



Residential Development at 89 Whiteway Drive, Gosford

State Significant Development

SSD 10321

October 2021



Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Residential Development at 89 John Whiteway Drive Gosford

Cover image: Perspective view from John Whiteway Dive, looking South (Source: Applicant's RTS)

© State of New South Wales through Department of Planning, Industry and Environment 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (October 2021) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
ACHAR	Aboriginal Cultural Heritage Assessment Report
ADG	State Environmental Planning Policy 65, Apartment Design Guide
AHD	Australian Height Datum
AHDD	Aboriginal Heritage Due Diligence Report
BASIX	State Environmental Planning Policy (Building Sustainability Index) 2004
BCA	Building Code of Australia
BCD	Biodiversity and Conservation Division, DPIE
BDAR	Biodiversity Development Assessment Report
CC Health	Central Coast Local Health District
CIV	Capital Investment Value
Commission	Independent Planning Commission
Council	Central Coast Council
Crown Lands	Crown Lands, DPIE
DA(s)	Development Application(s)
DAP	City of Gosford Design Advisory Panel
Department/ DPIE	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FSR	Floor space ratio
GDCP	Gosford City Centre Development Control Plan 2018
GFA	Gross floor area

Gosford SEPP	State Environmental Planning Policy (Gosford City Centre) 2018
GUDF	Gosford Urban Design Framework
Heritage	Heritage NSW, Department of Premier and Cabinet
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
NRAR	Natural Resources Access Regulator, DPIE
SEARs	Planning Secretary's Environmental Assessment Requirements
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SIC	Gosford City Centre Special Infrastructure Contribution Levy
SEPP 65	State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
SEPP 55	State Environmental Planning Policy No.55 – Remediation of Land
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
TfNSW	Transport for NSW
TIA	Traffic Impact Assessment
VIA	Visual Impact Assessment

Executive Summary

Introduction

This report provides an assessment of a State significant development (SSD) application (SSD 10321) for the development of 89 John Whiteway Drive, Gosford (the Proposal).

The application seeks approval for the following works:

- Construction and use of 4 residential flat buildings (that vary from Relative Level (RL) 86.4 metres (m) up to RL 99.1m) ranging in height from 5 to 9 storeys, including: -
 - 204 residential apartments
 - 1 basement level and 1 part- basement level car parking for 305 parking spaces
 - maximum gross floor area (GFA) of 24,692 square metres (m²) comprised of residential floorspace, including associated residential facilities
 - site-wide concept landscape plan including a publicly accessible elevated walkway and viewing platform and public pocket park

The application has been lodged by JWD Development (the Applicant) under Part 4, Section 4.38 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The site is in the Central Coast local government area (LGA). The Capital Investment Value (CIV) of the development is \$98,306,520 and the development would generate up to 472 construction jobs.

Engagement

The Department publicly exhibited the application between 23 April 2020 and 20 May 2020 (28 days). In response to the exhibition, the Department received twenty-four submissions, from eight Government agencies, Central Coast Council (Council), two from interest groups, and fourteen from the general public.

The key issues raised in public submissions related to building height, density, amenity impacts, bulk and scale, traffic, tree removal and construction impacts. In response to the issues raised, the Applicant provided an amended SSD and response to submissions (RtS), which included reductions in building height, FSR and the number of units.

The Department notified adjoining residents of the amended SSD and RtS in writing and provided a 14 day period from 14 April 2021 to 27 April 2021 to make a submission. In response to the exhibition, ten submissions were received from the public and one from an interest group, all of whom raised objections to the proposal. Six submissions were received from government agencies and one submission was received from Council, who provided comments on the amendments.

The Applicant provided a revised set of plans and a supplementary RTS to address the agency comments, public submissions and outstanding concerns raised by the Department.

The Applicant then submitted revised plans and documentation in response to the Department's Request for Further Information (RFI), requesting further clarification on documentation submitted with

the RTS. The Department was satisfied with the documentation provided and all outstanding matters were adequately addressed.

Assessment

The Department has considered the merits of the proposal in accordance with the relevant matters under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the issues raised in the submissions and the Applicant's responses.

The key assessment issues are design excellence, building height, built form, protection of views to the Rumbalara Reserve, solar access, building separation, tree removal, excavation within the non-buildable area, communal open space, and parking and traffic.

The Department considers the proposal is acceptable for the following reasons:

- It would achieve design excellence in accordance with the Gosford SEPP.
- It achieves amenity for future residents, despite the height non-compliance.
- The design features will reduce the overall bulk and scale of the proposed development, subject to the imposition of design conditions to further refine the built form.
- It appropriately responds to the qualities of the area and contributes to the surrounding context.
- The requirements for varying the height of buildings development standards have been met.
- It maintains views to the Rumbalara Ridgeline from key vantage points.
- Most units will have visual and acoustic privacy, as well as access to daylight and sunlight.
- Tree removal will be offset by replacement tree planting, to maintain the existing wildlife corridor.
- The proposed landscaping relates to the built form and the surrounding natural environment.
- Traffic can be adequately accommodated within the road network and the on-site car parking predominately aligns with the requirements of the Apartment Design Guide (ADG).

Conclusion

The Department is satisfied the proposed development would result in a positive contribution to the Gosford City Centre. The Department supports the modified design of the proposal and considers the height non-compliance to be acceptable, as satisfactory levels of amenity will be achieved for future residents, and the development will make a positive contribution to the neighbourhood character.

Overall, the proposed development will contribute to the growth of the Gosford City Centre, consistent with strategic planning objectives for the Central Coast Region and the City Centre. The proposal is consistent with the Gosford Urban Design Framework as it will provide a high-quality development to meet the needs of the community and make a positive contribution to the building stock and character of the Gosford City Centre. Furthermore, the proposal will provide infill development to support the need for new homes in the Gosford City Centre.

The issues raised by Government agencies, Council and the community have been addressed in the proposal, the Department's assessment report or by recommended conditions of consent.

For the reasons outlined above, the Department concludes the proposal is in the public interest and recommends that the application be approved subject to conditions.

Contents

1	Introduction	1
1.1	Introduction	1
1.2	Site Description	2
1.3	Surrounding Context	4
2	Project.....	5
2.1	Description of Development	5
2.2	Application History.....	6
3	Strategic Context	7
4	Statutory Context.....	8
4.1	State Significance.....	8
4.2	Permissibility.....	8
4.3	Secretary's Environment Assessment Requirements	8
4.4	Biodiversity Development Assessment Report	8
4.5	Mandatory Matters for Consideration	9
5	Engagement.....	13
5.1	Department's Engagement.....	13
5.2	Summary of Submissions.....	13
5.3	Public Authority Submissions	13
5.4	Public Submissions	16
5.5	Amended Application and Response to Submissions	16
5.6	Supplementary Response to Submissions and Request for Further Information.....	19
6	Assessment	20
6.1	Design Excellence	20
6.2	Built Form and Urban Design	21
6.3	Visual Impact	24
6.4	Amenity.....	25
6.5	Landscaping and Tree Removal	27
6.6	Bushfire Assessment.....	31
6.7	Traffic and Parking	31
6.8	Other issues	33
7	Evaluation.....	40
8	Recommendation.....	41
9	Determination.....	42
	Appendices	43
	Appendix A – List of referenced documents	43

Appendix B – Statutory Considerations	1
Appendix C – Clause 4.6 Variation: Building Height	23
Appendix D – Recommended Instrument of Consent	28

1 Introduction

1.1 Introduction

This report provides an assessment of a State significant development (SSD) application (SSD 10321) for the development of 89 John Whiteway Drive, Gosford (the Proposal).

The application seeks approval for the following development:

- Site preparation and earthworks
- Tree removal
- Construction and use of four residential flat buildings (that vary from Relative Level (RL) 86.4 metres (m) up to RL 99.1m) ranging in height from 5 to 9 storeys (Figure 1), including: -
 - 204 residential apartments
 - 1 basement level and 1 part- basement level to accommodate car parking for 305 vehicles
 - maximum gross floor area (GFA) of 24,692m² square metres (m²) comprised of residential floorspace, including associated residential facilities
 - site-wide concept landscape plan including a publicly accessible elevated walkway with viewing platform and a public pocket park.

The application has been lodged by JWD Development (the Applicant).



Figure 1| Perspective Image of proposed development (Base source: ADG Architects)

1.2 Site Description

The proposed development is located at 89 John Whiteway Drive, Gosford, on the eastern fringe of the Gosford City Centre and within the Central Coast Council LGA (Figure 2).

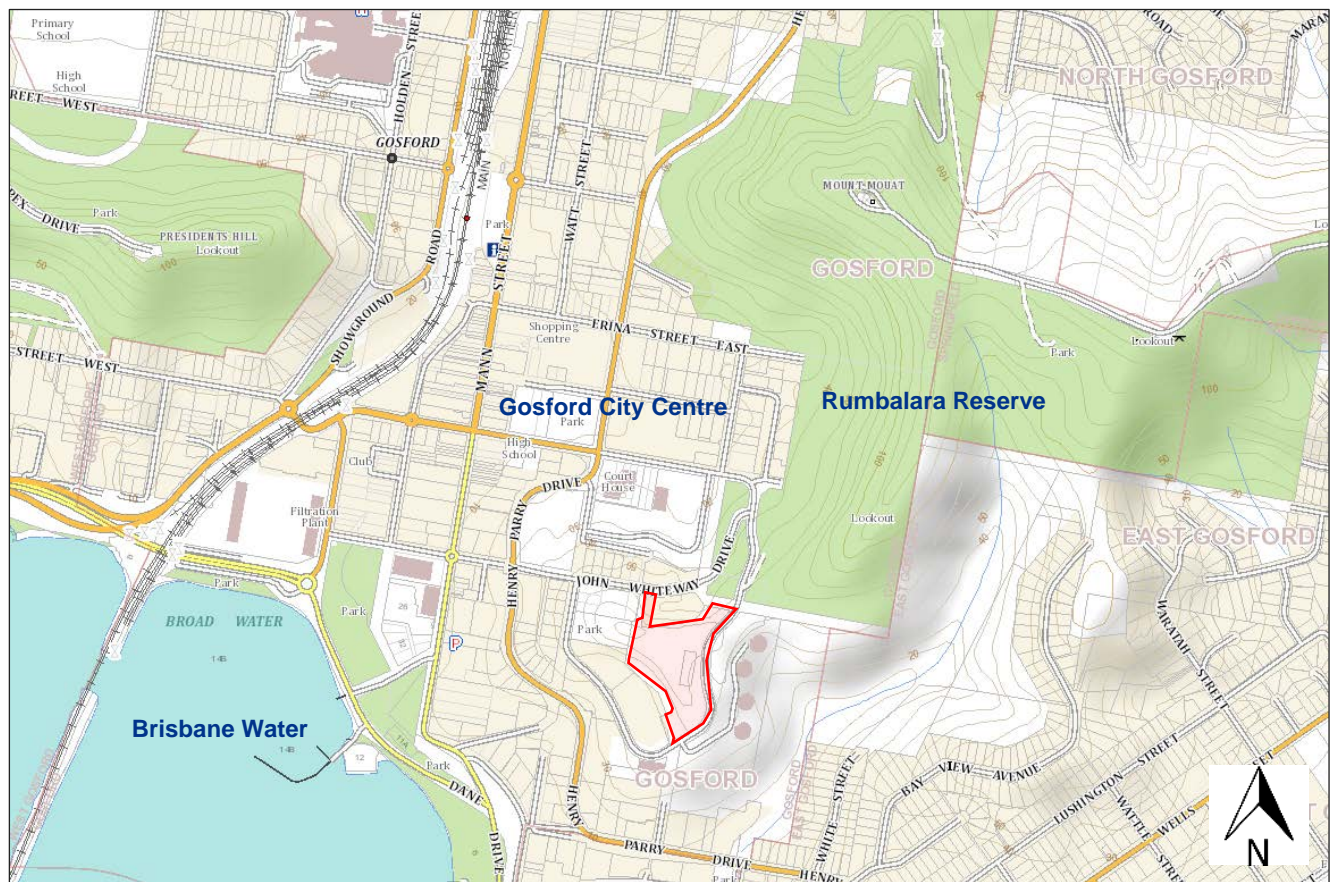


Figure 2 | Locality Map – Subject site highlighted in red (Base source: ePlanning Spatial Viewer)

The site is legally described as Lot 100 in DP 1075037 and Lot 1 in DP 45551. The site is irregular in shape and has a total area of approximately 22,300m².

The site is currently vacant and has remained undeveloped since it was historically used as a sandstone quarry up until 1985. Vegetation and rock outcrops are located to the north and west of the site (**Figure 3** and **Figure 4**).

The site occupies the upper bench of a former quarry. The topography is delineated by a large benched excavation area associated with earlier quarrying activities. This area is relatively flat, with a gradual fall towards the south-west from 68m AHD to approximately 64m AHD. The northern portion of the site includes an elevated horseshoe shaped area (between 69m AHD to 74m AHD), with a series of cut sandstone faces stepping up to relatively flat benched areas. The western portion of the site also includes a cut sandstone face dropping to a height of approximately 60m AHD from 77m AHD.

The northern and western portion of the site are covered with dense, mostly native vegetation, including a continuous canopy of trees.

There is currently no vehicular access to the site.



Figure 3 | Aerial view of the site and context (Base source: Nearmap)

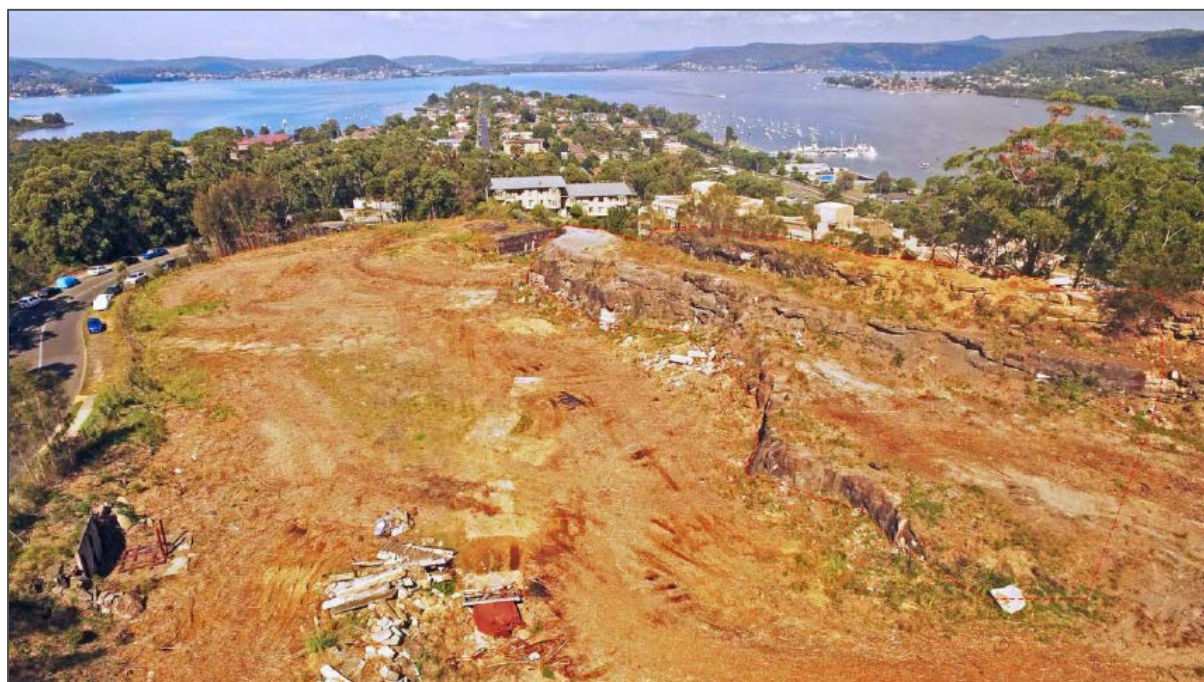


Figure 4 | Aerial view of subject site, looking south towards Brisbane Waters (Base Source: ADG Architects)

A Restriction as to User applies to the site, benefitting Gosford City Council (Identifier: 100/1075037), which prevents residential buildings or structures (other than landscaping) in the northern and western parts of the site. An assessment of the proposal against this Restriction as to User is at Section 6.5.

The site is also identified as containing bushfire prone land under the Gosford City Council Bushfire Prone Land Map. A Bushfire Assessment Report (BAR) has been submitted with the application.

The subject site does not contain any land of local or state heritage significance. However, the former Gosford Quarry, which forms part of the site, had previously been proposed for local heritage listing but removed from the proposed list by Council at its meeting of 10 December 2018. Council's decision indicated that the site would be reconsidered for listing with the next heritage study for the area.

The intention of the listing was to ensure that any development of the site incorporated appropriate interpretation of its history. This refers to the quarrying activities that are such a significant part of the historic development of the Gosford CBD and area generally.

