roads and spaces as well as unimpeded internal access"

5.7 Heritage

162. As outlined in Section 1.4.6 of the Department's AR, the Site is adjacent to a number of heritage items (see Table 5 in the AR). The Council raised concern with the heritage assessment in the EIS (see summary in Table 12 of the AR).

163. Heritage is addressed in Sections 6.4.70 to 6.4.76 in the Assessment Report. The Commission agrees with the conclusions of the Department in Sections 6.4.75 and 6.4.76, particularly in the discussion regarding the impacts associated with the existing and possible increased height and density afforded to the Site and as articulated by the Department "...the Gosford SEPP and GDCP envisage a scale of development that is significantly greater than the historic low-scale of Mann Street".

164. In Section 6.4.76 of the AR:

The Department therefore concludes the proposed height and scale of the building envelope would not have an adverse impact on the heritage significance of nearby heritage items. To ensure the design of future developments respect nearby heritage items, the Department:

- *has recommended a FEAR requiring future DA(s) include a HIS and consider the impacts on adjacent and nearby heritage items*
- *notes that the Design Guidelines require future buildings to not have adverse setting or visual impacts on heritage items and include appropriate materials.*

165. In cl 8.3(4), subclause (e)(iii) states that in order to exhibit design excellence "heritage issues and streetscape constraints" must be addressed. This has been considered by the Commission and concludes that the impacts on the nearby heritage items are acceptable. The proposed amendment to the envelope will serve to further reduce the bulk of the future buildings, hence the visual dominance of the development on heritage items.

5.8 Design excellence

166. The Applicant's EIS and the supporting architectural documentation outlines the basis on which the proposal achieves design excellence. Among others points it states:

In recognition of the significance of this site to Gosford City Centre, and the importance of providing a high quality design outcome which exhibits 'design excellence', an informal design competition process was undertaken by the applicant to select an architectural scheme that could respond positively to the surrounding context and the importance of the site.

Three top-tier architects were selected by the applicant to take part in the competition and were encouraged.

Their [DKO Architecture, the chosen firm] design, unlike the other competitors, provided a smart approach to potential public benefits and the unique opportunity with retail activation at the ground and upper levels, innovative landscape and public domain initiatives, ease of project staging, maximisation of views from all proposed In the presentation to the Commission on 28 July 2020, the Applicant also provided a timeline of the consultation with the Department, the DAP and images of the evolution of the proposal in consultation with the DAP.

167. Design excellence is discussed in Section 6.2 of the Department's AR. The Department refers to cl 8.3 of the GSEPP in Section 6.2.1, and states that "As it applies to all applications for new buildings within the Gosford City Centre, the Gosford SEPP design excellence provisions will apply to the design of future buildings".

Design Excellence Strategy

168. The Applicant's Design Excellence Strategy (**DES**) states on p4 that:

SSD-10114 has undergone a design review process with the City of Gosford Design Advisory Panel (CoGDAP) established by the Government Architect NSW and the supporting Design Reference Group (DRG). This has resulted in several key design moves (for incorporation in future stages), which are reflected in the submitted Design Guidelines.

169. The Department also refers to the Applicant's DES in Sections 6.2.9 and 6.2.10 and 6.2.11:

The Department notes the DAP has been involved with the proposal since its inception and has provided detailed advice and recommendations to guide the design of the development throughout the evolution of the proposal. The DAP has also considered the concept proposal and concluded it exhibits design excellence (Appendix E).

Subject to the continued involvement of the DAP in accordance with the Gosford SEPP and DES, the Department considers future developments are capable of being designed to achieve design excellence and maintain design integrity. The Department has recommended a FEAR requiring future development be undertaken in accordance with the DES and that future DA(s) are reviewed by, and respond to the advice of, the DAP.

Design competition

170. The proposed DES cites the statutory requirements under cl 8.4 (4) of the GSEPP will be met with regards to review of the future stage DAs by the DAP.

