

RESPONSE TO SUBMISSIONS

S4.55(2) AMENDMENT OF INSTRUMENT OF APPROVAL MP 09_0121



47-50 THE ESPLANADE, ETTALONG BEACH

Background

This Response to Submissions has been prepared in support of an application made under S4.55(2) of the Environmental Planning and Assessment Act 1979 for amendment of MP 09_0121. Submissions have been received from Central Coast Council and residents and owners of apartments located in the Mantra Resort.

The NSW Department of Planning and Environment (DPE) approved Project Application number MP 09_0121 on 24 November 2010 under Part 3A of the EP&A Act. Consent was given for the development of a mixed-use residential building to be developed over two stages. Stage 1 involved the construction of a 7-storey mixed use residential building and Stage 2 sought to construct a 2-storey commercial-retail building on the site. MP 09_0121 has subsequently been modified to increase the number of apartments within the building and make minor alterations and additions.

The submissions discussed herein relate to Mod 5 which originally sought to make minor additions and alterations to balconies on levels 3-6, modifications to the layout of the plant room and terraces on level 6, alter the roof to allow use as a trafficable terrace by units 601-602 and minor alterations to entry doors and the public bathroom on Ground level.

The proposal has been revised making the following modifications (as shown in figures 2 - 6):

- Sections of the balconies on levels 3 and 5 for apartments 307, 308, 506 and 507 are now to be non-trafficable.
- The extent of privacy screens on levels 3 and 5 are reduced.
- The new glass balustrades to levels 3 and 5 are to be frameless balustrades with clear glass.
- The roof area is no longer proposed to be modified to be trafficable.