1.3 Surrounding Context

The site is located within a residential area of the Gosford City Centre characterised by residential flat buildings. Specifically:

- To the north of the site is a residential flat building, up to four storeys in height, known as 117 John Whiteway Drive.
- To the east are four residential flat buildings, known collectively as 'The Sanctuary' (80 John Whiteway Drive). Further to the north-east of the site is the Rumbalara Reserve.
- To the south is a two-three storey residential flat building (84 John Whiteway Drive).
- To the west is an area of bushland and a grouping of five residential flat buildings along John Whiteway Drive, with heights ranging between seven to nine storeys (91-95 and 97-99 John Whiteway Drive). Due to the topography of the site and the western cliff edge, these properties are located well below the ground level of the proposed building area.

No heritage items directly adjoin, or are located within the vicinity of, the site.

The surrounding road network consists of a variety of local and State roads. Henry Parry Drive is a State arterial road, which is two-way (four lanes) with no kerb-side parking. John Whiteway Drive, is a local road with a default speed limit of 50km/h. The road is a two-lane, two-way road with on-street parking on the opposite side of the road from the subject site. Georgiana Terrace is a local road providing a direct connection between Henry Parry Drive and John Whiteway Drive.

Although only located 600m from the Gosford CBD, the site is positioned in a relatively remote location away from existing services. The site is not well serviced by public transport, and the walkability to the Gosford CBD is poor, which is owed to the topography of the area as well as limited pedestrian infrastructure.

Gosford Railway Station provides train services to the Sydney CBD, Wyong and Newcastle with services running every 20-30 minutes during peak times and approximately hourly during off-peak times. Whilst several bus stops are located within proximity of the site at Henry Parry Drive (250 metres), Mann Street (400 metres) and Donnison Street (550 metres); they are not easily accessible by foot due to the steep topography, as mentioned above.

2 Project

2.1 Description of Development

This SSD application, as amended, seeks approval for following works:

- Site preparation and earthworks.
- Construction and use of 4 residential flat buildings (that vary from Relative Level (RL) 86.4 metres (m) up to RL 99.1m) ranging in height from 5 to 9 storeys, including: -
 - 204 residential apartments
 - 1 basement level and 1 part- basement level car parking for 305 parking spaces
 - maximum gross floor area (GFA) of 24,692m² square metres (m²) comprised of residential floorspace, including associated residential facilities
 - site-wide concept landscape plan including elevated walkway public viewing platform.

The main components of the project are summarised in **Table 1** below.

Table 1 | Main Components of the Project

Aspect	Description
Site works	<ul style="list-style-type: none">• Site works include the following:<ul style="list-style-type: none">○ Excavation of the existing quarry face along the northern and western boundaries and the headland of sandstone.○ The southern end of the western headland will be excavated down to a height of approximately RL 62m, while the north-western portion of the headland will be excavated to leave a benched face rising north-west.○ Excavation of sandstone to depths ranging 3m and 6m to accommodate the basement
Residential Flat Buildings	<ul style="list-style-type: none">• Four residential flat buildings comprising 204 residential apartments to maximum heights of:<ul style="list-style-type: none">○ Block A - RL 86.6m (6 storeys)○ Block B - RL 88.6m (7 storeys)○ Block C - RL 94.8m (8 storeys)○ Block D - RL 99.100m (5-9 storeys)
Basement and car parking	<ul style="list-style-type: none">• One basement level and one part- basement level including:<ul style="list-style-type: none">○ 305 residential car parking spaces○ 14 motorcycle spaces○ Bicycle storage○ Building services
GFA, land use and floor space ratio (FSR)	<ul style="list-style-type: none">• A total of 24,692m² of GFA is proposed for residential use

Landscaping and Communal Open Space	<ul style="list-style-type: none"> • 5,774m² (26%) of communal open space, including the public walkway and viewing platform. • 11,570m² (52%) of deep soil will be provided, which largely includes the non-buildable zone. • An elevated public walkway and viewing platform. • Public pocket park. • Tree removal
Jobs	<ul style="list-style-type: none"> • The proposal will generate approximately 472 construction jobs during the construction process.
CIV	<ul style="list-style-type: none"> • \$98,306,520
Indicative Staging	<ul style="list-style-type: none"> • The works are anticipated to start in early 2022 and are expected to be completed for occupation in mid-2024. • The following construction stages are proposed: <ul style="list-style-type: none"> ○ Stage 1: Earthworks and stabilisation ○ Stage 2: Basement and part of the development ○ Stage 3: Remainder of development

2.2 Application History

On 26 March 2020, SSD-10321 was lodged seeking consent to construct four residential flat buildings, ranging in height from 6 to 12 storeys, to accommodate 260 residential apartments and basement parking for 400 vehicles.

Following exhibition of the EIS and issues raised in the submissions received, agency comments and by the Department, the Applicant revised the proposal and submitted an amended application on 31 March 2021 for the proposal outlined in **Section 2.1** above.

3 Strategic Context

The proposal is consistent with the strategic context for the following reasons:

- It is consistent with The Central Coast Regional Plan 2036, which identifies Gosford City Centre as the capital of the Central Coast and aims to grow the City Centre as outlined in Direction 1. The proposal will facilitate an increase jobs in the region particularly during construction, consistent with Direction 7. The proposal also supports Direction 19 and Action 20.1 as it provides for housing supply and choice within the Gosford City Centre.
- It is consistent with the Gosford Urban Design Framework developed by the Government Architect of NSW (GANSW) as it will assist with revitalising Gosford, providing a high-quality development to meet the needs of the community and make a positive contribution to the building stock and character of the Gosford City Centre. The proposal will provide infill development to support the need for new homes in the Gosford City Centre through the provision of a variety of unit types, which is consistent with one of the key design principles.
- It is consistent with the NSW Future Transport Strategy 2056 as it provides facilities to support active transport travel options and encourages the use of non-car modes of travel where possible.
- It would provide direct investment in the region of approximately \$98 million and would support 528 construction jobs during the construction process.

4 Statutory Context

4.1 State Significance

The proposal is SSD under section 4.36 (development declared SSD) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the development has a CIV in excess of \$75 million and is located within Gosford City Centre in accordance with clause 15 of Schedule 2 of the SRD SEPP. The Minister is the consent authority under section 4.5 of the Act.

In accordance with the then Minister for Planning's delegation to determine SSD applications, signed on 26 April 2021, the Executive Director, Key Sites and Regional Assessments may determine this application as:

- the relevant Council has not made an objection.
- there are less than 50 public submissions in the nature of objection.
- a political disclosure statement has not been made.

4.2 Permissibility

The *State Environmental Planning Policy (Gosford City Centre) 2018* (Gosford SEPP) is the principal environmental planning instrument (EPI) that applies to the site. The site is zoned R1 General Residential under the Gosford SEPP. The Gosford SEPP states that residential flat buildings may be carried out with consent.

4.3 Secretary's Environment Assessment Requirements

On 9 July 2019, the Department notified the Applicant of the Planning Secretary's Environmental Assessment Requirements (SEARs). The Department is satisfied that the EIS, amended application and RtS adequately address the requirements of the SEARs to enable the assessment and determination of the application.

4.4 Biodiversity Development Assessment Report

Under section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act), SSD applications are to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values.

A BDAR was submitted with the EIS. The Biodiversity and Conservation Division of the Department of Planning, Industry and Environment (BCD) requested that the Biodiversity Development Assessment report (BDAR) be updated to include measures proposed to address the offset obligations, as well as correct the inconsistencies in impact area presented in the Biodiversity Development Assessment Report (BDAR). An updated BDAR was submitted with the amended application and BCD have advised their concerns are satisfactorily addressed.

The Department has considered landscaping and the impacts on trees further at **Section 6.5**.

4.5 Mandatory Matters for Consideration

The following are the relevant mandatory matters for consideration:

- the matters in section 4.15(1) of the EP&A Act
- relevant EPIs
- objects of the EP&A Act
- Ecological Sustainable Development (ESD)
- Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

Section 4.15(1) matters for consideration

The matters for consideration under section 4.15(1) that apply to SSD in accordance with section 4.40 of the EP&A Act have been addressed in **Table 2** below.

Table 2 | Section 4.15(1) Matters for Consideration

Section 4.15(1) Evaluation	Consideration
(a)(i) any environmental planning instrument	Satisfactorily complies. The Department's consideration of the relevant EPIs is provided at Appendix B .
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	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 Appendix B .
(a)(iii) any planning agreement	No existing planning agreements apply to the site.
(a)(iv) the regulations Refer Division 8 of the EP&A Regulation	The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6), public participation procedures for SSD and Schedule 2 relating to EIS.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	Appropriately mitigated or conditioned as discussed in Section 6 .
(c) the suitability of the site for the development	The site is suitable for the development as it can accommodate the proposed development

without significant adverse impacts on the surrounding area, as discussed in **Section 6**.

(d) any submissions	Consideration has been given to the submissions received during the exhibition of the proposal as discussed at Sections 5 and 6 .
(e) the public interest	Refer to Section 6 of this report.

Environmental Planning Instruments

Under section 4.15 of the EP&A Act, the consent authority is required to take into consideration any EPI relevant to the development that is the subject of a development application. The EPIs that have been considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (State & Regional Development) 2011 (SRD SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)
- State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation SEPP)
- State Environmental Planning Policy No.65 – Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy (Gosford City Centre) 2018 (Gosford SEPP).

The Department has undertaken a detailed assessment of these EPIs in **Appendix B** and is satisfied the application is consistent with the requirements of the EPIs.

Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects as set out in section 1.3 of the Act. The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The statutory powers in the EP&A Act (such as the power to grant consent / approval) are to be understood as powers to advance the objects of the legislation, and limits on those powers are set by reference to those objects. Therefore, in making an assessment, the objects should be considered to the extent they are relevant.

The Department has considered the proposal to be satisfactory with regard to the objects of the EP&A Act as detailed in **Table 3** below.

Table 3 | Consideration of the proposal against the objects of section 1.3 of the EP&A Act

Objects of the EP&A Act	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	<p>The proposal will promote social and economic welfare by providing employment opportunities during construction.</p> <p>The proposed development will provide housing supply that meets the diverse housing needs of Gosford.</p>

	The proposal will not result in significant adverse impacts on any natural or artificial resources, agricultural land, or natural areas.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment,	The proposal includes measures to deliver ecologically sustainable development as described below.
(c) to promote the orderly and economic use and development of land,	<p>The proposal involves the orderly and economic use of land through the efficient development of an old quarry site. The proposal will facilitate development of the site for residential, purposes, the merits of which are considered in Section 6.</p> <p>The development of the site will also provide economic benefits through job creation and infrastructure investment during construction stage.</p>
(d) to promote the delivery and maintenance of affordable housing,	The proposal will not result in the loss of any existing affordable housing in the locality.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposal includes tree removal as discussed in Section 6.5 .
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposed development is not anticipated to result in any unacceptable impacts upon built and cultural heritage, including Aboriginal cultural heritage (refer to discussion in Section 5.7).
(g) to promote good design and amenity of the built environment,	As discussed in Section 6 , subject to conditions, the Department considers the application would provide for good design and amenity of the built environment.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The Department has considered the proposed development and has recommended a number of conditions of consent to ensure the construction and maintenance is undertaken in accordance with legislation, guidelines, policies, and procedures (refer to Appendix D).

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department publicly exhibited the proposed development, as outlined in Section 5 , which included consultation with Council and other public authorities and consideration of their responses.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department publicly exhibited the proposal, as outlined in Section 5 , which included notifying adjoining landowners, placing a notice in newspapers and displaying the proposal on the Department's website during the exhibition period.

Ecologically sustainable development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing, and incentive mechanisms.

The development proposes ESD initiatives and sustainability measures, including:

- passive design strategy – achieve higher occupancy comfort and energy reduction target through combination of passive element design, including crossflow opening, daylight access glazing, solar control shading, heavy insulation, and podium green roof to minimise heat island effect.
- low emission materials – selection of interior materials with low or zero toxic emission rating to improve indoor environmental quality and minimise occupant health risks. Y
- provision of high efficiency fittings & fixtures, appliances and a 10kL rainwater tank to outperform the minimum BASIX water target by additional 25%.

The Department has considered the project in relation to the ESD principles. The Precautionary and Inter-generational Equity Principles have been applied in the decision making process by a thorough assessment of the environmental impacts of the project. Overall, the proposal is consistent with ESD principles in accordance with the objects of the EP&A Act.

Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the EP&A Regulation cited in this report, the requirements for Notification (Part 6, Division 6) and Fees (Part 15, Division 1AA) have been complied with.

A BASIX Certificate has been submitted in accordance with the Regulation. A condition of consent is recommended to ensure the commitments within the BASIX Certificate are met.

5 Engagement

5.1 Department's Engagement

In accordance with Schedule 1 of the EP&A Act and Part 6, Division 6 of the EP&A Regulation, the Department publicly exhibited the application from 23 April 2020 and 20 May 2020 (28 days). The application was made publicly available on the Department's website.

The Department placed a public exhibition notice in the Newcastle Herald on 22 April 2020 and notified surrounding landholders, Council, and relevant public authorities in writing.

The Department has considered submissions during the assessment of the application (**Section 6**) and/or by way of recommended conditions in the instrument of consent at **Appendix D**.

5.2 Summary of Submissions

The Department received 22 submissions, comprising submissions from six public authorities, one from Council, fourteen from the public and two from organisations (special interest groups).

Issues raised in the submissions is provided below and copies may be viewed at **Appendix A**.

5.3 Public Authority Submissions

A summary of the issues raised in public authority submissions is provided at **Table 4** below.

Table 4 | Summary of government authority submissions to the exhibition of the proposal

Government Agency	Comments
Central Coast Council	Ecology <ul style="list-style-type: none">The clearing proposed outside the buildable area has the potential to impact the visual and environmental integrity of the precinct.In the northern area of the site, the proposed pathways and viewing platforms will result in the removal of trees and vegetation and is not supported.The proposed clearing, including the proposed clearing of all existing trees to the north of the development, will remove the function of this linkage as a wildlife corridor.
	Planning <ul style="list-style-type: none">The proposed buildings are 6, 7, 10 and 12 storeys and significantly over the height control. The preservation of views of the tree covered ridge lines and Rumbalara Reserve from the city and surrounding areas are important and irreplaceable elements of Gosford's character.

- The non-complying height, building separation and solar access and the excessive bulk over scale demonstrate an over development of the site.
- Building separation requirements are not achieved in Block D. There is significant non-compliance between balconies in the two sections of Block D.
- The proposal does not meet the solar access requirements under the ADG.

Heritage

- Due to the potential heritage listing, a Heritage Interpretation Plan (HIP) should be provided as part of the application and could be created in conjunction with the landscape plan.

Engineering

- The southern vehicular access point is located near the southern boundary of the site. It is noted that there are presently sight distance constraints at this location due to the bends and grades in the road and vehicles parking on the footway.
- On-site detention would be required to limit post development flows back to pre-development flows for all storms & recurrence intervals up to the 1%AEP recurrence interval.

Traffic

- The proposed parking provision exceeds the Gosford City Centre DCP requirements by 25 spaces and the RMS requirement by 96 spaces for high-density residential flat buildings.

Water Group

Further information is requested regarding the following:

- A detailed and consolidated site water balance (including an estimate of the volume of groundwater that will be removed during the construction phase and life of the building).
- Assessment of impacts on surface and groundwater water sources (both quality and quantity), related infrastructure, adjacent licensed water users, basic landholder rights, water courses, riparian land, and groundwater dependent ecosystems, and measures reduce/mitigate these impacts.
- Proposed groundwater monitoring activities and methodologies.
- Consideration of relevant legislation, policies and guidelines, including the NSW Aquifer Interference Policy (2012), the Guidelines for Controlled Activities on Waterfront Land (2018) and the relevant Water Sharing Plans.

Transport for NSW and RMS

- TfNSW have reviewed the operation of Henry Parry Drive between Donnison Street and Erina Street, and note that intersection of Henry Parry Drive and Donnison Street is approaching capacity.
 - A Green Travel Plan (GTP) is recommended.
-

	<ul style="list-style-type: none"> Should Council approve the subject application prior to adoption of the updated s7.11 plans for this catchment, TfNSW recommend that the developer enter into a Voluntary Planning Agreement with Council to provide contributions towards upgrading the intersections, apportioned relative to the number of trips generated by that development.
NSW RFS	<ul style="list-style-type: none"> A Bush Fire Emergency Management and Evacuation Plan is required. Conditions relating to Asset Protection Zones (APZ), construction standards and the provision water and utility services are recommended. In accordance with section 88B of the Conveyancing Act 1919, a restriction to the land use shall be placed on Lot 0/SP72557-80 John Whiteway Drive Gosford requiring the provision of a 5 metre wide APZ along the north western boundary beyond the property access ramp.
BCD	<ul style="list-style-type: none"> The accredited assessor should correct the inconsistencies in impact area presented in the Biodiversity Development Assessment Report (BDAR). 2. The accredited assessor should update the BDAR to include measures proposed to address the offset obligations. An Aboriginal cultural heritage management plan should be prepared to ensure the mitigation and management of any unexpected finds that may be found during the construction and development of the project area. The proponent should provide independent testing that verifies the efficacy of the proposed treatment solution. Consideration should also be given to use of water sensitive urban design elements to achieve the required water quality treatment goals. The proponent should demonstrate that Council's downstream connection can receive the proposed flow from the OSD. BCD recommend that a maintenance covenant is established over the OSD installation to allow for routine maintenance.
Central Coast Health	<ul style="list-style-type: none"> Due to the significant height and the elevated position of the site, the proposed development has the potential to impact helicopter flights to and from Gosford Hospital, therefore an Aviation Impact Assessment is requested. The application needs to consider the impact of this increase in the population on health services (hospital and community-based health services). Due to the steep topography, concerns are raised over pedestrian access. A Green Travel Plan should be provided.
Crown Lands	Crown Lands has no comments relating to the proposed development

5.4 Public Submissions

Public

Fourteen submissions were received, which raised the following objections to the proposal:

- non-compliance with the Gosford SEPP maximum height controls for the site
- density of the proposed development
- fire safety – access and egress
- acoustic and visual privacy
- solar access
- damage to surrounding properties during construction
- inaccurate information in geotechnical report
- traffic and parking
- stormwater
- adverse impact on landscape values of the area
- access to public transport/walkability
- adequacy of Aboriginal Heritage Impact Assessment
- adverse ecological impacts
- security and privacy risks associated with proposed walkway and viewing platform.