171. The Commission acknowledges the internal process undertaken to select the architect for the development (as explained in paragraph 166 above), and further the process undertaken by the Applicant and as described at its meeting with the Commission as “more like an expression of interest”. Decisions on the need for design competitions are made by the DAP in accordance with the provisions of the GSEPP. The Commission notes the DAP did not require a design competition at this concept development stage. It is unknown if the DAP contemplates that design competition/s for any future stages would be required.
172. In order to establish ‘design excellence’ under cl 8.3 of the GSEPP and confirm the suitability of the development under cl 8.4(4) of the GSEPP, the Commission is of the view that design competitions should be held for all future stages of the development. This is particularly relevant given the scale and prominence of the development (particularly the Northern and Southern Towers) at the southern end of the CBD and its location adjacent to Brisbane Water, its location in relation to significant public open space, and the need to better integrate and improve the through-site links. Unlike the drafting of other EPIs that allow the consent authority to determine the need for a design competition to demonstrate design excellence or as a pre-requisite of achieving additional FSR and height, there is no such provision in the GSEPP (or in the DCP). The only reference to design competitions in the GSEPP is in cl 8.4(4)(c) and (d), which provides that the decision to hold a competition remains at the discretion of the DAP. This is also set out in the *City of Gosford Design Advisory Panel Guide for Proponents and Stakeholders*.
173. The Commission notes that the decision to hold a design competition must be made by the DAP and not the consent authority. In FEAR C1 in the consent, the Commission has applied a Note that explains that prior to the lodgment of future development application(s), a design competition should be held unless the DAP agrees it is not required.

Design Guidelines

174. The Applicant also prepared Design Guidelines, prepared by DKO Architecture, as amended and dated 17 June 2020, Revision C.
175. The Applicant’s Design Guidelines are discussed in Sections 6.2.12 to 6.2.16 of the Department’s AR. The Commission agrees with the Departments assessment:

In response to a request from the Department, the Applicant prepared Design Guidelines which sets out the key principles and design parameters to inform the detailed design of buildings within the envelopes and ensure they achieve design excellence. The Design Guidelines provide whole-of-site and building specific guidance relating to building height, scale and architectural character and through site links.

and:

The Department notes, although the Design Guidelines are high-level in nature, they generally provide an appropriate starting point for the design of future buildings and spaces.

GSEPP cl 8.3 Design excellence

176. Sections 6.2.17 to 6.2.19 of the Department’s AR concluded:

The Department is satisfied that the Applicant is committed to a rigorous design process and to delivering the highest standard of design across the development.

The Department has reviewed the DES and the Design Guidelines and considers, subject to the ongoing involvement of the DAP and the Department's recommended conditions and FEARs, future developments will exhibit design excellence.

Based on the advice of the DAP, the Department is satisfied that the proposal exhibits design excellence in accordance with the Gosford SEPP for the reasons outlined above.

177. As identified by the Applicant and in the Department's AR (Section 5.6.3), the DAP has reviewed the proposal and concluded:

The Panel believes the proposal for this stage of the concept masterplan proves, exhibits design excellence and noting the sufficient amendments have been made in responses to the Panel's previous comments.

178. As requested, the Department provided the Commission with a more detailed assessment against cl 8.3 on 12 August 2020.

179. The Commission acknowledges the process that the Applicant has undertaken with the DAP that has resulted in the subject proposal and supports the Department's Assessment of the Applicant's DES in paragraph 176 and the imposition of FEAR C1. However, the Commission has identified that design competitions should be required for the future stages (see paragraph 173 above) of the development.

180. Acknowledging that this is a concept only, the Commission is of the view that design excellence can be achieved in future built form if the bulk of the envelope of the Northern and Southern buildings (particularly the towers) is reduced, as discussed throughout Section 5 of this report. The amendment to the envelope will address clauses 8.3(4) (a), (v), (vii) and (x) of the GSEPP anticipating that a modified concept proposal and future development on the Site would be capable of exhibiting design excellence.

Other Issues

5.9 ESD

181. As identified in paragraph 45 above, cl 8.4(4)(f) of the GSEPP requires the consent authority to be satisfied that the building "meets or exceeds" minimum building sustainability and environmental performance standards in order to grant consent above the base height and FSR in the GSEPP.