Figure 1 - The site in red, the Mantra Resort in blue



Figure 2 - Level 3 floor plan with revisions shown in green

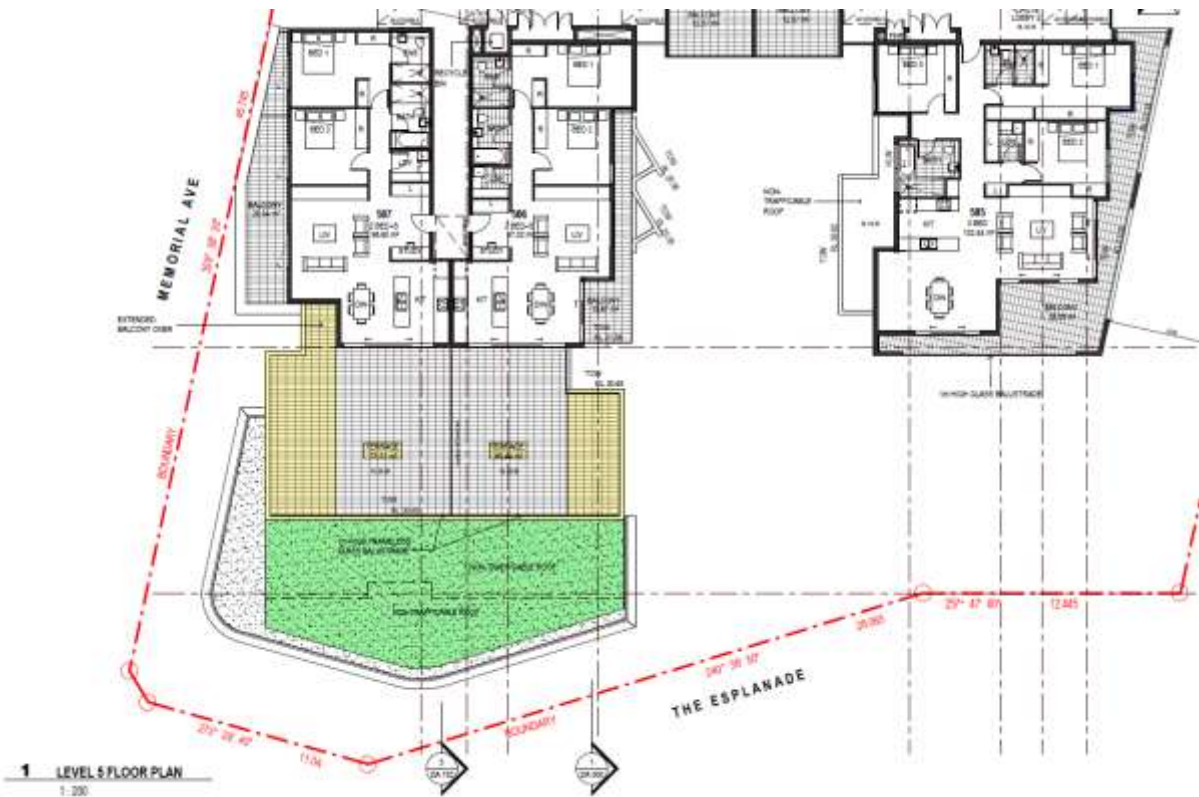


Figure 3 - Level 5 floor plan with revisions shown in green

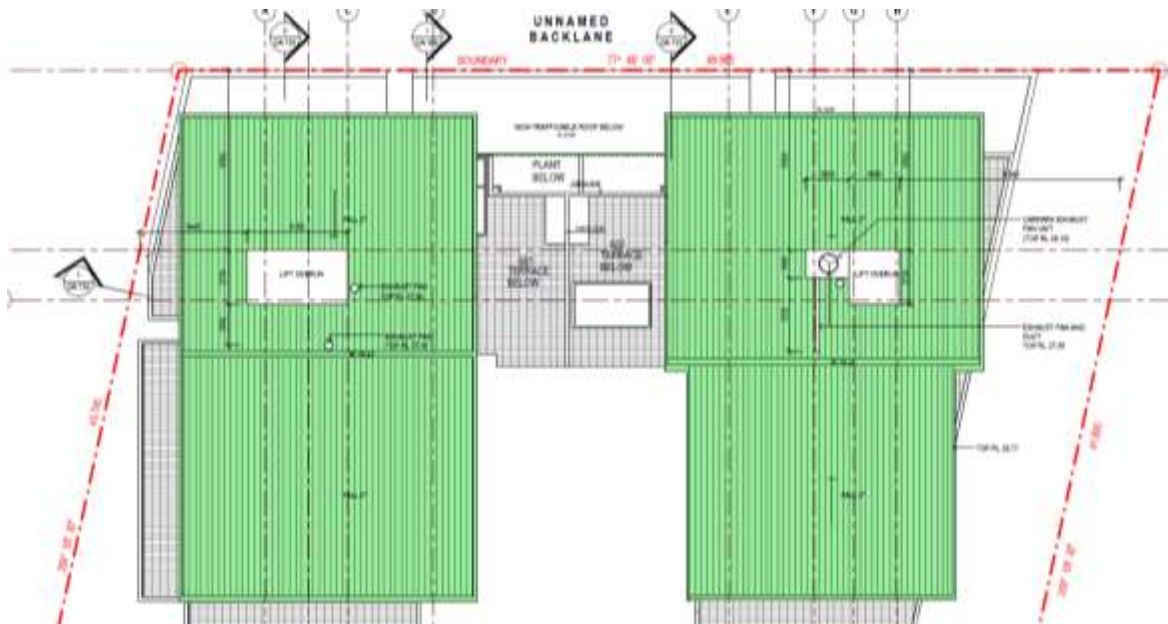


Figure 4 - Roof plan with revisions shown in green



Figure 5 - East elevation with revisions to the Level 3 privacy screen shown in green



Figure 6 - West elevation with revisions to the Level 5 privacy screen shown in green

Central Coast Council

A submission was received from the Central Coast Council which did not raise any objections to the proposal. The submission stated:

“No assessment of the modifications in relation to the BCA has been carried out in this instance. The proposal is to comply with the Building Code of Australia.

There is no objection to this amendment. The proposal raises no issues in relation to the relevant provisions of Gosford Local Environment Plan 2014 and Gosford Development Control Plan 2013, State Environmental Planning No. 65 – Design Quality of Residential Flat Development and the Apartment Design Guide.

The proposed modifications are considered to create substantially the same development as the original proposal.”

The proposal will comply with the BCA as a condition of consent. The proposal will result in larger balconies for some apartments and does not detrimentally affect the development’s compliance with SEPP 65.

Public Submissions

All public submissions were made by owners or occupants of the Mantra Resort and relate to the western side of the development. No submissions were received in regards to the eastern level 6 balcony or the internal level 6 terraces. The public submissions made in response to the exhibition of the application raise three fundamental concerns relating to the proposal. These are:

- The potential for noise nuisance to arise from the use of larger and additional balconies and a roof terrace.
- Visual privacy concerns associated with the locations of proposed balconies and roof terrace facing towards the Mantra Resort.
- Visual Impact arising from various aspects of the proposal, especially relating to the proposed level 3 and 5 privacy screens, modified balustrades and the roof terrace.

Since the collection of submissions by the Department of Planning and Environment, the proposal has been modified to address some of the concerns raised in the submissions by the public. This includes:

- Sections of the balconies on levels 3 and 5 for apartments 307, 308, 506 and 507 are now to be non-trafficable.
- The extent of privacy screens on levels 3 and 5 are reduced.
- The new glass balustrades to levels 3 and 5 are to be frameless balustrades with clear glass.
- The roof area is no longer proposed to be modified to be trafficable.

Noise, privacy and visual impact will be discussed separately below.

Noise impact

The proposed modifications include increases to the area of existing balconies on levels 3 - 6. The expected occupancy of the apartments is unchanged as a result of the proposal and the approved residential use remains unchanged. As there is no change to use or expected occupancy, there is no basis to assume that the proposed modifications will result in any greater noise impact than the approved development.

The submissions concerning noise impacts rely on unfounded assumptions regarding the use of the balconies for parties and other similar events. While these assumptions are entirely speculative and unfounded, it should be noted that the proposal has been revised to reduce the proposed trafficable area of the balconies on levels 3 and 5 and to entirely remove the trafficable roof terraces from the proposal.