Organisation (special interest group)

Two submissions were received from community groups (Friends of Gosford Pty Ltd and Community Environment Network), which raised the following objections to the proposal:

- non-compliance with the Gosford SEPP maximum height controls for the site
- appropriateness of the site location due to poor pedestrian access
- visual impacts of the proposed development
- poor quality of submitted photomontage with regard to the view impact assessment
- construction impacts, including stability of sandstone wall, noise impacts and increased traffic during construction.

5.5 Amended Application and Response to Submissions

Following exhibition of the application, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised.

On 31 March 2021, the Applicant provided an Amended SSD and combined Response to Submissions (RtS) (**Appendix A**), which included the following amendments and additional information:

- reduction in the building height from 6 - 12 storeys to 5 - 9 storeys
- reduction in the number of residential apartments from 260 apartments to 204 apartments, resulting in a reduction in FSR from 1.39:1 to 1.11:1

- overall refinement of the building envelopes to respond to concerns relating to built form, visual impacts, and amenity
- refinement of the façade design
- replanning of apartment layouts to further improve amenity levels
- deletion of the through site connection to John Whiteway Drive, mitigating visual privacy concerns
- inclusion of new publicly accessible open space, footpath construction and heritage interpretation elements which provide improved public benefits.

Table 5 | Comparison of EIS and Amended SSD

Item	EIS	Amended SSD
GFA	22,300 m ²	11,816 m ²
FSR	1.39:1	1.11:1
Site coverage	4,117m ² (18%)	4,781m ² (21.4%)
Height (storeys)	Block A: 6 Block B: 7 Block C: 10 Block D: 12	Block A: 6 Block B: 7 Block C: 8 Block D: 5-9
Height (metres)	RL 107.60	RL 99.10
Units	260	204
Car parking	400 spaces	305 spaces
Communal open space	6,187m ² (28%)	5,774m ² (26%)
Deep soil	11,245m ² (50%)	14,783m ² (66%)

The Department notified adjoining residents of the amended SSD and RtS in writing and provided a 14 day period from 14 April 2021 to 27 April 2021 to make a submission. The amended SSD and RtS were made publicly available on the Department's website and also forwarded to Council and relevant government agencies for comment.

Public authority submissions

The Department received comments from Council and four government agencies. See **Table 6** below.

Table 6 | Summary of Government agency submissions to the RtS

Government Agency	Comments
Council	<p>Council advised that their comments, dated 3 June 2020, remain current (Refer Section 5.3). A summary of issues raised include:</p> <ul style="list-style-type: none"> • clearing and construction within non buildable area • tree removal and retention • SEPP 19 and wildlife corridors • height • ADG compliance

- view impacts
- solar access
- scale and relationship to neighbouring properties
- construction noise and vibration impacts
- adequacy of geotechnical assessment
- building separation and privacy
- heritage
- traffic
- water and sewer flows and pressure
- waste

Water Group	Water Group is satisfied, subject to post approval recommendations.
Transport for NSW and RMS	Advised that the advice in their letter to DPIE, dated 14 May 2020, remains current (Refer to Section 5.3).
NSW RFS	NSW RFS is satisfied with the proposal, subject to conditions.
Heritage NSW	Heritage NSW provides the following comments: <ul style="list-style-type: none"> • an ACHMP should be prepared in accordance with the initial recommendation provided by BCD • the ACHMP should be appended to the CEMP and referred to in Section 8.6 of the CEMP • the current control measures should be updated to refer to the ACHMP including the correct Government Agencies in the event of an unexpected find • the ACHMP should be developed in consultation with the Registered Aboriginal Parties for the project.
BCD	The recommendations 1, 2, 4, 5 and 6 of BCD's biodiversity and flooding comments on the EIS (dated 7 May 2020) have been satisfactorily addressed in the response to submissions report.
Central Coast Health	Central Coast Health raised concerns regarding the following matters: <ul style="list-style-type: none"> • the detail provided within the submitted Social Impact Assessment • the impact of the proposed development on existing health services • the detail provided with regard to public health issues.

Community submissions

Ten public submissions were received, which raised the following objections to the proposal:

- non-compliance with the Gosford SEPP maximum height controls for the site.
- density of the proposed development.
- provision of infrastructure
- acoustic and visual privacy
- visual impact

- solar access
- damage to surrounding properties during construction
- inadequate information in geotechnical report.
- traffic and parking.
- access to public transport/walkability
- provision of open space
- adverse ecological impact
- tree removal
- adequacy of geotechnical report.

Organisation (special interest group)

One submission was received from a community group (Community Environment Network) in response to the public exhibition, which raised the following objections to the proposal:

- non-compliance with the Gosford SEPP maximum height controls for the site.
- visual impacts of the proposed development
- poor quality of submitted photomontage with regard to the view impact assessment

5.6 Supplementary Response to Submissions and Request for Further Information

On 31 May 2021 the Applicant provided a revised set of plans and a supplementary RTS to address the agency comments, public submissions and outstanding concerns raised by the Department (**Appendix A**). The supplementary RTS made minor amendments to the proposal, including amending the internal layout of several units to reduce the depth of the units to 8m in accordance with the ADG.

The amended plans largely clarified information requested by the Department, including the provision of detailed sun eye diagrams, cross sections where the proposal interfaces with the non-buildable area, clarification of communal open space areas, as well as landscape treatments to soften the appearance of the protruding basement at the south east corner of the site.

On 27 July 2021 the Applicant submitted revised plans and documentation in response to the Department's Request for Further Information (RFI), requesting further clarification on documentation submitted with the RTS, which included:

- a detailed view analysis to demonstrate which units will have water views (which do not achieve compliant solar access) to meet the design guidance of the ADG
- accurate solar access diagrams
- shadow diagrams demonstrating solar access to principal areas of communal open space in accordance with the ADG
- clarification of areas of excavation across the site, including detailed section plans
- a valid BASIX Certificate.

The Department was satisfied with the documentation provided and the assessment herein is based on amended plans submitted with the RTS, RFI, together with the amended SSD.

6 Assessment

The Department has considered the EIS, RtS and responses to requests for information (RFIs) along with the issues raised in submissions. The Department considers the key assessment issues are:

- design excellence
- built form and urban design
- visual impact
- solar access and amenity
- landscaping and tree removal
- bushfire
- traffic and parking

Each of these issues is discussed in the following sections of this report. Other issues considered during the assessment of the application is discussed at **Section 6.8**.

6.1 Design Excellence

Clause 8.3 of the *State Environmental Planning Policy (Gosford City Centre) 2018* (Gosford SEPP) requires that new development within the Gosford City Centre exhibit design excellence. The Gosford SEPP design excellence provisions have therefore been considered in this section and at **Appendix B**.

The Department notes that design concerns were raised by Council and in the public submissions, including concerns that the proposal does not achieve design excellence.

In considering whether a development exhibits design excellence, the Department has considered the advice of the City of Gosford Design Advisory Panel (DAP) and a range of matters required to be considered in relation to design excellence as set out in Clause 8.3 of the SEPP.

The City of Gosford Design Advisory Panel (DAP)

The DAP was established by the NSW Government in October 2018 to provide independent 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. Panel members include the NSW Government Architect, NSW Deputy Architect and independent design experts.

A number of Design Reference Group workshops were held in 2019 prior to lodgement, as well as throughout the assessment in 2020. The DAP then met and reviewed the proposal on four occasions including:

- 29 August 2019 prior to the lodgement of the application
- 28 July 2020 in response to the exhibition of the EIS
- 2 November 2020 prior to lodgement of the RtS.

On each occasion, the Applicant amended the scheme and refined the design in response to the matters raised by the DAP. At the final meeting, held on 2 November 2020, the DAP advised that there were outstanding matters that required further resolution and consideration by the Department. These matters related to:

- visual impact of the development when viewed from the foreshore, Gosford CBD, and Rumbalara Reserve

- the character and composition of 'Block D' noting the visualisations submitted to the Panel did not enable appropriate consideration
- consistency with the Apartment Design Guide.

Based on the information provided at the final meeting, the DAP was unable to determine whether the proposal is capable of achieving design excellence.

The Department has since worked with the applicant to resolve outstanding matters raised by the DAP.

Gosford SEPP Matters for Consideration

Clause 8.3 of the Gosford SEPP must be considered by the consent authority in determining whether the development exhibits design excellence. The clause is addressed in **Appendix B**, however key matters for consideration include:

- The location, bulk, height, and massing of the buildings (refer **Section 6.2**).
- Visual impact from key views as determined by the Gosford Urban Design Framework (refer **Section 6.3**).
- Solar access to units and communal open space (refer to **Section 6.4**).

Subject to the imposition of conditions, the development will result in high-quality urban design outcomes that will make a positive contribution to the Gosford City Centre. Having regard to the assessment in the following sections and in **Appendix B**, the Department is satisfied the proposal would achieve design excellence in accordance with the Gosford SEPP.

6.2 Built Form and Urban Design

Building Height

Clause 4.3 of the Gosford SEPP prescribes a maximum building height for the site, ranging from RL 73 to RL 80. The proposed development exceeds the prescribed building height by a maximum of 22.1m at Block D, which equates to a 356.4% variation when expressed as a variation in metres. It is noted that Buildings A, B and C also exceed the height limit albeit to a lesser extent (refer detailed discussion at **Appendix C**).

The submitted Clause 4.6 report has outlined that compliance with Clause 4.3 would likely result in a larger building footprint in a series of smaller buildings, which would compromise the quality of communal open space as well as the overall landscape scheme for the site. The Department also acknowledges that the built form is limited to only a portion of the site due to the restriction as to user which constrains the footprint of the development (see discussion under **Section 6.5**).

The height of the building (five to nine storeys) is consistent with surrounding residential flat buildings. Due to the topography of the land, the adjoining buildings are located below the proposed development reducing their visual prominence along the ridgeline. Even so, the proposed building height is compatible with the established character of development in the immediate vicinity and would not appear incongruous when viewed from popular locations in the Gosford City Centre.

Throughout the assessment concerns were raised with the impact of the variation to building height on solar access and visual amenity. These concerns have since been addressed through design changes, including an overall reduction to the height of Blocks C and D. On balance, the proposal achieves an appropriate level of amenity for future residents, despite the height non-compliance.

Solar access and the visual impact of the proposal have been satisfactorily minimised. These matters are discussed in detail throughout **Section 6** below.

The physical constraints of the site resulting from the imposition of the 'restriction as to user' have been taken into account in the assessment of such a significant variation to the development standard. The proposal's ability to still meet the objectives of the height of buildings development standard, as well as the objectives of the R1 General Residential zone, has been carefully considered in the assessment of the height variation against Clause 4.6 of the Gosford SEPP. The Department concludes that the proposal is consistent with the objectives of the zone and the development standard, would achieve an acceptable amenity outcome for future residents and adjoining occupiers, and is consistent with the established character of the immediate area. Therefore, it is considered the proposal is within the public interest and the proposed height is supported (refer to **Appendix C**).

Built form

The Department engaged a peer review of SEPP 65 Design Quality Principles, which raised some concerns regarding the built form, in particular that the bulk and scale are excessive. However, the peer review also acknowledged that the built form configuration has sought to concentrate the built forms to the eastern and northern part of the site to maximise the amenity of the open space by increasing the scale of the built forms and thereby reducing the site coverage. Overall, the Department supports the configuration of the built form, acknowledging the constraints of the site due to the extent of the non-buildable area. The bulk and scale of the development is also considered appropriate as discussed below.

The scale of the proposed development is appropriate in the context of the site, noting it complies with the Gosford SEPP FSR of 1.5:1. The proposed development incorporates 4 residential flat buildings, which have been arranged to allow for a generous communal open space area within the centre of the site. The arrangement of the buildings within the site does reduce the perception of bulk and scale, noting that the taller buildings are located to the rear of the site.

Architectural features including solid vertical elements, planter boxes, and a variety of colours and materials have been incorporated into the façade of each building, which creates visual interest. The introduction of a grey render to the upper levels of Block C and D gives the illusion of a more recessive built form. Sandstone walls are provided at the lower levels to give the buildings a softer appearance at ground level.

Nevertheless, there are opportunities for design changes to refine the built form. Conditions are recommended to address the following:

- The south eastern basement entry structure sits forward of the proposed building alignment, is not well integrated into the overall building envelope, and presents blank wall interfaces to the bushland corridor and public domain. A condition is recommended requiring the south eastern basement entry structure to be redesigned to increase the setback from the street, reduce the overall bulk and scale and minimise blank wall interfaces.
- There are extensive blank wall areas along the southern façade at ground and first floor levels. To improve the perceived bulk and scale of the development, a condition is recommended to reduce the extent of these blank wall facades to improve the presentation to the street and the relationship between Blocks A and B.
- Consistent with the requirements of the ADG, the roof form of Block C should be redesigned to:
 - include a roof overhang on the eastern façade,

- improve articulation and the proportions of the building profile; and
 - provide protection from weathering.
- The glazed balconies on the western elevation of Block D should be redesigned to include solid elements at levels 7, 8 and 9, which will further refine the façade and better integrate the balconies into the built form consistent with the objectives of the ADG.

Subject to the conditions outlined above, the Department is satisfied that the design features incorporated into the development reduce the overall bulk and scale of the proposed development, and that the overall built form is appropriate in this location.

Context and neighbourhood character

Design Quality Principle 1 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* prescribes that good design should respond and contribute to its context. The peer review raised concerns that the proposal does not provide a well-considered contextual response, which is largely due to the extent of cut and fill required to achieve the proposed building footprint, resulting in potential adverse visual impacts to the public domain at the north eastern corner of the site where proposed ground level units are located below street level.

Extensive cut and fill is required throughout the site in order to achieve a cohesive development across the four proposed buildings and to allow for better pedestrian connections. However, it is not considered this cut and fill results in an unreasonable adverse impact on the proposal's overall presentation to John Whiteway Drive.

Whilst it is noted that the existing ground level of the site (at the north eastern corner) does sit below the street level, only 3 units are affected by this (C05, C06 and C07) and would be difficult to avoid due to the topography of the site. The siting of these units does not necessarily result in a poor streetscape outcome because landscaping softens the transition from street level to the ground level units and their respective areas of private open space. Access stairs are also provided directly from the street to Level 1, thus creating some connectivity between the public and private domain.

The ground floor level units of Block A and Block B, and their respective areas of private open space, are located at street level. The main pedestrian entry between Block A and Block B, at the south western corner of the site, provides a focal point at street level and creates a visual separation between the two buildings as the site wraps around the curve of John Whiteway Drive.

The site is located at the top of the ridge and is relatively separated from adjoining development by virtue of the topography of the locality. The scale of the proposed development is consistent with surrounding development, in particular residential flat buildings at 80, 91-95 and 97-99 John Whiteway Drive.

Surrounding existing vegetation and proposed landscaping will help the proposal to blend in with the natural landscape. Natural features such as the sloping topography, exposed rock shelves, bushland setting and extensive district views are considered key character elements defining the existing character of the area, which will be retained.

Overall, the Department is satisfied that the proposal is consistent with Design Quality Principle 1 as the development responds to the qualities of the area and contributes to the surrounding context.

6.3 Visual Impact

Clause 8.11 of the Gosford SEPP and the GDCP seek to protect key vistas and view corridors in the Gosford City Centre. The GDCP has designated the site as a 'Special Area', which aims to protect the western section of the ridgeline from visual encroachment when viewed from specific public viewing locations. This is reinforced by the Gosford Urban Design Framework (GUDF), which identifies that views to the Rumbalara Ridgeline should be protected when viewed from key areas, such as Kibble Park and waterfront areas.

The DAP raised concerns regarding the proposed height of buildings and the impact on the Rumbalara Ridgeline from key vantage points. The Department agreed that the proposal should sit below the tree canopy when viewed from the waterfront, acknowledging that some projection of the building may be appropriate where there is no tree canopy.