182. The Department's AR in this regard in Table 6 to Section 4.6.9 states:

As discussed at paragraphs 4.6.15 to 4.6.21, the future buildings are capable of being designed to achieve ESD. The Department has recommended FEARs requiring that future DA(s) demonstrate how ESD principles have been incorporated into the proposal, include the appropriate sustainability measures, achieve minimum and explore stretch sustainability targets.

183. In Section 4.6.15 of the AR, the Department states that:

The development proposes ESD initiatives and sustainability measures, including:

- *a minimum 4-star NABERS Energy rating, with a target of 5 stars or greater*
- *maximise thermal efficiencies and minimise uncontrolled leakage*
- *highly efficient façade design and thermally efficient glazing*
- *mixed-mode natural ventilation within residential buildings*

- *high efficiency plant and systems, including monitoring controls*
- *centralised gas hot water systems for the hotel and residential buildings with minimum 50% solar contribution*
- *high efficiency lighting and fixtures and motion sensors*
- *water efficient appliances and fixtures and minimum 50 kilolitre rainwater tank.*

184. In response to the submission from the Council that there is insufficient information on the proposed standards, the “Department agreed with Council that future DA(s) should strive to improve on minimum standards” (Department’s AR Section 4.6.18).

185. The Department proposed draft FEARs C20 and C21 to address this requirement in the future stages. As it is a prerequisite to the granting of consent for higher density and FSR above the base controls the Commission has imposed FEAR 20 to state that future development applications are to:

- definitively ‘meet or exceed’ the targets (instead of future development needing to ‘explore opportunities’ to exceed the targets as worded in draft FEAR 21), and
- must address the *National Construction Code of Australia 2019*, which the Commission understands has 5.5 NABERS (or equivalent) rating requirements for energy and water efficiency.

5.10 Quantum of commercial floorspace

186. A further requirement of the GSEPP cl 8.4(4) is consideration of commercial floor space in the development. The *Quantum of commercial floorspace* is assessed by the Department under *Other Issues* in Table 18 on pp74 -75 of the AR:

- *The Department is satisfied the indicative scheme has demonstrated the proposed commercial floorspace would be appropriately located to activate existing and proposed streets and through-site links and would appropriately screen above-ground car parking levels.*
- *The Department considers the proposal meets the objectives of the B4 Mixed Use zone as it provides for a mixture of compatible and diverse range of land uses in an accessible location, improves public domain and pedestrian links, enlivens the waterfront and protects the scenic qualities of Gosford City Centre.*
- *The Department concludes the commercial component of the proposal is sufficient, would provide for new employment*

187. Under the ‘recommended condition’ comment in Table 18, “The Department recommends a ToA securing a minimum amount of retail / commercial GFA”.

188. The Commission is satisfied that the proposal meets the requirement of cl 8.4(4)(e) of the GSEPP. The proposed first stage being the hotel will in particular be an asset for Gosford and the commercial uses are consistent with the objective of the B4 Mixed use zone in the GSEPP:

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.

189. Given the reduction in the building fill for the Northern and Southern building envelope there will be a slight reduction in the commercial/retail GFA to 2,787m², being 8.0% of the new total GFA. This is compared to the Applicant's proposal (Reference Scheme) with commercial/retail GFA of 3,213m², which was 8.2% of the total GFA. The consent has specified that the approved commercial GFA is a minimum, leaving scope for additional commercial/retail floorspace within the overall maximum GFA.

5.11 Car parking and traffic

Car parking

190. Section 6.6 in the Department's AR addresses the key issue of car parking and traffic. In Sections 6.6.2. and 6.6.3 the Department explains:

6.6.2 The application proposes that future DA(s) provide car parking in accordance with the residential, hotel and retail car parking rates contained within the Roads and Maritime Guide to Traffic Generating Developments 2002 (RMS Guide).

