

Submission by the Community Environment Network
State Significant Development Application (SSD – 10321)

87-89 John Whiteway Drive, Gosford

Proposed Development

This application seeks approval for the following development:

- Site preparation and bulk earthworks;
- Construction and use of 4 residential flat buildings (ranging in height from 5 to 12 storeys), including:
 - 260 residential apartments;
 - 1 basement level and 1 part-basement level car parking for 400 parking spaces;
 - Vehicular access points on John Whiteway Drive;
- Site landscaping including a new through site link and public viewing platform;
- Tree removal and planting; and
- Extension and augmentation of physical infrastructure and utilities as required.

The preliminary CIV cost estimate for the proposed development is \$101,113,676 (incl GST).

Numerical Overview

The key numeric development information is summarized:

Site Area	22,300m ²	
Gross Floor Area (GFA)	30,966m ²	
Floor Space Ratio (FSR)	1.39:1	
Site Coverage	4,117m ²	(Building Footprint Area 18%)
Maximum Height (Metres)	Parapet Height: RL 107.20	
	Top of Building: RL 107.60	
Maximum Height (Storeys)	Block A: 6	
	Block B: 7	
	Block C: 10	
	Block D: 12	

Car Parking 400 spaces

Communal Open Space 6,187m²

Zoning and development controls

The site is zoned R1 General Residential under State Environmental Planning Policy (Gosford City Centre). Residential flat buildings are permissible in the R1 zone. The maximum Floor Space Ratio is 1.5:1.

The SEPP incorporates the same height controls for this site that previously applied under Gosford LEP 2014. The height limit for development on the southern part of the site is RL 73 metres; the height limit on the northern part of the site is RL 77 metres, except for the north-west corner where the height limit is RL 80 metres.

The NSW Government had the opportunity when it was preparing State Environment Planning Policy (Gosford City Centre) to review and amend the FSR and height controls that apply to the John Whiteway Drive precinct. It is significant, therefore, that the SEPP retains exactly the same height and FSR controls for this precinct as applied under Gosford LEP 2014.

Furthermore, the Consultation Paper (Gosford City Centre Revitalisation, May 2018, Appendix A) included draft planning controls which were proposed to be included in the SEPP. The draft controls included a clause which would permit exceptions to the height and FSR controls that would have applied to large sites in the Gosford City Centre, whether they were zoned Business or Residential. This clause would have applied to the site of this proposed development, because the site area exceeds 5,600 square metres.

It is most significant, therefore, that the Department/Minister decided, following submissions from concerned community groups, to amend this clause so that it would only apply to large sites in the Business zones. When the Minister approved SEPP (Gosford City Centre) 2018, he made a significant policy decision that the clause that would permit exceptions to the height and FSR controls (for development of large sites) would not apply to the John Whiteway Drive precinct (or any other Residential zoned sites).

Gosford City Centre DCP

Section 4.4 of the DCP states:

“The character of Gosford is strongly defined by significant views, particularly to Brisbane Water and the ridgelines of Rumbalara Reserve and President’s Hill. Significant views should be maintained, especially from public spaces.”

The objectives for this section are:

- A. Enhance Gosford’s unique identity and sense of place that is created by the current significant views and vistas.

- B. Protect Gosford's character of visual openness with the surrounding landscape.
- C. Maintain and enhance significant view corridors from public spaces and streets to Brisbane Water and the identified view corridors which afford views of the ridgelines of Rumbalara Reserve and Presidents Hill.
- D. Open up new significant views, where possible.

Section 4.4 of the DCP does not define exactly what is meant by "the ridgeline of Rumbalara Reserve". The EIS for the proposed development appears to assume that John Whiteway Drive is not part of the view of the ridgeline because it is not within Rumbalara Reserve. However, it is clear from the relevant maps and studies that the site is located on the southern end of the ridgeline of Rumbalara Reserve.

It is reasonable to conclude that the objectives of Section 4.4 concerning maintaining the significant views of the ridgeline apply to the proposed development. This interpretation of Section 4.4 is confirmed by the more detailed objectives in Section 10.3 of the DCP.

Section 10.3: Special Area – John Whiteway Drive Precinct applies to the land known as the Old Gosford Quarry site, as illustrated in Fig.13 of the DCP. It is worth noting that the controls in Section 10.3 are identical to those that applied to this precinct in Gosford DCP 2013.

The objectives of this section are:

- A. To protect the western section of the ridgeline from visual encroachment by development when viewed from specified public viewing locations.
- B. To provide the northern section of the ridgeline and non-ridgeline influenced properties with development controls referenced to appropriate visual impact analysis and relevant site specific constraints.
- C. To ensure that the amenity of the area is protected for existing and future residents of the locality.
- D. To ensure that the land will be developed in a form and manner that the community will accept as a good example of high density residential development.