In response to these concerns, the Applicant reduced the height of Blocks C and D, and provided a detailed Visual Impact Assessment (VIA), which provided an analysis of the proposed development from key viewpoints, including (but not limited to) Rumbalara Reserve, Kibble Park and waterfront areas (**Figure 5** and **Figure 6**).



Figure 5 | Extract from VIA showing view of the proposed development from a waterfront location (Base Source: ADG Architects & Richard Lamb Associates)

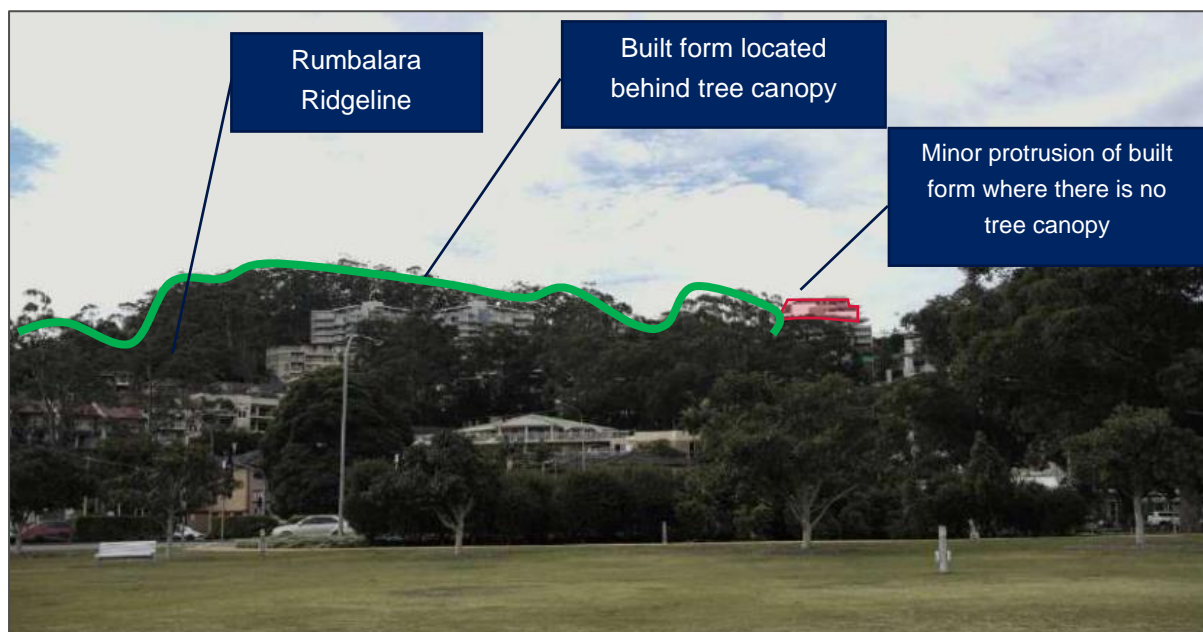


Figure 6 | Extract from VIA showing view of the proposed development from Waterfront Park (Base Source: ADG Architects & Richard Lamb Associates)

The Department is satisfied that the proposed development maintains views to the Rumbalara Ridgeline, as well as from key vantage points. The minor protrusion of the built form is appropriate given it is in a location with minimal tree canopy and will not be highly visible. Although the development differs from surrounding developments in that it is not nestled in amongst vegetation, this is a reflection of the topography of the existing ridgeline and the site's overall elevation. The proposed buildings, although higher than adjoining properties, are in keeping with the surrounding built form. On this basis, the visual impact of the development is acceptable and considered to satisfy the objectives of the Gosford SEPP and the GDCP.

6.4 Amenity

Solar Access

Objective 4A-1 of the Apartment Design Guide (ADG) prescribes that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm in mid-winter. Furthermore, a maximum of 15% of apartments in a building may receive no direct sunlight between 9 am and 3 pm in mid-winter.

The applicant has provided a detailed solar analysis, which concludes that 43% of units (88 units) within the development receive compliant 3hr solar access. The analysis also confirmed that an additional 12 units will receive 2hrs and 45min solar access during mid-winter. The proposal's inability to provide compliant solar access is largely due to the orientation of the buildings on the site, as well as the site constraints which has resulted in a more concentrated built form. Overall, the Department agrees that based on the calculations provided, 49% (100 units) will receive an acceptable level of solar access during mid-winter.

Whilst the proposal does not achieve numerical compliance with the solar access requirement, the applicant has relied on the design guidance provided for Objective 4A-1 of the ADG, which outlines that it may not be possible to achieve compliant solar access where buildings are located away from

the desired aspect for direct sunlight to achieve a significant view. The applicant has noted that the development has been designed to take advantage of the views to Brisbane Water to the south.

A comprehensive view analysis has been provided by the applicant, which shows that 48 units within the proposed development will receive water views. However, the Department believes only 40 units receive views of such significance to warrant not achieving solar access.

In considering solar amenity, the Department notes the following:

- 10% of units across the entire development achieve no direct sunlight between 9am and 3pm mid-winter.
- 88 out of 204 units (43%) receive 3hrs of compliant solar access. Given the unique site constraints, the Department is willing to accept 2hr 45min, which takes the total number of units with acceptable solar amenity to 100 (49%).
- On the basis of 2hr 45mins of direct sunlight being acceptable, the percentage of compliance per building results in the following figures:
 - Block A - 62.5%
 - Block B – 35%
 - Block C - 55%
 - Block D – 45.5%
- The Department has recommended a condition of consent to delete three units, which achieve poor amenity (as discussed further in **Section 6.4**) including no solar access, which reduces the overall number of apartments in the development and increases the percentage of units with acceptable solar amenity to 50%.
- With the inclusion of the additional 40 units which are considered to receive significant water views, a total of 63% of units will receive acceptable solar access or achieve significant views to offset the loss of solar amenity.

While solar amenity does not meet the minimum requirements of the ADG, the development is constrained by orientation, confined building footprint, existing rock shelves, the layout of John Whiteway Drive and a desire to locate buildings to address the extensive length of the street frontage.

To further justify the variation the Applicant has identified that 70% of units would achieve at least 2 hours of sunlight in mid-winter. The Department also notes that even where significant views are not achieved, due to the arrangement of the site and its location on a ridgeline, many units would enjoy district views which would go some way towards improving the amenity of the units affected by a lack of solar access.

The Department is satisfied that due to the unique constraints of the site noted above and the generally accepted benefit from orientation to views (where they are available), the amenity of future residents would not be unreasonably compromised and the proposal can be supported.

Privacy and Building separation

Objective 3F-1 of the ADG prescribes that adequate building separation distances should be provided to achieve reasonable levels of visual privacy. The proposal largely meets internal separation

distances between buildings within the proposed development. Some minor non-compliances occur between Blocks A and B (between Units A2-03 and B2-01, and Units A5-02 and B5-01) however adequate privacy mitigation measures, such as screening between balconies have been proposed.

Overall, the Department is satisfied that the proposal achieves compliance with Objective 3F-1 of the ADG as a majority of units will achieve satisfactory levels of amenity, in terms of visual and acoustic privacy, as well as access to daylight and sunlight. Adequate visual privacy is provided between the proposal development and neighbouring units particularly due to the site topography.

Notwithstanding the above, the Department notes that a small number of ground level units within Block D (Units D1-06, D1-07 and D1-08) have poor amenity due to their interface with the rocky outcrop to the north of the site. The subterranean nature of these units, and the minimal separation between habitable rooms, private open space and the rocky outcrop, would result in poor access to sunlight and daylight, as well as a poor visual outlook from the internal primary living rooms and the ground floor private open space (**Figure 7**). A condition of consent is recommended to delete Units D1-06, D1-07 and D1-08.

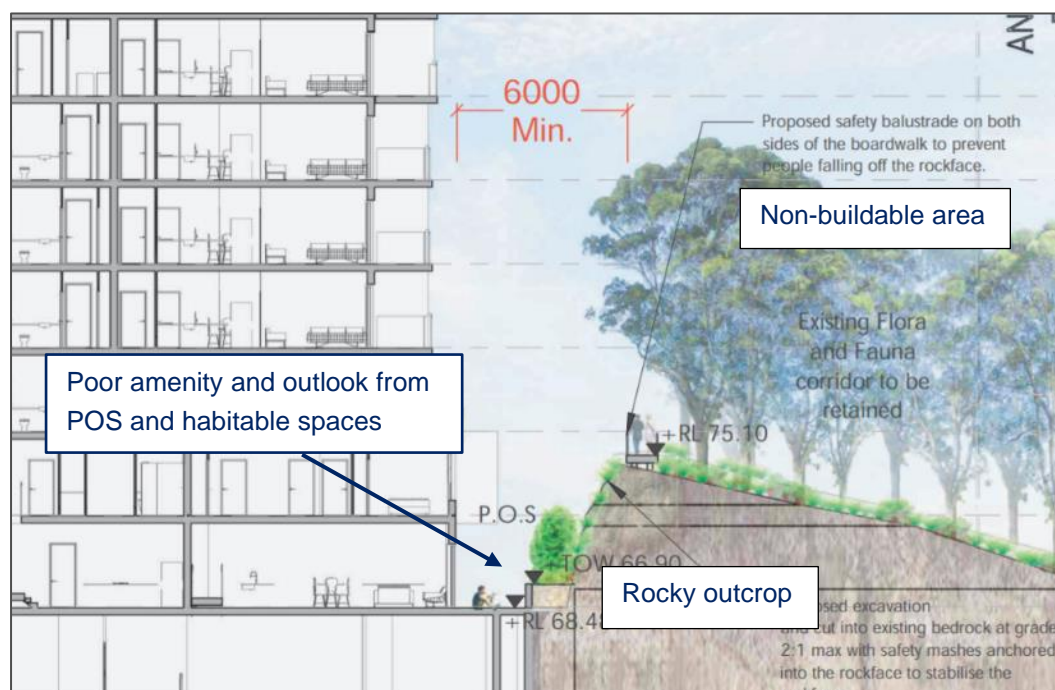


Figure 7 | Section across Unit D1-08 shows the subterranean nature of the ground level units, noting that a 6m separation distance is not achieved from ground level private open space (Base Source: Distinctive Living Design)

6.5 Landscaping and Tree Removal

Tree Removal and Retention

A narrow band of vegetation in the northern section of the site provides a linkage between retained bushland areas to the west of the site and larger areas of remnant vegetation to the northeast within Rumbalara Reserve which forms part of Council's Coastal Open Space System.

The EIS proposed the removal of 657 trees across the site. However, following design changes, the amended application included a revised Tree Assessment Report, prepared by Conacher Consulting Pty Ltd, which confirms that the proposal requires the removal of 606 trees across the site and 224

trees are proposed to be retained. The trees proposed for removal include 86 of a medium or large size class that are endemic, live species. The remainder of the trees proposed for removal are exotic species (74), dead trees (3), native species not endemic to the natural site vegetation (243) and endemic small trees (200).

Some tree removal is required to facilitate the proposed new development and to reduce the canopy cover within the proposed Bushfire Asset Protection Zone (APZ) (Refer to **Section 6.6**). A vegetation retention and restoration area will be provided in the far western section of the site. Replacement tree planting is proposed across the site, including native, endemic species within the Vegetation Corridor.

The Vegetation Management Plan (VMP) outlines that it is intended to utilise this area as a corridor for native wildlife through the combination of vegetation retention and native vegetation replanting works. The northern access handle to John Whiteway Drive and an area along the western section of the site are also proposed to be retained for wildlife connectivity purposes.

To ensure appropriate management and protection of vegetation during construction, where trees are to be retained, temporary tree protection zone fencing must be installed and appropriately maintained under the supervision of a project arborist during civil and construction works.

The conflict between bushfire Asset Protection Zones and vegetation management is unavoidable and the Department is generally satisfied with the replacement tree planting proposed, subject to compliance with the VMP. BCD has advised it is satisfied with the biodiversity impacts, as discussed within **Section 6.8**. Compliance with the VMP is recommended as a condition of consent.

Excavation within the 'non-buildable area'

The subject site has a 'Restriction as to User' over a portion of the site, as discussed within **Section 1.2**. The terms of the restriction are outlined below:

'No Residential Building or Residential Structure will be permitted to be erected or to remain erected within the area delineated by the letter "X" within Lot 100.

Within the area delineated by the letter "X" within Lot 100, Gosford City Council, its employees or persons authorised by it shall have the right to pass, repass and carry out such works in connection with tourist lookout facility, the character and extent of which shall be agreed upon from time to time between the registered proprietors of the said Lot 100 and Gosford City Council.'

The terms of the 88B Instrument restricts 'residential buildings' and 'residential structures' which include only the residential apartments and associated car parking. The definition expressly excludes landscaping and associated structures (e.g. footpaths and retaining walls), as well as gardens, open space, and any other areas not forming part of a residential building.

The Department is satisfied that the proposed encroachment into the 'non-buildable area' includes only landscaping and associated structures.

The development also proposes to excavate within the 'non-buildable area' and introduce areas of batter to the interface with the proposed units at the northern and western elevations. The southern end of the headland is also required to be removed to facilitate the proposed development. This former headland area will be landscaped and used to expand the wildlife corridor. **Figure 8** shows the extent of the headland proposed to be battered/and or removed.

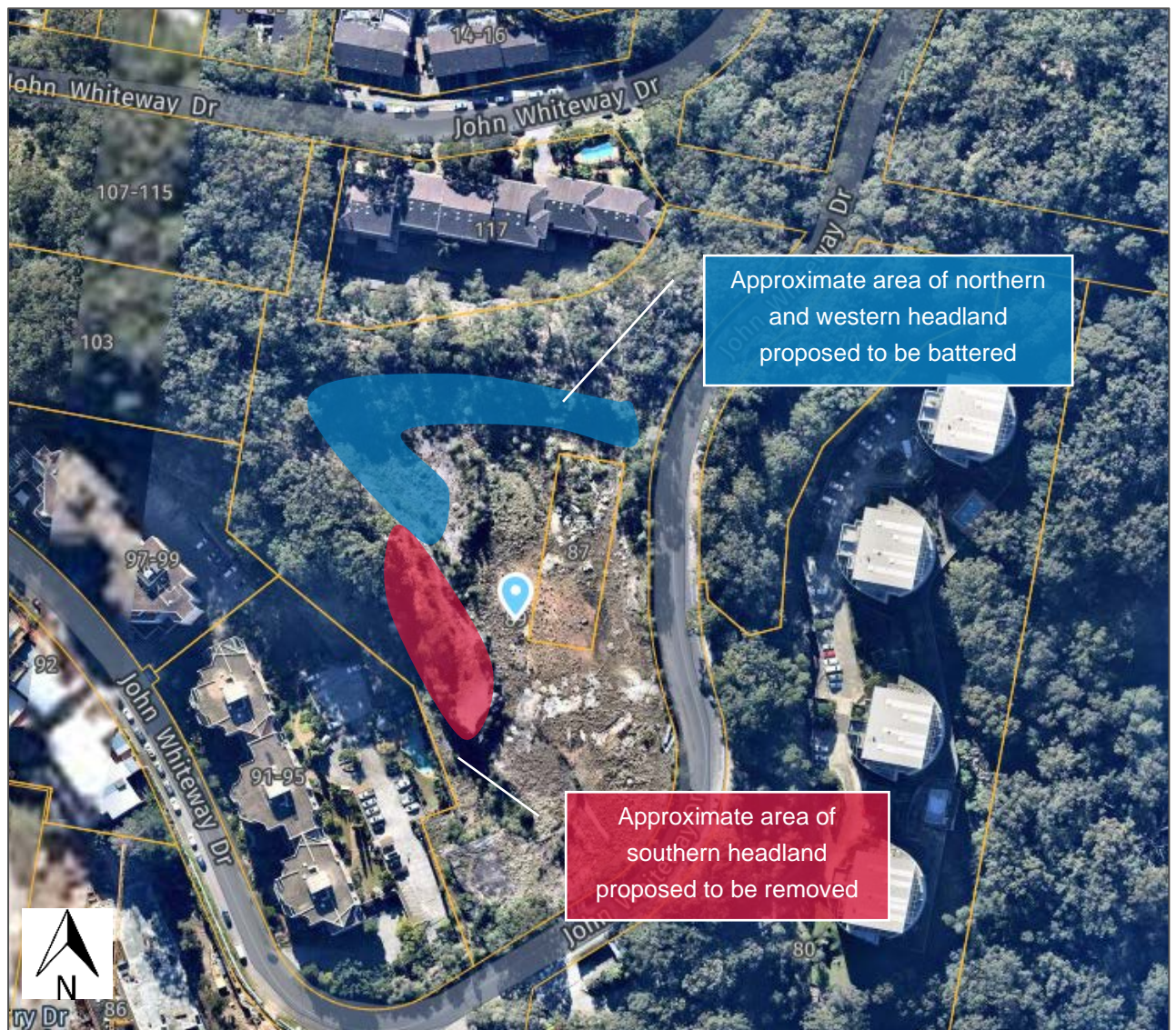


Figure 8 | Extent of headland proposed to be removed/battered (Base Source: Nearmap)

The GDCP prescribes that variations to the prescribed buildable area must be supported by a comprehensive geotechnical survey, which assesses the stability risk posed to both the ridge, proposed development, and existing development. A Geotechnical Investigation report, prepared by a qualified engineer, has been submitted with the application. The Department engaged a peer review of the submitted Geotechnical Report, which found the excavation support, earth pressure for retaining wall design and footing foundations were acceptable.