6.6.3 The Gosford SEPP includes hotel and commercial car parking rates and the GDCP includes residential, hotel and retail car parking rates for developments within the Gosford City Centre. The ADG recommends that car parking for residential developments on land zoned B4 Mixed Use, within a regional centre, should be in accordance with the RMS Guide or local controls (whichever is the less).

191. Table 15 of the Department's AR summarises the various parking requirements based on the GSEPP, RMS and DCP. This is based on the Applicant's Reference Scheme which included an assumed unit mix for the residential component.

192. As stated in Sections 6.6.5 to 6.6.7 of the AR:

6.6.5 Council objected to the car parking rates noting parking should be provided in accordance with the GDCP rates. In addition, car parking design should meet appropriate Australian Standards.

6.6.6 TfNSW initially recommended car parking be reviewed and that the hotel and retail car parking should be provided in accordance with the Gosford SEPP requirements. After reviewing the RtS TfNSW recommended future DA(s) include a detailed TIA to be prepared in consultation with TfNSW and Council to identify and assess key traffic/transport issues, and confirm car parking requirements.

6.6.7 The Applicant has stated that as a concept application it does not seek minimum or maximum car parking numbers. Further, the RMS Guide provides the appropriate car parking rates for the site in accordance with ADG requirements. The Applicant also stated it has sought to minimise basement excavation (for car parking) due to site flood constraints, access and nearby intersection performance

193. For the residential component, the car parking required in the DCP is greater than that under the ADG which references the RMS Guidelines. The Commission agrees with the Department's position that the strategic aim should be to minimise car parking in the City Centre, but also accepts Council's position as expressed in the submission and Meeting with the Commission that there is a shortage of car parking in the City Centre and the new Leagues Club Field will generate additional parking needs (p24-15, Transcript of Meeting with Commission).

194. The Council in its meeting with the Commission also considered that in its view car parking had not been assessed adequately stating that:

...we've got an application that doesn't justify current car parking but [the Department's Assessment says] we're going to approve it anyway and deal with it later. How is that a logical thing to do? Is the site even capable of catering to the car parking if a future traffic and parking impact assessment says they require a hundred more spaces?" (Meeting Transcript p25)

195. The Commission understands that the Applicant has not sought car parking provision in the concept proposal but identifies that this approach has been supported by the Department. It is difficult to determine the final parking generation for the residential component when the final apartment numbers are not known. The Applicant's Traffic Impact Assessment (TIA) has made assumptions based on the Reference Scheme and has flagged that intersection upgrades will be required, (see paragraph 202 below).
196. The Department recognised the Council's position and in Section 6.6.11 of the Department's AR notes that there would be an issue if there was a significant reduction in on-site parking per unit, lowering the minimum rate under the RMS Guideline. The Department states in Section 6.6.12 of the AR:
- However, the Department is concerned that further detailed assessment of the appropriate amount of car parking is required to ensure the correct balance between meeting car parking demand from the development on site, not increasing (or displacing) car parking demand elsewhere in the City and minimising traffic impacts.*
197. A FEAR was proposed in the draft instrument (C22) to require a Car Parking Assessment Report with future DAs, and that the car parking rates be set at the RMS rates as a minimum and the DCP rates as a maximum.
198. The Commission notes that the proposed FEAR does not specify that this range in car parking rates will only apply to the residential component. This may be implied, but given the statement in Section 6.62 and quoted in paragraph 190 above, and as the reference to the car parking rate is in a ToA, rather than a modification to the Applicant's proposal, this appears not to be the case.
199. Clause 8.5 of the GSEPP specifies the minimum car parking rates for "commercial activities", which are defined in the cl 8.5(4) of the GSEPP as
- the use of the building for the purposes of office premises, business premises, hotel or motel accommodation (but not hotel or motel accommodation that is subdivided under a strata scheme), food and drink premises or other like uses or a combination of such use*
200. Table 15 in Section 6.6.4 of the Department's AR shows that the GSEPP rate for "commercial activities" would require 202 car spaces based on the Reference Scheme. The Applicant's TIA (p27) states that 86 car spaces are proposed for the Hotel and 159 spaces for retail/commercial, a total of 245 car spaces.
201. Clause 8.5 of the GSEPP is referred to in Table 23 in Appendix C of the Department's AR that states "The indicative development confirms the proposal is capable of complying with these car parking requirements". The Department has recommended a FEAR requiring that future DA(s) include a TIA and consider the appropriate rate of car parking for the site (Section 6.6). Whilst the overall number of car spaces may be compliant, in the Reference Scheme it appears that the number of car spaces allocated to the hotel will not meet the minimum in the GSEPP. The rates in the RMS Guideline for a hotel use have no statutory basis (unlike the RMS rates for residential apartments that derive from the requirement in the ADG). The GSEPP rates for "commercial activities" must therefore apply. The Commission has imposed condition Modification B3 and FEAR C22 which reflects this.