The proposal's inclusion of larger trafficable balconies on levels 3 - 6 does not increase the potential occupancy or change the use of the apartments and will, therefore, not increase the noise impact of the development.

Visual Privacy

Visual privacy concerns were raised in several submissions by Mantra Resort residents. These concerns related to all new and extended balconies on the western elevation and the trafficable roof terrace. The trafficable roof terrace has been entirely removed in the revised proposal.

The building envelope complies with the controls for building separation in Section 4.2.5.4 of the Gosford Development Control Plan 2013 which requires 18m of separation between habitable rooms/balconies for buildings of 5 storeys or higher. The site and the Mantra Resort are separated by a distance greater than 18m at all points by Memorial Avenue. Memorial Avenue is a two-lane road with sizable footpaths on either side providing an appropriate level of separation within a town centre. Due to the compliant separation of all habitable rooms and balconies and the negligible additional privacy impacts arising from the proposed modifications, they are acceptable on balance.

Level 3 and 5 extended balconies

The extensions to the Level 3 and Level 5 balconies are oriented towards the ocean views to the south and south-east. The Mantra Resort sits to the north-west of the extended balconies. As a result, any views towards the balconies of the Mantra Resort will be incidental rather than primary. Incidental views towards the Mantra Resort are already possible under the approved development. The extension of these balconies does not significantly increase the privacy impacts upon the eastern apartments of the Mantra Resort.

Level 3 and 4 bedroom balconies

Bedrooms in apartments 308 and 408 are proposed to have a small balcony installed. This is intended to improve the amenity of the bedroom for occupants. These balconies are setback within the building envelope by several metres restricting the view from them. It should be noted that the approved development contains windows where the balconies are proposed and as such the privacy impact is not greatly increased above those of the existing approved development.

Level 6 western balcony

The new balcony to the rear of the apartment 601 is oriented towards ocean views to the south-west rather than towards the Mantra Resort. While this balcony will have incidental views of the Mantra, the balcony is separated by a distance greater than 18m from any habitable room or balcony and has a minor privacy impact that is acceptable on balance.

The cumulative privacy impacts of the proposal are minor and incidental. The separation between the Mantra Resort and the balconies subject to this proposal is compliant with the separation requirements of the Gosford DCP 2013. They are, therefore, acceptable on balance.

Visual Impact and View Loss

Submissions regarding visual impact are primarily related to the balustrades and privacy screens proposed for the extended balconies on Levels 3 and 5 and the proposed roof terrace. The proposed roof terrace has been removed in the revised proposal and is no longer a relevant consideration.

In response to the submissions, the following has been changed in the revised plans:

- Sections of the balconies on levels 3 and 5 for apartments 307, 308, 506 and 507 are now to be non-trafficable.
- The extent of privacy screens on levels 3 and 5 are reduced.
- The new glass balustrades to levels 3 and 5 are to be frameless balustrades with clear glass.

Due to the reduced length of the privacy screens on levels 3 and 5 and revised the balustrades to frameless glass, the impact from these structures will be minimal when viewed at a distance of over 18m as from the Mantra Resort. The frameless glass is entirely transparent and will result in minimal disruption of views. The reduction of the trafficable area of the balconies minimises the potential for occupants to place items on the balconies which may obscure views.

The proposal's impact on views from the Mantra Resort, which are achieved in part across the balconies of apartments 307, 308, 506 and 507, is minimal as significant separation exists between the buildings and the revised proposal makes only a minor increase in the length of the 1m high, transparent glass balustrade. The resultant view loss is minimal.

Conclusion

The submissions from the general public are entirely from owners and occupants of the Mantra Resort and their submissions primarily relate to concerns over noise impacts, visual privacy and visual impacts and view loss. In response to submissions, the proposal has been revised to remove the trafficable roof terrace and on Levels 3 and 5 to lessen the trafficable area, use frameless glass balustrades and reduce the size of privacy barriers between the balconies.

The proposal does not alter the building's use or expected levels of occupancy and will, therefore, not increase noise impacts above those of the existing approved development.

The privacy of residents of the Mantra Resort is not significantly affected by the proposal as views towards the Mantra Resort are incidental. The frequency of incidental views is not likely to be significantly increased by the proposal in comparison to the existing approved development. The proposed extended and new western balconies are separated from the Mantra Resort by varying distances, all of which are greater than the minimum required 18m under the Gosford DCP 2013. The impacts on the privacy of residents of the Mantra Resort as a result of the proposal are minimal and are acceptable on balance.

Submissions made regarding view loss have been taken into consideration when creating the revised proposal. Under the revised plans, view loss associated with the proposal is minimal as the 1m high balustrades are proposed to be frameless glass. The privacy screens between balconies have been reduced in size and the trafficable areas of balconies have also been reduced. The Mantra Resort retains significant water facing views to the south and is minimally affected by the proposed modifications.

This Response to Submissions Report demonstrates that the revised plans have taken into consideration the contents of the public submissions and has taken steps to minimise negative environmental impacts. Under the revised proposal the impacts on the Mantra Resort are minimal. It is recommended that the proposal be approved.