Subject to recommended conditions, including the retention of an engineer on site to oversee the excavation works and requirements for dilapidation reports on adjoining properties, the extent of excavation proposed can be appropriately managed and is consistent with the restriction on title.

Public Walkway and viewing platform

An elevated walkway is proposed to the north of the site, within the non-buildable area, which will provide a viewing platform to Brisbane Waters, as well as the Gosford City Centre (**Figure 9**). The walkway and viewing platform would be publicly accessible.

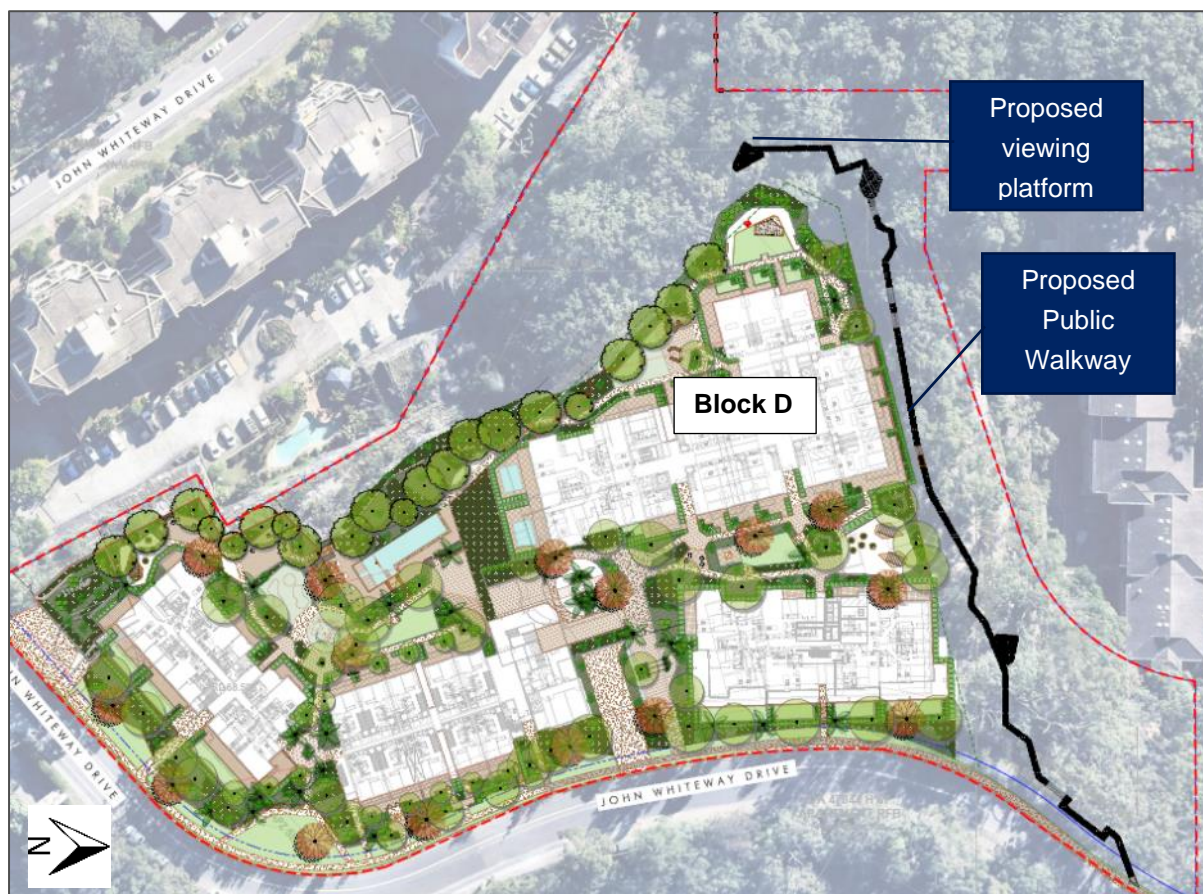


Figure 9 | Proposed public walkway and viewing platform (Base Source: Distinctive Living Design)

The Department and Council raised concerns over the removal of vegetation to accommodate the proposed walkway. With the amended application, the layout of the walkway and viewing platform was revised, and additional tree removal would not be required. The walkway would not result in any significant vegetation impacts.

Potential privacy impacts from the viewing platform to the proposed development have been considered by the Department. The elevated nature of the walkway, its future use by the public, and its proximity to the development (only 6m of separation at some points) would allow for direct views into the north facing lower level units within Blocks C and D. To mitigate privacy impacts, conditions are recommended requiring privacy screening along the southern edge of the public walkway.

The applicant has also noted that the Owners Corporation will be responsible for the maintenance of the public walkway and viewing platform. Even so, the Department has recommended a condition for the Applicant to make satisfactory arrangements with Council to secure the maintenance, management, and accessibility of the walkway in perpetuity. A condition is also recommended to ensure the delivery of the walkway and viewing platform prior to the occupation of the final building.

Landscaping and Communal Open Space

Design Quality Principle 5 of SEPP 65 outlines that good landscape design recognises landscape and buildings operate as an integrated and sustainable system. The proposed landscaping scheme is based around a central communal open space area, which will provide a pedestrian connection between all four buildings within the proposed development. Key elements to be provided within the central communal open space area, include a putting green, children's play area, swimming pool and deck, as well as active and passive recreation areas.

A variety of vegetation is proposed throughout the site, including medium and large trees as well as shrubs. New plantings are also proposed within the wildlife corridor in accordance with the VMP. Retaining walls, planter boxes and level changes will provide a distinction between private outdoor areas and common areas. The use of sandstone and limestone features will reflect the quarrying history of the site, connecting the proposed development with the significant former use.

The bushland setting within the non-buildable area will make a positive contribution to the landscaping scheme across the site. Based on the above, the Department considers that the proposed landscaping scheme relates to the built form as well as the surrounding natural environment and therefore is consistent with Design Quality Principle 5.

6.6 Bushfire Assessment

The site is located on Bushfire Prone Land - partially Vegetation Category 1, with the remainder within the Vegetation Buffer zone. A Bush Fire Assessment Report has been submitted, which demonstrates the proposal can comply with the performance criteria of Planning for Bushfire Protection 2019. The NSW RFS have reviewed the proposed development and raises no concerns subject to the imposition of conditions (Refer to submissions under **Section 5.3**).

The NSW RFS have required the establishment of Asset Protection Zones (APZ) to minimise the risk of bushfire attack and provide protection for emergency services personnel and residents. The site is required to be managed as an inner protection area (IPA) which requires the removal of some vegetation to reduce the canopy cover within the APZ to less than 15%.

The NSW RFS also require a restriction on the land use in accordance with Section 88B of the Conveyancing Act 1919 to be placed on Lot 0/SP72557- 80 John Whiteway Drive Gosford, located to the south east of the site. The restriction would require the provision of a 5-metre-wide APZ along the north-western boundary beyond the property access ramp. This must be maintained as an Outer Protection Area (OPA) as outlined within Appendix 4 of Planning for Bush Fire Protection 2019.

It is noted that Owners consent, from the Owners Corporation of 80 John Whiteway Drive has been provided, allowing the establishment of an APZ, as required by the NSW RFS.

The Department is satisfied that the proposed development can comply with the requirements of the Planning for Bushfire Protection 2019. Conditions provided by RFS have been included in the recommended consent.

6.7 Traffic and Parking

Car parking

The proposal would provide a total of 305 car parking spaces, including 32 accessible car parking spaces (allocated to residents and visitors) over two basement levels. The breakdown of spaces for each use is outlined in **Table 7** below.

Table 7 | Car Parking Breakdown

Parking allocation	Number of spaces
Resident	264
Visitor	41
Total	305

Objective 3J-1 of the ADG prescribes that the minimum car parking rate for residents is set out in the 'Guide to Traffic Generating Developments' ('RMS Guide'), or the car parking requirement prescribed by the GDCP, whichever is less. The RMS Guide provides a lower rate (244 resident and visitor spaces) than that of the GDCP (296 resident and visitor spaces), and as such should be the prevailing car parking rate.

The site is reasonably isolated (given its location on the fringe of the Gosford City Centre) and has a steep incline from Henry Parry Drive to John Whiteway Drive, making pedestrian access to public transport challenging. Public transport servicing John Whiteway Drive is poor. For these reasons the parking rate in the GDCP (255 resident and 41 visitor) is the most appropriate rate for this site.

The proposed car parking arrangement exceeds the prescribed car parking rate by a total of 9 spaces. The Department considers this minor exceedance to be satisfactory, given the inclusion of 7 car share/electric vehicle charging stations, as well as the likely negligible traffic impacts created by the proposed development, as discussed below.

Traffic Impacts

In their submission to the Department, TfNSW noted the continuing intensification of the Gosford CBD, as well as the fact that the intersection of Henry Parry Drive and Donnison Street is approaching capacity.

The submitted Traffic and Parking Assessment confirms that the CBD network is oversaturated during the PM peak period, as per the SIDRA modelling. The modelling also indicates the additional traffic generated by the development will have little or no impact on the oversaturated conditions currently experienced in the PM peak period. 110 peak hour trips generated by the development account for only 0.7% of the 15,000 vehicles per hour currently operating in the network during the PM peak.

Both Council and TfNSW have acknowledged that intersections within the Gosford CBD will eventually require upgrading due to the significant number of developments proposed within the Gosford CBD. However, neither Council nor TfNSW have disputed that the additional traffic that will be generated by the proposed development will have a negligible impact on current traffic conditions during the PM peak period.

The proposal would be subject to the payment of both Special Infrastructure Contributions and Local Contributions which will contribute to future upgrades of the road network. The Department is satisfied that the proposed development will result in a negligible impact to the current traffic conditions.

Green Travel Plan

TfNSW recommended the preparation of a Green Travel Plan (GTP) to reduce reliance on private vehicles. In response, the Applicant has provided a GTP, which seeks to encourage the occupants of

the proposed building to make greater use of public transport, cycling, walking and car sharing and reduce car usage. The GTP recommends that a Transport Access Guide (TAG) provide future residents with information on:

- access to public transport infrastructure
- walking distances and times to public transport services
- services provided by local public transport, including Availability of train and bus services.
- ticketing information for public transport,
- location of local facilities and amenities within walking distance and cycling distance
- overview of cyclist provisions (bicycle storage etc.)
- details of car-pooling benefits and strategy
- detail recommended building regulations for the residential use of the site.

The submitted GTP encourages the use of alternative transport modes by future residents. A condition of consent is recommended to ensure the GTP is implemented and updated annually.

6.8 Other issues

The Department's consideration of other issues is provided in **Table 8** below.

Table 8 | Other Issues

Issue	Findings	Recommendations
Developer Contributions	<p>The proposal is subject to:</p> <ul style="list-style-type: none"> • State Contributions (Gosford City Centre Special Infrastructure Contribution) equivalent to 2% of the cost of the development or approximately \$ 3.3 million for the Stage 1 development. • Central Coast Council's Section 7.12 Contributions Plan for Gosford City Centre (known as the Civic Improvement Plan) which levies development contributions at 1% of the development cost to fund local infrastructure improvements. 	<p>A condition consistent with the Minister's direction is recommended in relation to payment of state infrastructure contributions.</p> <p>A condition is recommended requiring payment of local infrastructure contributions.</p>
Contamination	<p>A Detailed Site Investigation (DSI) and Remediation Action Plan (RAP) prepared by Trace Environmental were submitted with the EIS.</p> <p>The DSI identified the following:</p> <ul style="list-style-type: none"> • Remnant concrete slabs and equipment associated with the previous use as a quarry were found on site, along with various waste products including building materials, concrete mounds, and a burnt-out car. 	<p>Conditions are recommended requiring the implementation of the RAP and the submission of a Site Audit Statement by an NSW EPA accredited Site Auditor on completion.</p>

Issue	Findings	Recommendations
	<ul style="list-style-type: none"> • Soil sampling found that fill depth was shallow, however some metals were reported at concentrations exceeding guideline criteria. • Groundwater collected from monitoring wells contained heavy metals exceeding guideline criteria. <p>The DSI recommended that a RAP be prepared for the site.</p> <p>The submitted RAP includes the following measures to make the site suitable for the development:</p> <ul style="list-style-type: none"> • Additional on-site inspections and sampling during removal of surface waste and further investigations of fill material. • Removal of affected soils. • Implementation of an unexpected finds strategy. • Management of off-site disposal as well as importation of fill material. • Site Validation <p>The Department is satisfied that with the implementation of the RAP, the site can be made suitable for the proposed residential development.</p>	
Public Benefit	<p>The application proposes the following public benefits:</p> <ul style="list-style-type: none"> • provision of a publicly accessible walkway and viewing platform along the northern part of the site through the bushland area • provision of a small pocket park on the south western frontage adjoining John Whiteway Drive • extension of the footpath across the site frontage to adjoin the existing footpath in front of 91-95 John Whiteway Drive • inclusion of a public art strategy in the form of a large mural on the façade of Building B to reflect the quarrying history of the site. <p>The Department is satisfied that above would deliver appropriate public benefits to the local community.</p>	<p>Conditions are recommended to secure the delivery of the proposed public benefits.</p>
Water Quality and Stormwater Management	<p>To manage water quality and stormwater, the Department has recommended that prior to the issue of the construction certificate, the stormwater management</p>	<p>Standard conditions relating to stormwater design are recommended.</p>

Issue	Findings	Recommendations
	system is to be developed in consultation with Council.	
Acid Sulfate Soils	The development site is identified as containing Class 5 acid sulphate soils under the Gosford SEPP. Works within Class 5 that lower the regional water table below 1m AHD in the adjacent Class 1,2,3,4 land, is considered to pose an ASS risk. The submitted Geotechnical Investigation provides an acid sulphate assessment, which concluded that there is no potential for lowering the water table at the site during construction. As such, no further assessment is required under the clause.	A condition is recommended requiring further Geotechnical works as provided in the submitted Geotechnical Investigation which includes requirements for groundwater monitoring.
Biodiversity	<p>The proposed development involves the removal of existing vegetation from within the site. The application was accompanied by a Biodiversity Development Assessment Report (BDAR) in accordance with the requirements of the BC Act.</p> <p>The report was updated with the Amended SSD to address some matters raised by BCD, one of which related to the inconsistencies in the BDAR with respect to the size of the development. BCD have advised that the updated report has satisfactorily addressed this issue.</p> <p>An assessment was undertaken against the Biodiversity Assessment Method (BAM) which identified that a total of 16 ecosystem credits are required for PCT Blackbutt - Narrow leaved White Mahogany shrubby tall open forest of coastal ranges, northern Sydney Basin. The report also notes that no serious and irreversible impact entities are likely to be impacted by the proposed development</p> <p>Following submission of the Amended SSD, BCD has advised it is satisfied with the biodiversity assessment.</p> <p>When having regard to the above, the Department is satisfied that biodiversity impacts can be appropriately mitigated.</p>	<p>A condition is recommended requiring that ecosystem credits be retired in accordance with the BDAR, prior to the issue of the Construction Certificate.</p> <p>The provision of a Biodiversity Management Sub-Plan to be incorporated in the Construction Environmental Management Plan is also recommended to ensure the implementation of mitigation and management measures throughout construction.</p>
Aboriginal Heritage	<p>The EIS included an Aboriginal Cultural Heritage Assessment Report (ACHAR) that considered the impact of the proposal on Aboriginal cultural heritage, including the site's potential to contain archaeological remains.</p> <p>The ACHAR found that while the development has Aboriginal cultural values as part of the wider landscape, no specific cultural values or associations were</p>	<p>The Department has reviewed the ACHAR and considers that potential impacts on Aboriginal cultural heritage have been appropriately addressed.</p> <p>A condition requiring the provision of an ACHMP is recommended. The ACHMP</p>