Traffic generation

202. With regard to Traffic Generation, the Applicant's TIA Report is analysed by the Department in Sections 6.4.14 to 6.6.16 of the AR. Intersection upgrades will be required with the development and in the long term as the Level of Service of nearby intersections will reduce. The Commission agrees with the Department that this issue must be dealt with in DAs for the next stages:

6.6.18 The Gosford City Centre Special Infrastructure Contribution Levy requires a 2% levy (SIC) for local and state infrastructure improvements, including road infrastructure improvements.

6.6.19 The Applicant noted TfNSW is currently preparing the GCCTP, which will holistically determine the appropriate road upgrades which the SIC levy may be directed towards. The Applicant confirmed it does not object to the SIC levy and would accept a FEAR requiring levies be paid at each detailed stage of the development

203. Given the uplift proposed, it would have been preferable to apply the SIC contribution and/or requirements for intersection upgrades with this DA, as this sets the quantum of GFA. However, the final unit mix of the future residential apartments is unknown and the Commission accepts that the final requirements for traffic works would require the completion of the Gosford City Centre Transport Plan.

5.12 Public benefits

204. The public benefits of the proposal are discussed in the Department's AR in Section 6.7 in terms of the increase in residential apartments, the economic benefits of the proposal particularly with regard to new jobs, and in Sections 6.7.3 and 6.7.4:

6.7.3 Council stated there is a need for affordable housing across the Central Coast region, community facilities within the Gosford City Centre and future development should consider including both. CC Health recommended the proposal consider including a childcare facility.

6.7.4 In response to Council's comments the Applicant has stated:

- there is no planning policy requirement for affordable housing contribution on the site*
- while the development would not trigger the need for an additional community centre, the Applicant will discuss a range of on / off-site improvements as part of a future public benefits offer*
- while the development will generate demand for 10 childcare places, it does not trigger the need for a new facility. However, the provision of a centre may be considered as part of a future planning agreement.*

205. The Commission has imposed the Department's recommended FEAR "requiring future DA(s) investigate the potential, in consultation with Council, for the development to accommodate: affordable housing and/or community facilities and a childcare facility" (AR Section 6.79).

206. The other public benefits of the proposal set out by the Department in Section 6.7.6 of the AR are the proposed publicly accessible through site links and the payment of local and State Government contributions. As indicated in Section 5.6 above, the benefits of the through-site links are somewhat compromised by overshadowing and lack of space and integration. The reduction in the Northern and Southern building envelope will help address these concerns. The Commission requested that the Applicant articulate the public benefits of the proposal (other than required contributions payable to offset the impacts of the proposal). These were explained in detail in the Applicant's Letter to the Commission dated 11 August 2020 (Response to the Commission on 12 August). This included an 'Order of Costs' for the through site links (cost shown as \$4.05 million).
207. The Commission acknowledges the overall benefits of the proposal to the Gosford City Centre and supports the provisions outlined by the Applicant in the Letter in Response to the Commission. This is accepted noting that it is unfortunate there is no direct provision in the GSEPP requiring public benefits associated with the increase in height and FSR (aside from meeting the strategic intent of the GSEPP), or specific consideration of the provision of public benefits in cl 8.4 of the GSEPP. The Department and Council have not negotiated any planning agreements for public benefits at this concept proposal stage, when the uplift in height and FSR will be achieved.