Issue	Findings	Recommendations
	<p>identified. Further, no historic values were identified, and the aesthetic value was assessed to be low significance. No Aboriginal objects or landscapes were identified during the field survey, and due to the extensive disturbance of the project area the likelihood of subsurface deposits is low. On this basis the area is concluded to be of low archaeological potential.</p> <p>Heritage NSW reviewed the ACHAR and recommended conditions be imposed requiring the preparation of an Aboriginal Cultural Heritage Management Plan (ACHMP) to manage the impacts of the development.</p>	<p>is required to be prepared in consultation with the Registered Aboriginal Parties and is to include measures for unexpected finds.</p>
<p>Non-indigenous heritage</p>	<p>The subject site does not contain any land of listed local or state heritage significance and is not located in the vicinity of any heritage items. However, the former Gosford Quarry, which forms part of the site, was proposed for local heritage listing but removed from the proposed list by Council at its meeting of 10 December 2018. Council's decision indicated that the site would be reconsidered for listing with the next heritage study for the area.</p> <p>The intention of the listing was to ensure that any development of the site incorporated appropriate interpretation of its historic use for quarrying activities that are such a significant part of the historic development of the Gosford CBD and area generally.</p> <p>The Applicant submitted a Heritage Impact Assessment Report with the application that found the site has historical, social, and scientific importance due to its former use. The report concludes that the development would not result unreasonable heritage impacts subject recommendations including:</p> <ul style="list-style-type: none"> • interpretation of the history through the design of the communal open space area • inclusion of an unexpected finds protocol. <p>Council reviewed the report and requested the provision of a Heritage Interpretation Strategy (HIP).</p> <p>The Department is satisfied that subject to conditions, the historical significance of the site can be retained.</p>	<p>The Department has recommended a condition requiring the provision of a HIP as requested by Council. Further, the HIP is required to include a public art strategy to apply to the privacy screening along the public walkway discussed earlier in this report.</p>

Issue	Findings	Recommendations
Construction Impacts	<p>Concerns have been raised by adjoining residents relating to construction impacts.</p> <p>The Department notes that extensive excavation is required and has recommended conditions of consent to ensure extensive dilapidation reports are undertaken, and to ensure a geotechnical engineer oversees all excavation on site.</p> <p>The Department has also recommended conditions requiring the preparation of a Construction Environmental Management Plan (CEMP) prior to the issue of the construction certificate, to ensure construction impacts are mitigated and/or managed. The CEMP is to include management of impacts relating to traffic, noise and vibration, soil, and water. Further the CEMP is required to include a community consultation and complaints handling policy.</p> <p>Hours of construction are limited to those recommended by the EPA's <i>Interim Construction Noise Guidelines</i> (ICNG).</p> <p>Subject to conditions, the Department is satisfied the construction impacts of the development would be appropriately managed.</p>	<p>The Department has recommended conditions of consent requiring the preparation and implementation of a CEMP throughout the construction phase.</p>
Noise and Vibration	<p>A Noise and Vibration Impact Assessment (NVIA) was submitted with the EIS.</p> <p>The NVIA undertook noise monitoring at three locations on the site nearest to the adjoining residential properties to provide an accurate baseline of background noise levels in this location. The findings and recommendations of the NVIA are as follows.</p> <p><u>Construction noise and vibration</u></p> <p>Construction is proposed to be separated into two stages. Stage 1 comprises excavation and piling, and Stage 2 comprises general construction works.</p> <p>The NVIA found that during Stages 1 and 2, noise would exceed the 'noise affected' noise management levels (NML's) at all adjoining residential locations. However, the 'highly noise affected' criteria would not be exceeded. It is noted that exceedances of the NML's are worse in Stage 1 than in Stage 2.</p> <p>The NVIA recommends mitigation measures to minimise noise exceedances including:</p>	<p>The Department has recommended conditions requiring the provision of a CEMP including a noise and vibration sub-plan. Hours of construction are also proposed to be limited to those allowed by the ICNG, being:</p> <ul style="list-style-type: none"> • 7am and 6pm, Mondays to Fridays inclusive; and • between 8am and 1pm, Saturdays.

Issue	Findings	Recommendations
	<ul style="list-style-type: none"> establishing a community consultation strategy acoustically rated site hoarding and temporary noise barriers scheduling of noisy works. <p>An assessment of vibration impacts found that subject to equipment choice, minimum offset distances can be achieved to ensure construction works comply with vibration limits for cosmetic damage. Further, the NVIA recommends that construction plant should be chosen to maintain human response limits.</p> <p>The Department is satisfied that subject to conditions requiring the preparation and implementation of a CEMP including a Noise and Vibration sub-plan, construction noise and vibration will be appropriately managed.</p> <p><u>Operational noise</u> Operational noise will remain within guidelines.</p> <p>Recommendations have been made for the treatment of mechanical plant equipment particularly for ventilation fans and condensers. The Department has recommended conditions requiring that mechanical plant and equipment be design in accordance with the NVIA.</p>	
Neighbour Amenity	<p>The public submissions raised concerns relating to a loss of amenity. In particular, the following issues were raised:</p> <ul style="list-style-type: none"> overshadowing of adjoining properties loss of privacy and overlooking of adjoining properties loss of views. <p>Each of these issues are addressed below.</p> <p><u>Overshadowing</u> The submitted shadow diagrams indicate the development would impact on the neighbouring property at 91-95 John Whiteway Drive between 9am and 11am mid-winter. It is noted that part of the communal open space and swimming pool at this property is already overshadowed by the existing cliff face for part of this period. It is evident that the dwellings and communal open space at 91-95 John Whiteway Drive would continue to receive compliant solar access mid-winter consistent with the ADG.</p>	<p>The Department is satisfied that the proposed development would not result in any significant detrimental impacts on neighbour amenity.</p> <p>No conditions relating to these issues are required.</p>

Issue	Findings	Recommendations
	<p>The proposed development would not impact on solar access to any other surrounding residential properties.</p> <p><u>Privacy and Overlooking</u></p> <p>Due to the topography of the site, views from the proposed development would generally overlook the rooftops of surrounding residential flat buildings rather than into the adjoining apartments themselves. Further, the proposed buildings are setback from the site boundaries and achieve the minimum separation distances outlined in the ADG minimising opportunities for privacy impacts.</p> <p>The proposed development would not result in any significant loss of privacy or overlooking of adjoining properties.</p> <p><u>Loss of Views</u></p> <p>Currently, only residents in the upper floor units of 80 John Whiteway Drive would have views across the subject site to Gosford and Brisbane Water in the west, Due to the topography of the land, any development of 89 John Whiteway Drive for a residential flat building would obstruct these views, even if fully compliant with all development controls.</p> <p>In assessing view loss impacts, the Department has considered the planning principles established in <i>Tenacity Consult v Warringah Council [2004] NSWLEC</i>. The impact on view sharing is considered to be moderate, and acceptable in the circumstances of this proposal.</p>	

7 Evaluation

The proposed SSD application seeks approval for the construction of four residential flat buildings at 89 John Whiteway Drive, Gosford. The Department has reviewed the EIS, Amended EIS/RTS and additional information and assessed the merits of the proposal, taking into consideration advice from the public authorities, including Council and all environmental issues associated with the proposal have been thoroughly addressed.

The Department's assessment of the proposal concludes:

- the built form and urban design are suitable for the site.
- the requirements for a variation from the height controls have been met and the Department considers that overall scale and height is appropriate for the site, subject to some improvements via condition.
- the proposal has generally been designed to ensure a high-quality interface with the public domain in the context of the site constraints.
- the proposal will provide a high-quality landscape outcome that would make a positive contribution to the character of the area, provide pleasant outdoor spaces for residents, and improve pedestrian amenity and environmental outcomes on the site.
- subject to developer contributions to assist with funding infrastructure improvements, the proposal would not result in material traffic or parking impacts, and conditions are recommended to encourage sustainable transport use and ensure reduced reliance on private vehicles.

The proposal is consistent with key government strategic plans and policies, including the North Coast Regional Plan 2036, The Gosford Urban Design Framework, and Future Transport Strategy 2056.

The proposal is considered to be in the public interest as it would provide public benefits, including:

- additional investment housing for the region's population.
- support the continuing growth of the Capital City of the Central Coast, providing revitalisation of this part of the centre, and encourage economic growth and investment.
- footpath upgrades, a public walkway and viewing platform and a pocket park.

Based on its assessment, the Department considers that the project is justified and in the public interest, and that the site is suitable for the proposed development.

Recommended conditions of approval and the implementation of measures detailed in the Applicant's documentation would ensure that the project would minimise and mitigate the residual environmental impacts of the project. Consequently, the Department recommends that the State significant development for 89 John Whiteway Drive Gosford be approved, subject to the recommended conditions of consent.

8 Recommendation

It is recommended that the Executive Director, Key Sites and Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **agrees** with the key reasons for approval listed in the notice of decision;
- **grants consent** for the application in respect of SSD 10321; and
- **signs** the attached development consent and recommended conditions of consent (see **Appendix D**).

Recommended by:

A handwritten signature in blue ink, appearing to read 'K T' followed by a long horizontal stroke.

Keiran Thomas

Director

Regional Assessments

9 Determination

The recommendation is **Adopted / Not adopted** by:

A handwritten signature in blue ink that reads "Sargeant". The signature is written in a cursive style with a large initial 'S'.

Anthea Sargeant

Executive Director

Key Sites and Regional Assessments

Appendices

Appendix A – List of referenced documents

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning, Industry and Environment's website as follows.

1. Environmental Impact Statement
<https://www.planningportal.nsw.gov.au/major-projects/project/11961>
2. Submissions
<https://www.planningportal.nsw.gov.au/major-projects/project/11961>
3. Applicant's Response to Submissions
<https://www.planningportal.nsw.gov.au/major-projects/project/11961>

Appendix B – Statutory Considerations

State Environmental Planning Policy (State and Regional Development) 2011

The State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) aims to identify development that is of State significance due to its size, economic value, or potential impact.

The project is classified as State significant development (SSD) under section 4.36 of the EP&A Act, as it comprises development on land identified as being within the Gosford City Centre and has a capital investment value of more than \$75 million under clause 15 of Schedule 2 of the SRD SEPP.

State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

The Department referred the application to TfNSW and has considered TfNSW's submissions on the proposal (Refer **Section 5**). The Department has recommended conditions to manage and/or mitigate the impacts of the development (**Appendix D**).

State Environmental Planning Policy No.55 – Remediation of Land

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application.

The EIS includes a Detailed Site Investigation (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 was historically used as a sandstone quarry up until 1985. In 2003 the site appeared to have been used as a car park and has been unoccupied since approximately 2010.

Several remnant concrete building slabs and old equipment associated with quarrying activities were identified. Various wastes (concrete, scrap metal, tiles, bricks, non-putrescible rubbish, concrete mounds, burnt-out car) were observed across the site.

The DSI also identified soil and groundwater contaminants exceeding guideline criteria.

A Remediation Action Plan (RAP) was also submitted with the EIS including the following measures to ensure the site is made suitable for the development:

- Additional on-site inspections and sampling during removal of surface waste and further investigations of fill material.
- Removal of affected soils.
- Implementation of an unexpected finds strategy.
- Management of off-site disposal as well as importation of fill material.
- Site Validation.

The Department is satisfied that subject to the imposition of conditions requiring remediation to be undertaken in accordance with the RAP and the submission of a Site Audit Statement from a NSW EPA accredited Site Auditor, the site can be made suitable for the proposed residential use and will not result in unacceptable contamination risks.

Draft Remediation of Land State Environmental Planning Policy

The Draft Remediation SEPP will retain the overarching objective of SEPP 55 promoting the remediation of contaminated land to reduce the risk of potential harm to human health or the environment.

Additionally, the provisions of the Draft Remediation SEPP require all remediation work carried out without development consent, to be reviewed and certified by a certified contaminated land consultant, categorise remediation work based on the scale, risk and complexity of the work and require environmental management plans relating to post-remediation management of sites or ongoing operation, maintenance and management of on-site remediation measures (such as a containment cell) to be provided to council.

The Department is satisfied that the proposal will be consistent with the objectives of the Draft Remediation SEPP.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

Clause 9 of SEPP 19 - Bushland in Urban Areas specifies requirements for land adjoining bushland zoned or reserved for public open space purposes. Where a public authority proposes to grant approval or development consent in relation to development on land to which this clause applies, the public authority shall not carry out that development or grant the approval or development consent unless it has considered

- the need to retain any bushland on the land,
- the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and
- any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

The site is adjacent to Council's John Whiteway Drive Bush Reserve (to the east). The northern part of the site, which is located within the non-buildable area, currently forms a linkage between John Whiteway Bushland Reserve and Rumbalara Reserve. The applicant intends on maintaining this linkage from Rumbalara Reserve to the subject site. The VMP outlines that the corridor will be retained for native wildlife through a combination of vegetation retention where suitable and native vegetation replanting works.

When having regard to the above, the Department is satisfied that the above matters have been considered and is satisfied that proposal meets the objectives of SEPP 19

State Environmental Planning Policy (Coastal Management) 2018

The Coastal SEPP aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone by managing development in the coastal zone and protecting the environmental assets

of the coast, establishing a framework for land use planning to guide decision-making in the coastal zone, and mapping the 4 coastal management areas (the coastal wetlands and littoral rainforests area, the coastal vulnerability area, the coastal environment area and the coastal use area) that comprise the NSW coastal zone for the purpose of the definition in the *Coastal Management Act 2016*.

A portion of the site is identified as being located within the Coastal Environment Area under the SEPP.

The Department has assessed the impacts of the proposed development on the coastal environment area and pursuant to Clause 13, is satisfied that the proposed development would not result in adverse environmental impacts, including hydrological impacts, impacts to water quality, vegetation, fauna, open space, Aboriginal heritage, or impacts to foreshore areas. Pursuant to clauses 15 and 16, the Department is also satisfied the development is not likely to cause increased risk of coastal hazards and notes there is no certified coastal management plan applicable to the site

State Environmental Planning Policy No. 65 – Residential Apartment Development, including Apartment Design Guide

State Environmental Planning Policy 65 – Residential Apartment Development (SEPP 65) seeks to improve the design quality of residential developments and encourage innovative design. The ADG is closely linked to the principles of SEPP 65 and sets out best practice design principles for residential developments.

Clause 30(2) of SEPP 65 outlines that development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design quality principles and the objectives specified within the Apartment Design Guide for the relevant design criteria. An assessment of how the proposal satisfies Clause 30(2) of SEPP 65 is provided below.

Following receipt of the amended application, the Department engaged a peer review of the proposal against the SEPP 65 Design Quality Principles and the relevant provisions of the ADG. **Table 9** below provides the Department's consideration of the Design Quality Principles.

Table 9 | Consideration of the Design Quality Principles of SEPP 65

SEPP 65 Principle	Department's Response
1. Context and Neighbourhood Character	The Department is satisfied that the proposal is consistent with Design Quality Principle 1 as the development appropriately responds to the qualities of the area and contributes to the surrounding context – Refer to discussion under Built Form and Urban Design in Section 6.2 .
2. Built Form and Scale	The Department is satisfied that the design features incorporated into the development visually reduces the overall bulk and scale of the proposed development subject to conditions requiring minor refinements – Refer to discussion under Built Form and Urban Design in Section 6.2 .
3. Density	The Department is satisfied that the proposal meets Design Quality Principle 3, as the proposal results in a FSR of 1.11:1 across the

development which is compliant with the maximum FSR controls applying to the site (1.5:1).

Overall, the proposed development achieves an acceptable level of amenity for residents (subject to conditions), and results in a density which is appropriate to the site and the anticipated future character of the area.

4. Sustainability	<p>The Department is satisfied that the proposal meets Design Quality Principle 4 as the proposal achieves cross ventilation in accordance with the ADG design criteria and provides for satisfactory solar access to units within the development.</p> <p>The flora and fauna corridor contributes to canopy coverage and reduction in heat island effect. The landscape strategy incorporates native low water consumption species to improve sustainability outcomes.</p>
5. Landscape	<p>The Department considers that the proposed landscaping scheme relates to the built form as well as the surrounding natural environment and therefore is consistent with Design Quality Principle 5 – Refer to discussion under Landscaping and Communal Open Space in Section 6.5.</p>
6. Amenity	<p>Overall, subject to conditions, the Department considers the proposed development will result in satisfactory amenity for future residents, as the proposal achieves adequate access to sunlight, natural ventilation, and acoustic privacy. Further, a number of units within the development will benefit from significant water views, and others will enjoy district views.</p>
7. Safety	<p>The Department is satisfied that the proposal achieves compliance with Design Quality Principle 7, as the development provides opportunity for passive surveillance of public and communal areas by orientating units to the street as well the communal open spaces.</p>
8. Housing Diversity and Social Interaction	<p>The proposal provides a range of different dwelling types, including 1-4 bedroom units and townhouses at ground level. As such the Department is of the opinion that the proposal achieves compliance with Design Quality Principle 8.</p>
9. Aesthetics	<p>The Department is satisfied that the proposed development is consistent with Design Quality Principle 9 as the built form generally has good proportions and a balanced composition of elements. Furthermore, the proposal uses a variety of materials, colours and textures, as discussed under Built form in Section 6.2.</p>

Table 10 provides the Department's consideration of the relevant Objectives and Design Criteria contained within the ADG.

Table 10 | Consideration of the Apartment Design Guide

Objective	Department's comments
3A-1 Site Analysis Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	<p>Satisfactory.</p> <p>The site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.</p> <p>The limitations of the site analysis have been addressed in detailed section and landscape plans, which informs the context of the site when having regard to changes to existing site levels.</p> <p>A further comprehensive detailed streetscape analysis is not considered necessary in the context of the site and surrounding development.</p>
3B-1 Orientation Building types and layouts respond to the streetscape and site whilst optimising solar access within the development.	<p>Satisfactory.</p> <p>The development has been sited to respond to John Whiteway Drive. Ground level units provide for passive surveillance to the street and internal layout can be interpreted from the streetscape through the provision of balconies and other architectural elements.</p> <p>Buildings are not necessarily sited to optimise solar access, rather they are orientated to take advantage of the views to Brisbane Water, the Department is satisfied that the proposal achieves an acceptable level of solar access.</p>
3B-2 Orientation Overshadowing of neighbouring properties is minimised during mid-winter.	<p>Satisfactory.</p> <p>The shadow analysis has demonstrated that solar access to neighbouring properties has not been reduced by more than 20%.</p>
3C-1 Public Domain Interface Transition between private and public domain is achieved without compromising safety and security.	<p>Satisfactory.</p> <p>It is noted that the existing ground level of the project area is below the street level creating difficulties in achieving a positive relationship between the development and the street.</p> <p>However, the transition between private and public domain has been acceptably managed through landscaping features and visibility of dwellings. The entry points to each building are also clearly defined.</p>
3C-2 Public Domain Interface Amenity of the public domain is retained and enhanced.	<p>Satisfactory.</p> <p>Overall, the Department is satisfied that the amenity of the public domain is retained and enhanced.</p>

	<p>The peer review commented that the basement entry is visually prominent when viewed from John Whiteway Drive. In order to resolve this, the Department has imposed a condition of consent to redesign the south eastern basement structure to increase the setback from John Whiteway Drive and reduce the overall bulk of the structure.</p>
<p>3D-1 Communal and Public Open Space</p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p>	<p>Satisfactory.</p> <p>The proposal provides 5,744 sqm of communal open space which equates to 26% of the total site area. This area includes the public walkway and viewing platform.</p>
<p>3D-1 Communal and Public Open Space - Design Criteria</p> <p>Communal open space has a minimum area equal to 25% of the site area.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9am and 3pm on 21 June (mid-winter).</p>	<p>Satisfactory.</p> <p>The applicant has demonstrated that the proposal will achieve 50% direct sunlight to the principle communal open spaces area during mid-winter.</p>
<p>3D-2 Communal and Public Open Space</p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.</p>	<p>Satisfactory.</p> <p>The communal areas include a range of active and passive recreation areas including, pool facilities, communal gardens, putting golf greens, boardwalks, bocce courts and open areas for congregation and social gathering.</p>
<p>3D-3 Communal and Public Open Space</p> <p>Communal open space is designed to maximise safety.</p>	<p>Satisfactory.</p> <p>Units are orientated to overlook the communal areas with communal pathways meandering through open spaces to increase passive surveillance and enhance a sense of security for residents.</p> <p>The Department has concerns over the privacy of the north facing units in Block D, as a result of the proposed public walkway. In order to mitigate privacy concerns from a condition of consent will be imposed, requiring privacy screening where the walkway is located opposite Blocks C and D.</p>
<p>3D-4 Communal and Public Open Space</p>	<p>Satisfactory.</p>

Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.

Public open space is well connected with John Whiteway Drive.

3E-1 Deep Soil Zones

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Satisfactory.

The proposal provides 11,959sqm of deep soil which equates to 53.5% of the total site area. The deep soil is largely accommodated within the undevelopable part of the site along the northern, western, and southern perimeter of the site.

3E-1 Deep Soil Zones - Design Criteria

Deep soil zones are to meet the following minimum requirements:

Site area >1,500m²

Minimum dimensions of 6m and 7% of site area.

Site area >1,500m² with significant existing tree cover

Minimum dimensions of 6m and 7% of site area.

Satisfactory.

As above.

3F-1 Visual Privacy

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

Satisfactory.

Adequate building separation distances are shared equitably between neighbouring sites.

3F-1 Visual Privacy - Design Criteria

Separation distance between windows and balconies is provided to ensure visual privacy is achieved. Minimum requires separation distance from buildings to the side and rear boundaries are as follows:

Building up to 12m (4 storeys)

6m between habitable rooms and balconies,
3m between non-habitable rooms.

Building up to 25m (5-8 storeys)

9m between habitable rooms and balconies,
4.5m between non-habitable rooms.

Building over 25m (9+ storeys)

12m between habitable rooms and balconies, 6m between non-habitable rooms.

Separation distances between buildings on the same site should combine required

The building separation between Blocks A and B is less than recommended in the ADG.

However, the Department is satisfied that the proposal achieves compliance with Objective 3F-1 of the ADG as a majority of units will achieve satisfactory levels of amenity, in terms of visual and acoustic privacy, as well as access to daylight and sunlight - Refer to detailed discussion under **Section 6.4**.

building separations depending on the type of room.

Gallery access circulation should be treated as habitable space when measuring privacy separation distance between neighbouring properties.

3F-2 Visual Privacy

Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.

Satisfactory.

The proposal has been designed to increase privacy without comprising access to light and air.

3G-1 Pedestrian Access and Entries

Building entries and pedestrian access connects to and addresses the public domain.

The Department acknowledges that the street facing ground level units, within Block C, do not have direct access to John Whiteway Drive and sit below the street level by approximately 3m. This is due to the topography of the site and the street level naturally sitting higher than the north eastern corner of the site.

Given the existing topography of the site, the Department accepts this variation to the ADG, noting that Blocks A and B comply with this Objective.

3G-2 Pedestrian Access and Entries

Access, entries and pathways are accessible and easy to identify.

Satisfactory.

The pedestrian entries and lobbies are clearly visible from the public domain and communal spaces. Further, a condition is recommended to include way-finding signage throughout the development.

3H-1 Vehicle Access

Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.

Satisfactory.

Vehicle access points have been designed to achieve safety and create high quality streetscaped.

The peer review commented that the basement entry, at the south western corner of the site, is visually prominent when viewed from John Whiteway Drive. In order to resolve this, the Department has imposed a condition of consent to redesign the south eastern basement structure to increase the setback from John Whiteway Drive and reduce the overall bulk of the structure.

3J-1 Bicycle and Car Parking

Satisfactory.

Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.

The proposal incorporates a sufficient allocation of bicycle and car parking.

3J-1 Bicycle and Car Parking - Design Criteria

For development in the following locations:

- on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area, or
- on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre.

The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.

The car parking need for a development must be provided off-street.

Satisfactory.

The proposed car parking arrangement exceeds the prescribed car parking rate by a total of 9 spaces. The Department considers this minor exceedance to be satisfactory, given the inclusion of 7 car share/electric vehicle charging stations, as well as the likely negligible traffic impacts created by the proposed development, as discussed below. Refer to detailed discussion under **Section 6.7**.

3J-2 Bicycle and Car Parking

Parking and facilities are provided for other modes of transport.

Satisfactory.

Compliant bicycle parking is provided within the basement levels.

3J-3 Bicycle and Car Parking

Car park design and access is safe and secure.

Satisfactory.

The proposal satisfies this objective as garbage, plant and switch rooms, storage areas and car wash bays can generally be accessed without crossing car parking spaces.

3J-4 Bicycle and Car Parking

Visual and environmental impacts of underground car parking are minimised.

Satisfactory.

Visual impacts of basement parking have generally been minimised, however there are some minor protrusions, which is largely attributed to the topography of the site.

The Department is satisfied that the proposal meets this objective as landscape treatments throughout the site will soften the appearance of any protrusions.

4A-1 Solar and Daylight Access

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

Satisfactory.

The Department is generally satisfied that the proposed development optimises the number of apartments receiving sunlight to habitable rooms. Refer to detailed discussion under **Section 6.4**.

4A-1 Solar and Daylight Access - Design Criteria

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.

A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.

Achieving the design criteria may not be possible on some sites. This includes:

- where significant views are oriented away from the desired aspect for direct sunlight

The Department considers that the proposed development provides adequate solar access, in accordance with Objective 4A-1 of the ADG, based on the following:

- 88 out of 204 units (43%) receive 3hr compliant solar access. In this instance, the Department is willing to accept 2hr 45min as compliant, given the minor 15min discrepancy, which takes the total number of complaint units to 100 (49%).
- The Department has imposed a condition of consent to delete 3 units, which achieve poor amenity, which equates to close to 50% of units with compliant solar access.
- An additional 40 units, are considered to receive significant water views, resulting in a total of 63% of units receiving either complaint solar access or views to offset the limited solar access as allowed by the ADG.

The Department is satisfied that 63% compliant solar access is acceptable given the physical constraints of the site.

4B-1 Natural Ventilation

All habitable rooms are naturally ventilated.

Satisfactory.

All habitable rooms within the proposed development are ventilated.

4B-2 Natural Ventilation

The layout and design of single aspect apartments maximises natural ventilation.

Satisfactory.

Apartment depths are limited to maximise airflow and ventilation.

4B-3 Natural Ventilation

The number of apartments with natural cross ventilation is maximized to create a comfortable indoor environment for residents.

Satisfactory.

4B-3 Natural Ventilation - Design Criteria

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be naturally ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

Satisfactory.

At least 60% of apartments are naturally cross ventilated.

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

4C-1 Ceiling Heights

Ceiling height achieves sufficient natural ventilation and daylight access.

Satisfactory.

Ceiling heights meet the minimum requirements outlined in the design criteria below.

4C-1 Ceiling Heights - Design Criteria

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Habitable rooms

2.7m.

Non-habitable rooms

2.4m.

Two storey apartments

2.7m for main living area floor.

2.4m for second floor, where its area does not exceed 50% of the apartment area.

Satisfactory.

Minimum ceiling heights have been implemented throughout the development.

4C-2 Ceiling Heights

Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.

Satisfactory.

Well-proportioned rooms have been provided.

4D-1 Apartment Size and Layout

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Satisfactory.

The layout of apartments is generally well organised and provides a high level of amenity.

4D-1 Apartment Size and Layout - Design Criteria

Apartments are required to have the following minimum internal areas:

Studio

35m².

One bedroom

50m².

Two bedroom

70m².

Three bedroom

90m².

Satisfactory.

All units meet the minimum internal areas, according to the number of bedrooms provided.

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

4D-2 Apartment Size and Layout

Environmental performance of the apartment is maximized.

Satisfactory.

The proposal is consistent with Objective 4D-2.

4D-3 Apartment Size and Layout - Design Criteria

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

4D-3 Apartment Size and Layout - Design Criteria

Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space),

Satisfactory.

Private Open Space for each unit is appropriately sized to enhance residential amenity.

Bedrooms have a minimum dimension of 3m (excluding wardrobe space).

Living rooms or combined living/dining rooms have a minimum width of:

One bedroom apartments

3.6m.

Two or three bedroom apartments

4m.

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.

4E-1 Private Open Space and Balconies

Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Satisfactory.

Private Open Space for each unit is appropriately sized to enhance residential amenity.

4E-1 Private Open Space and Balconies - Design Criteria

All apartments are required to have primary balconies as follows:

Satisfactory.

All balconies meet the minimum area and dimensions.

Studio apartments

4m².

One bedroom apartments

8m² with a minimum depth of 2m.

Two bedroom apartments

10m² with a minimum depth of 2m.

Three+ bedroom apartments

12m² with a minimum depth of 2.4m.

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.

4E-2 Private Open Space and Balconies

Primary private open space and balconies are appropriately located to enhance liveability for residents.

Satisfactory.

Private open space and balconies are generally located to enhance the liveability for residents.

4E-3 Private Open Space and Balconies

Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.

Satisfactory.

Private open space and balcony design is generally integrated into the overall architectural form and detail of the building.

The exception to the above is the upper level balconies in Block D where the balconies are not well integrated into the architectural form. In order to resolve this, a condition of consent will be imposed to redesign the upper level balconies on the western elevation of Block D to include solid elements, to better integrate them into the built form.

<p>4E-4 Private Open Space and Balconies</p> <p>Private open space and balcony design maximizes safety.</p>	<p>Satisfactory.</p> <p>Design of balconies and private open space avoids opportunities for climbing and falls, subject to meeting relevant standards.</p>
<p>4F-1 Common Circulation and Spaces</p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p>	<p>Satisfactory.</p> <p>Common circulation spaces within the proposed development achieve good amenity.</p>
<p>4F-2 Common Circulation and Spaces</p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>Satisfactory.</p> <p>The proposed development provides common circulation spaces with good amenity, as corridors will have access to adequate daylight and ventilation.</p>
<p>4G-1 Common Circulation and Spaces</p> <p>Adequate, well designed storage is provided in each apartment.</p>	<p>Satisfactory.</p> <p>Adequate storage is provided within each apartment.</p>
<p>4G-1 Common Circulation and Spaces - Design Criteria</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p><u>Studio apartments</u> 4m³.</p> <p><u>One bedroom apartments</u> 6m³.</p> <p><u>Two bedroom apartments</u> 8m³.</p> <p><u>Three+ bedroom apartments</u> 10m³.</p> <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>Satisfactory.</p> <p>Storage is provided in accordance with the prescribed design criteria.</p>
<p>4G-2 Common Circulation and Spaces</p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>Satisfactory.</p> <p>Additional storage is conveniently located within the basement and will be accessible to residents.</p>
<p>4H-1 Acoustic Privacy</p> <p>Noise transfer is minimized through the siting of buildings and building layout.</p>	<p>Satisfactory.</p> <p>Noise transfer is generally minimised throughout the development. Whilst the proposal does not comply with the minimum building separation requirements in some locations (as outlined previously), it is anticipated that the noise transfer impacts will be negligible as a result. This is</p>

	because the proposed development will be residential only, where acoustic impacts are generally minimal.
4H-2 Acoustic Privacy Noise impacts are mitigated within apartments through layouts and acoustic treatments.	Satisfactory. Noise impacts are appropriately mitigated through apartment layouts and acoustic treatments.
4J-1 Noise and Pollution In noisy or hostile environments, the impacts of external noise and pollution are minimized through the careful siting and layout of buildings.	N/A – The site is not located within a noisy or hostile environment. Surrounding development is residential only.
4J-2 Noise and Pollution Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	N/A - The site is not located within a noisy or hostile environment. Surrounding development is residential only.
4K-1 Apartment Mix A range of apartment types and sizes is provided to cater for different household types now and into the future.	Satisfactory. The development provides a variety of apartment types.
4K-2 Apartment Mix The apartment mix is distributed to suitable locations within the building.	Satisfactory. Apartment mix is appropriately distributed throughout the development.
4L-1 Ground Floor Apartments Street frontage is maximized where ground floor apartments are located.	Satisfactory. The street frontage is generally maximised where ground floor apartments are located. As previously discussed, ground level units within Block C do not have direct access to John Whiteway Drive. This is due to the topography of the site and the street level naturally sitting higher than the north eastern corner of the site. Also, the siting of Block D does not provide any opportunity for connection to the street. Given the existing topography of the site, the Department accepts this variation to the ADG, noting that Blocks A and B comply with this objective.
4L-2 Ground Floor Apartments Design of ground floor apartments delivers amenity and safety for residents.	Satisfactory. Generally, the design of ground floor apartments delivers amenity and safety for residents.

The exception to the above are the ground level units on the northern elevation of Block D where units are located below ground level, resulting in subterranean conditions. The Department has explored alternative design options, including a reconfiguration of the internal layout however, concluded that a redesign of these units would not result in a greater level of amenity for future residents. As such a condition of consent will be imposed to delete Units D1-06, D1-07 and D1-08.

4M-1 Facades

Building facades provide visual interest along the street while respecting the character of the local area.

Satisfactory.

Architectural features including solid vertical elements, planter boxes, and a variety of colours and materials have been incorporated into the façade of each building, which creates visual interest. The introduction of a grey render to the upper levels of Block C and D gives the illusion of a more recessive built form. Sandstone walls are provided at the lower levels to give the buildings a softer appearance from a human scale.

4M-2 Facades

Building functions are expressed by the façade.

Satisfactory.

Building function are expressed by the façade as building entries are clearly identified within all buildings. Furthermore, apartment layout is expressed externally through façade features.

4N-1 Roof Design

Roof treatments are integrated into the building designed and positive respond to the streets.

Satisfactory.

The proposal generally provides roof treatments which are appropriately integrated into the design of the building.

The Department has imposed a condition of consent to redesign the roof form of Building C to include a roof overhang to the eastern faced, improve articulation and provide protection from weathering.

4N-3 Roof Design

Roof design incorporates sustainability features.

Satisfactory.

Roof design incorporates sustainability features.

4O-1 Landscape Design

Landscape design is viable and sustainable.

Satisfactory.

Landscaping design is generally sustainable.

4O-2 Landscape Design

Landscape design contributes to the streetscape and amenity.

Satisfactory.

Landscaping generally contributes to the streetscape and amenity. It is noted that significant vegetation will be retained within the wildlife corridor.

4P-3 Planting on Structures

Satisfactory.

Planting on structures contributes to the quality and amenity of communal and public open spaces.