5.13 Other issues identified in the Department's assessment

208. The Commission agrees with the Department's assessment of the *Other issues* discussed in the Section 6.8 in the Department's AR. Where more explanation of the Commission's position is required, the Other issues are discussed in more detail below:

Wind impacts

209. With regards to wind impacts, the Department states on p68 of the AR:
- *To ensure spaces are comfortable for their intended use, the PWES (Applicant's Pedestrian Wind Environment Statement) recommends future DA(s) undertake wind tunnel testing and include wind mitigation measures to address identified wind impacts, such as:*
 - o retention of trees along Vaughan Avenue and provision of densely foliating, evergreen planting, provided in clusters with interlocking canopies*
 - o awnings over trafficable areas and localised screening and screens at cafés, shopfronts and main entrances*
 - o wind screens within through site links, near corners of buildings and at balconies....*
- and
- *To ensure wind impacts are appropriately addressed, the Department considers it necessary that a detailed Wind Assessment is undertaken, including wind tunnel testing, consideration of cumulative impacts with other Mann Street DA approved towers and provide wind management and mitigation measures to address any impacts.*
210. The Commission agrees with the Department's assessment, and imposes a FEAR relating to *Wind Assessment* which requires future development applications to include mitigation noting that amendments to building elements within the Site and to building setbacks generally may be necessary to provide for planting on the Site.

Future residential amenity

211. Future residential amenity is discussed in Section 6.8 of the Department's AR. As well as issues with the internal links, concern was raised by the Council that the future communal open space for residents was not sufficient, and their open space needs would rely on access to the Leagues Club Field. The Commission accepts that at the density proposed, the opportunity for at grade open space on the Site is minimal. The design of the future apartment buildings will need to address the Design Criteria in the ADG, including meeting Objective 3-D1 for communal open space. According to the Department's AR, the communal open space provided will exceed the ADG criteria (p67 under *Other Issues – Future residential amenity*).

Baker Street

212. The relationship of the development to Baker Street as existing, and Baker Street as proposed to be extended through to Vaughan Avenue, was raised in Council's submissions and at the Council's Meeting with the Commission. The Council raised the need for a turning area to allow for vehicles entering the existing ATO building to exit onto Georgiana Terrace. This part of Baker Street is currently two way with 90 degree parking. There is also a pedestrian link from this point to Vaughan Avenue to the east.

213. The Council also stated that it was unclear if the Baker Street extension would be a one way shared zone with emergency access only to Vaughan Avenue, or a completely through road (which it did not support). Control 5 in cl 6.7 of the DCP states "Baker Street (extension) is a desired pedestrian boulevard (emergency vehicle access only)". The Commission sought further information from the Department on this issue. The Department advised that the Baker Street Extension would be a one way shared zone with a left turn out into Vaughan Avenue. Under *Baker Street*, the Department's AR states on p71 that:

- *The Department notes the application does not propose any works to Baker Street and the extension/upgrade of that road forms part of a separate process. The Department considers the TIA submitted with future DA(s) should consider the development's relationship to and impact on Baker Street.*

214. It is outside the remit of this DA to determine the appropriate function of the Baker Street extension, that being part of the Leagues Club Field project being undertaken by the HCCDC. However, the Reference Scheme shows that the access for Stage 1 is from the existing Baker Street and that a loading area for all stages is also accessed from Baker Street.

215. The Commission is of the view that the future configuration of Baker Street is relevant to the proposal as is the resolution of any conflicts between traffic using and parking on Baker Street and entering the ATO building. A FEAR relating to Traffic and Transport refers to consideration of the Baker Street extension.

216. The *Other issues of Contamination and Quantum of Commercial floor space* were discussed in this Report in paragraphs 56 to 58 and Section 5.10 respectively.