4Q-1 Universal Design Universal design features are included in apartment design to promote flexible housing for all community members.	Satisfactory.
4Q-2 Universal Design A variety of apartments with adaptable designed are provided.	Satisfactory.
4Q-3 Universal Design Apartment layouts are flexible and accommodate a range of lifestyle needs.	Satisfactory.
4U-1 Energy Efficiency Development incorporates passive environmental design.	Satisfactory.
4U-2 Energy Efficiency Development incorporates passive solar design to optimize heat storage in winter and reduce heat transfer in summer.	Satisfactory. Subject to BASIX compliance.
4U-3 Energy Efficiency Adequate natural ventilation minimises the need for mechanical ventilation.	Satisfactory.
4W-1 Waste Management Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	Satisfactory.
4W-2 Waste Management Domestic waste is minimised by providing safe and convenient source separation and recycling.	Satisfactory.
4X-1 Building Maintenance Building design detail provides protection from weathering.	Satisfactory. The peer review contended there is an overreliance on painted render material which is not considered a high quality and durable material. The Department is satisfied the proposed sandstone at the ground and first floor levels provides a high-quality finish at the pedestrian interface and that the use of painted render is acceptable on the upper floor levels, particularly when

	considered with the context of the site in this part of Gosford.
4X-2 Building Maintenance Systems and access enable ease of maintenance.	Satisfactory.
4X-3 Building Maintenance Material selection reduces ongoing maintenance costs.	Satisfactory. The Department is satisfied the proposed material choices are appropriate for this location and will not result in unreasonable ongoing maintenance.

State Environmental Planning Policy (Gosford City Centre) 2018

The Gosford SEPP was gazetted in October 2018 and seeks to promote the economic and social revitalisation of Gosford City Centre. In addition, it aims to strengthen Gosford's regional position, enhance its vitality, identity and diversity, promote employment, residential, recreational and tourism opportunities, manage natural and man-made resources, protect and enhance the environment, preserve solar access to open spaces, create a mixed-use place and pedestrian links and ensure developments exhibit design excellence.

The Department has considered the relevant provisions of the Gosford SEPP and concludes the development is consistent with the Gosford SEPP.

Table 11 | Gosford SEPP compliance table:

Clause	Department Comment / Assessment
Clause 2.1 Land Use Zones	The site is zoned R1 General Residential. The proposed residential flat building is permissible with consent. The proposal is consistent with the objectives of the zone as it contributes to the provision of a variety of housing types and densities within the Gosford City Centre.
Clause 4.3 Height of Buildings	The proposal exceeds the prescribed maximum height within various locations across the site. The applicant has sought an exception to the height of buildings development standard under clause 4.6 of the Gosford SEPP. Refer to discussion at Appendix C .
Clause 4.4 Floor Space Ratio	An FSR control of 1.5:1 applies to the site under the clause. The proposal has a maximum FSR of 1.11:1, therefore complies with clause 4.4.
Clause 6.1 Acid Sulfate Soils	The development site is identified as containing Class 5 acid sulphate soils under the Gosford SEPP. Works within Class 5 that lower the regional water table below 1m AHD in the adjacent Class 1,2,3,4 land, is considered to pose an ASS risk. The submitted Geotechnical Investigation provides an acid sulphate assessment, which concluded that there is no potential for lowering the water table at the site during construction. As such, no further assessment is required under the clause.

Clause 8.3 Design excellence

Consent must not be granted unless the proposal exhibits design excellence.

Matters for consideration:

(a) high standard of design, materials and detailing appropriate to building type and location,

(b) form and external appearance impact on public domain,

(c) impacts to solar access to key public open space and identified vistas and view corridors,

(d) the requirements of any applicable DCP

The proposal has been reviewed by the City of Gosford Design Advisory Panel, as well as peer reviewed. The Department has considered these comments, as well as the amended information received, and is satisfied the proposal would exhibit design excellence as discussed in **Section 6.1** having regard to the matters for consideration as follows:

- (a) The proposal exhibits a high-quality architectural design that incorporates materials and detailing appropriate for a contemporary residential flat building. The architectural design is appropriate in the context of its location, noting the presence of surrounding residential flat buildings on John Whiteway Drive and the established character of development in this area of Gosford.
- (b) Subject to conditions, the building presents a high-quality design to the public domain, incorporating a variety of facade elements and variation in massing which add visual interest, promote activation and present a human scale at the interface with the street.
- (c) There are no public open space or identified view corridors affected by the proposal, as discussed in **Section 6.3**. Even so, it is noted that the amended development maintains views from the waterfront to Rumbalara Reserve.
- (d) Development Control Plans do not technically apply to SSD, however the Department has given consideration to the requirements of Gosford City Centre DCP (below)
 - (i) (ii) The land is considered suitable for the proposed residential flat building development and is zoned accordingly, and the proposed use is considered suitable for the site and would contribute to the revitalization of the Gosford City Centre.
 - (iii) Heritage issues are considered in **Section 6.8**, noting that the proposal results in no heritage concerns, subject to Conditions requiring a Heritage Management Plan. Impacts to streetscape are discussed in **Section 6.2** and the Department is satisfied that subject to conditions, the proposal responds appropriately to the streetscape.

- | | |
|---|---|
| <p>(e) how the development addresses the following matters:</p> <p>(i) the suitability of the land for development,</p> <p>(ii) the existing and proposed uses and use mix,</p> <p>(iii) heritage issues and streetscape constraints,</p> | <p>(iv) The subject site is visually separate from neighbouring residential properties, due to the subject site being located at the crest of a ridgeline. There is minimal visual relationship between the subject development and adjoining sites. However, the Department notes that the scale of the proposed development is consistent with surrounding development, in particular 91-95 John Whiteway Drive.</p> <p>(v) (vi) The location, bulk, massing of the buildings and their height at the street frontage is considered appropriate. The buildings also incorporate appropriate modulation to provide visual interest and human scale. Refer to detailed discussion in Section 6.2.</p> <p>(vii) Environmental impacts have been considered as part of the assessment. Subject to conditions to mitigate and manage construction impacts, the proposal is not considered to result in any adverse environmental impacts.</p> <p>(viii) The development incorporates ESD initiatives, as discussed in Section 4.5.</p> |
| <p>(iv) relationship of the development with other development</p> | <p>(ix) Internal access and circulation are acceptable, and the proposal incorporates pedestrian links throughout the site. Conditions are recommended to improve the pedestrian access within the site, including the provision of way finding maps.</p> <p>(x) Overall, the proposal presents an active and visually interesting interface to the public domain, resulting in a significant improvement to the adjoining public domain compared to the site conditions. The public walkway and viewing platform and extension of the public footpath to 91-95 John Whiteway Drive will provide further improvement to the public domain. Developer contributions will also enable other local public domain improvements.</p> |
| <p>(v) bulk, massing, modulation of buildings,</p> <p>(vi) street frontage heights,</p> | |

(vii) environmental impacts, including solar access, shadowing, sustainable design, wind, and reflectivity,

(viii) ecologically sustainable development,

(ix) access, circulation, pedestrian network

(x) impact on

/improvements to public domain

Clause 8.10 Solar access to key public open spaces	The proposal is not located within the immediate vicinity of any identified public open spaces that would be affected by the development.
Clause 8.11 Key Vistas and View corridors	The Department is satisfied the proposal would not affect any key vistas or view corridors in the Gosford City Centre, as discussed in Section 6.3 .

Gosford City Centre Development Control Plan 2018 (GCCDCP)

In accordance with Clause 11 of the SRD SEPP, Development Control Plans do not apply to State significant development. Nevertheless, consideration has been given to the GCCDCP as it provides specific guidance for the development of the site.

The Applicant has provided detailed consideration of the proposal against the requirements of the DCP in Appendix 4 of the RTS. The Department generally agrees with the Applicant's assessment.

The Department notes the proposal results in minor variations from the recommendations of the GCCDCP with regard to vehicular crossings and setbacks however the Department considers the variations to be acceptable. The site is located within an identified special area being the John

Whiteway Drive precinct. With the exception of building height which has been discussed earlier in this report, the proposal is consistent with the requirements for this precinct. The Department is satisfied the objectives of the DCP would be achieved, and a high-quality built form would be delivered on the site despite the variations from the controls.

Appendix C – Clause 4.6 Variation: Building Height

The proposal seeks a variation to the maximum building height as prescribed by Clause 4.3 of the Gosford SEPP 2012. Clause 4.3 of the Gosford SEPP requires the height of a building on any land not to exceed the maximum height shown for the land on the Height of Buildings Map. The site is subject to a maximum building height of RL 80m at the north western corner of the site. The maximum height reduces incrementally to RL 73m to the south of the site (**Figure 1**).



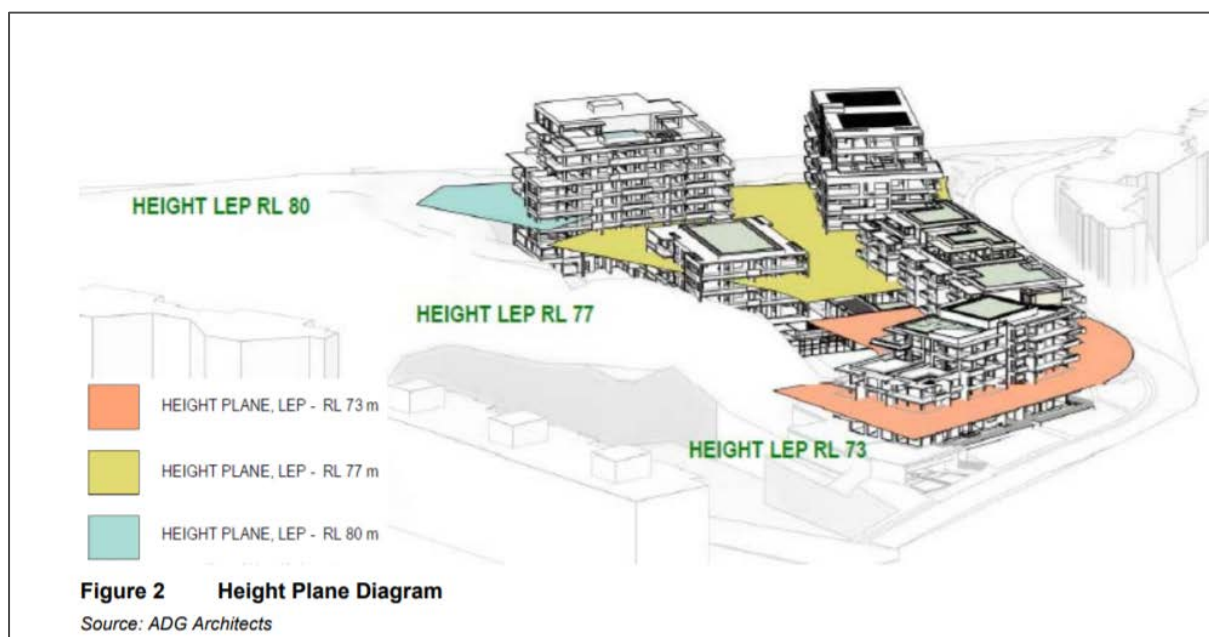
Figure 10 | Extract of the Gosford SEPP height of Buildings map - site outlined in yellow (Base Source: NSW Planning Portal)

The proposed development comprises 4 buildings (Block A, Block B, Block C and Block D). The maximum height for each building varies, depending on where it is located within the site. The proposed development exceeds the prescribed building height by a maximum of 22.1m at Block D (located within the north western portion of the site), which equates to a 356.4% variation when expressed as a variation in metres.

It is noted that Blocks A, B and C also exceed the prescribed building height. Blocks B and D are located over two different height planes as such, the height variation differs across the respective buildings. A breakdown of the building height is provided in **Table 12** and the areas proposed to exceed the maximum building height is shown in **Figure 2**.

Table 12 | Proposed building height

Element	SEPP Height	Height	Max. Variation
Block A	RL 73 (Approx. 7.97m)	RL 85.8 (20.77m)	5.78m or 19.26%
Block B	RL 73 (Approx. 7.08m)	RL 88.6 (20.68m)	15.6m or 192%
Block C	RL 77 (Approx. 9.68m)	RL 96 (28.68m)	19m or 196.2%
Block D	RL 77 (Approx. 6.2m)	RL 99.1 (28.3m)	22.1m or 356.4%

**Figure 211 | Areas of the building proposed to exceed the maximum building height (Base Source: ADG Architects)**

Clause 4.6(2) of the Gosford SEPP permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. In consideration of the proposed variation, clause 4.6 requires the following:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In accordance with clause 4.6(3), the Applicant has prepared a written request to vary the height of buildings (**Appendix A**).

Clause 4.6(4)(a) requires the consent authority to be satisfied that:

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

The Department has considered the proposed exception to the height of buildings development standard under clause 4.6, applying the tests arising from *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (as summarised by *Gabriel Stefanidis v Randwick City Council* [2017] NSWLEC 1307) and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

1. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone

The objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To promote best practice in the design of multi dwelling housing and other similar types of development.*
- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development*

The Department is satisfied that the proposed development is consistent with the relevant objectives of the R1 zone in Gosford SEPP, as:

- The proposed development will provide for the housing needs of the community through the provision of 201 dwellings and a variety of unit types.
- The proposed development is consistent with the desired future character of the zone, as the proposal generally complies with key design requirements, including landscaping, visual privacy, building separation and solar access.
- The development promotes best practice in the design of residential flat buildings within the Gosford City Centre. The development comprises 4 separate residential flat buildings, which have been sited to maximise communal open space and landscaping throughout the site. Each building is orientated to take advantage of the views to Brisbane Water providing good amenity for future residents. The development will include a number of design features which acknowledge the historic use of the site, including public art along the public walkway; as well as a mural, referencing the history of the Gosford Quarry, located on the southern façade of Block B, thus enhancing the quality of the public domain.

2. Is the consent authority satisfied the proposed development will be consistent with the objectives of the standard,

The objectives of the Building Height development standard in the Gosford SEPP are:

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

The Department considers the proposal to be consistent with these building height objectives, as outlined below:

- The proposal results in a high-quality urban form that appropriately responds to the constraints of the site, noting that the proposal achieves Design Excellence in accordance with Clause 8.3 of the Gosford SEPP, as discussed within **Section 6** and Appendix B – Statutory Considerations of the report.
- The proposal achieves adequate solar access in accordance with the ADG. Access to daylight and sunlight to individual units within the development is considered acceptable. The communal open space provides a high level of amenity for residents as exposure to sky and sunlight satisfactorily meets the ADG requirements.
- The proposed development will not adversely impact upon exposure to sky and sunlight within public areas.
- The proposed building heights have been appropriately transitioned to respond to the topography of the site, as well as the public domain, noting that the proposed development sits below the tree canopy, maintaining views to Rumbalara Reserve.
- Taller buildings are located to the rear of the site, with the smaller buildings being located to the street frontage, reducing the perception of bulk and scale when viewed from the street.
- The proposed development, notwithstanding the contravention of the height of building development standard, will continue to allow views to identified natural topographical features, including Rumbalara Reserve.

3. Has the consent authority considered a written request that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and they are satisfied that the matters required to be demonstrated have adequately been addressed

The Applicant demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, having regard to the five tests outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. It establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances, as the proposed development achieves the

objectives of the standard and accordingly justifies the variation to the height control, meeting the first test outlined in Wehbe.

The Department supports the Applicant's conclusions that the proposed development achieves the objectives of the standard. Compliance with the development standard is unnecessary in this case as the objectives of the height standard are still achieved and unreasonable as no purpose is served by requiring strict compliance. In the Wehbe judgement Preston CJ expressed the view that there are five different methods in which a development may be well founded, however only one method is required to be met. As such the Department is satisfied that the proposal meets the first method only.

Having considered the Applicant's written request, the Department is satisfied that the Applicant has adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard and with the Court the matters required to be demonstrated have adequately been addressed.

The Applicant's written request justifies contravention of the development standard on the following environmental planning grounds:

- The variation will enable the provision of additional communal open space and deep soil landscaping compared to a scheme that would have lower scale buildings with greater ground cover due to the site's constraints.
- The variation will facilitate a high quality built form which that provides high quality residential amenity, while respecting the natural landscape features of Gosford.
- The variation will not result in any unacceptable view impacts and will preserve views to Rumbalara Reserve.
- The variation will enable the provision of a new elevated walkway and public viewing platform, which will improve the relationship between the Gosford City Centre and the Rumbalara Reserve.

Having considered the Applicant's written request and further to the Department's assessment of height in **Section 6**, the Department is satisfied the Applicant has adequately demonstrated there are sufficient environmental planning grounds to justify the contravention of the development standard.

The Department therefore concludes that the Applicant's written request adequately addresses the matters required to be demonstrated under Clause 4.6 of the Gosford SEPP and the proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

In supporting the Applicant's request, the Department considers that the development will deliver an overall better planning outcome for the site, for the following reasons:

- The proposal will make a positive contribution to the Gosford City Centre, in the form of high-density residential development, that is consistent with the objectives of the R1 zone
- The proposal contributes to the provision of residential accommodation with a variety of unit types, which is key to the revitalisation of the Gosford City Centre.
- The proposal will deliver public benefits, including the public walkway and viewing platform.
- The proposal maintains views from key vantage points, such as waterfront public areas, to the Rumbalara Reserve.

Appendix D – Recommended Instrument of Consent

The recommended conditions of consent can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/25551>