5.14 Objects of the EP&A Act and Public Interest

217. The Department's AR has assessed the Development in accordance with the Objects of the EP&A Act in Sections 4.6.12 to 4.6.13 including Table 7 in the AR. The Commission agrees with the Department's Assessment of the Objects in table 7, and subject to the amendments outlined in Section 5 above the Commission is satisfied that that the Application accords with the objects of the EP&A Act.

218. The Department's AR states that "the proposal is a significant development within the Gosford City Centre and is therefore in the public interest as discussed at Section 6" (in Table 4 in Section 4.6.2). The Department concludes in the Executive Summary of the AR that "... the proposal would result in benefits to the local community and is therefore in the public interest, subject to appropriate conditions". The Commission concurs with the assessment in Section 6 of the Department's AR, that the Application should be approved subject to the Commission's additional amendments as identified in Section 5.
219. The Commission has addressed the public interest by balancing the strategic aims for redevelopment of the Gosford City Centre with the impacts of the proposed development, including the concerns raised by the Council and the CEN. The Commission notes that this development is also important given it will provide further guidance for future applications under the GSEPP.

6 THE COMMISSION'S FINDINGS AND DETERMINATION

220. The views of the community were expressed through the submissions received from the Council and the public. Both the Council and the CEN which made a formal submission were afforded the opportunity to address the Commission. The Commission has carefully considered these matters in making its decision. The way in which these concerns were taken into account by the Commission is set out in Section 5 above.
221. The Commission has also carefully considered the Material before it and determines that the Application should be approved subject to a condition requiring a reduction in the amount of permissible GFA in the Northern and Southern part of the building envelope. The reasons to reduce the available area for a building within the envelope as identified in Section 5 are in order to:
- reduce the visual impact of the development from key views to Rumbalara Reserve
 - reduce the bulk of building envelope and reduce the visual impact of the proposal for users of the newly upgraded major open space area, the Leagues Club Field
 - reduce overshadowing of Leagues Club Field between 9 am and 10am
 - further mitigate the overshadowing of Poppy Park and Memorial Park, consistent with the objective of the control in the DCP
 - increase the width of the through-site links, by a reduction in the envelope of the podiums
 - reduce overshadowing to the through-site links
 - reduce the loss of views to Brisbane Water from surrounding residential apartment buildings
 - reduce the visual bulk of the future buildings thus improving the visual impact on nearby heritage items.
222. It will also allow:
- an increase in the residential car parking on the site (keeping the car park area the same), beyond the minimum provided for under the RMS guide and closer to that required in the DCP
 - the residential towers to achieve improved compliance with SEPP 65 and the ADG, particularly in relation to building separation and solar access.
223. In addition to the Conditions recommended by the Department, other Conditions imposed by the Commission include requirements:
- to show an amendment to the through-site link or envelope so that a view to the waterfront/Leagues Club Field will be retained when standing at the boundary to the Site on Mann Street looking west towards the water (Section 5.5)
 - a Note to FEAR C1 (Section 5.8.) relating to future design competitions

- referencing the need to provide all abilities access to publicly accessible areas in FEAR C9 (Section 5.6)
- specifying the provision of ESD measures in future buildings (Section 5.9) (FEAR C20)
- specifying future parking requirements for residential apartments as distinct from the parking requirements specified in the GSEPP for commercial activities (Modification B3 and FEAR C22) (Section 5.11)
- amendments to FEAR C27 *Wind assessment* to identify that changes to building elements within the envelope may be necessary to provide for planting within the site to ameliorate wind (Section 5.5)
- a requirement for additional site investigation to satisfy SEPP 55 in FEAR C33 (Section 4.4.3).

224. These amendments are required to ensure that design excellence as required under cl 8.3 of the GSEPP and improved environmental and amenity outcomes can be achieved through future development applications.

225. The Commission determines that consent be granted to SSD 10114, subject to the conditions in the consent, which includes those identified in Section 5 and summarised above.

226. The reasons for the Decision are given in this Statement of Reasons for Decision dated 24 August 2020.



Chris Wilson (Chair)
Member of the Commission



Wendy Lewin
Member of the Commission