Since Section 10.3 applies to the land delineated in Fig.13, the references in Objectives A and B to sections of the ridgeline must refer to those sections within the Quarry site as delineated. The northern section of the ridgeline, therefore, refers to the site of the proposed development and Objective B applies to the site.

The DCP states that the development controls specified for the Old Gosford Quarry site seek to maximise development potential within clearly identified development parameters acknowledging the inherent biophysical constraints of the precinct as a whole and the site specific requirements of individual allotments.

Fig. 14 in the DCP is a Development Principles Plan, which includes the building height limits on each lot and "other development controls necessary for development to conform with the relevant objectives of the DCP". The Plan identifies views from the west, south-west and the south of development sites in the

Quarry as having visual significance. In other words, the development controls were designed specifically to achieve the objective of minimizing the visual impact of development on the Quarry site.

The Gosford City Centre DCP was approved by the Minister/Department in October 2018. Since there has been no change in the last 18 months in the context of the John Whiteway Drive Precinct, it is reasonable to conclude that the development controls in this Precinct should be applied as required by the SEPP and the DCP.

Proposed exceedance of height limits

The applicant has lodged an objection under clause 4.6 of the SEPP to the height limits that apply to this site. The table below compares the proposed height of each building to the height limit prescribed by the SEPP and estimates the percentage variation in building height that is proposed.

Building	Ground level#	Height limit (RL)	Permissible building height (m)	Proposed roof level (RL)	Proposed building height(m)	Variation in height (m)	Percentage increase^
A	65.0	73	8.0	86.4	21.4	13.4	168%
B (south)	65.0	73	8.0	88.4	23.4	15.4	193%
B (north)	68.5	77	8.5	88.6	20.1	11.6	136%
C	68.5	77	8.5	102.6	34.1	25.6	301%
D (east)	68.5	77	8.5	107.6	39.1	30.6	360%
D (west)	68.5	80	11.5	107.6	39.1	27.6	240%

Notes:

- Ground level based on RL of the lowest habitable floor (as shown in elevations attached to EIS).

^ - (Variation in height/Permissible height)*100.

The columns above showing the “Proposed Roof Level” and the “Variation in height(m)” are copies of the equivalent columns in Table 1 of the “Clause 4.6 Variation Request”. However, the last column in Table 1 of the “Clause 4.6 Variation Request”, which shows the Percentage Variation in the development standard, is grossly misleading.

The percentage variation shown in Table 1 is calculated by using the building height (RL) as denominator; that is, the percentage is calculated using the height of the building roof above AHD (i.e sea level). This percentage grossly underestimates the visual impact of the variation in building height because the height of the site above sea level is included in the denominator.

If a building is proposed that is twice as high as a building which complies with the development standard, the percentage variation should be shown as +100%. This the reason that the Percentage Increase shown in the last column of the table above has been calculated using the Permissible Building Height (above ground level) as the denominator.

Consequently, the table demonstrates what massive increases in height are proposed by this “Clause 4.6 Variation Request”, in particular for Buildings C and D. Both buildings are proposed with heights exceeding the height limit by more than 300% of the permissible building height.

The Percentage Increase in the table above is 9 times that shown in the equivalent column of Table 1 of the “Clause 4.6 Variation Request” (except for Block D(west)).

Bushfire

The Rural Fire Service included the following comments in its input to the Secretary’s Environmental Assessment Requirements (SEARs) for the EIS:

- The principles and criteria associated with subdivisions in bushfire prone areas will apply to the development, in accordance with section 4.1.3 of BPB 2006 (or subsequent version), as the proposal increases residential density.
- Asset Protection Zones (APZs) must be provided that comply with Appendix 2 as part of a deemed-to-satisfy solution. Alternatively, a performance solution can be provided based on a radiant heat threshold of 29kW/m² or less for the proposed residential towers. In addition, suitable provisions for construction, access, water and landscaping are required.
- The proposed residential towers on the south-eastern, northern and western aspects are required to provide APZs within the lot boundaries that comply with Appendix 2 of BPB 2006 (or subsequent version). In this regard, proposed tower T1 does not satisfy the requirements of Table A2.4 in its current location without considering offsite APZs.
- Where the development seeks to utilise adjoining privately owned or managed lands to provide an APZ, an 88B easement must be supplied or prepared after having been agreed to by the adjoining owner.
- Landscaping must comply with the requirements of Appendix 5 of the PBP 2006 (or subsequent version) to provide managed gardens along the northern and western site boundaries that are along the threat bushfire interface. In this regard, any retention of existing vegetation on the northern and western aspects will influence the vegetation assessment and result in greater radiant heat exposure for the towers on those aspects.

The Bushfire Assessment Report submitted with the EIS has assessed the relative bushfire hazard based on topography, proximity to vegetation, and the type of vegetation. Drawing on this information, Clarke Dowdle & Associates has rated the proposed development as BAL 29 (refer to Table 11).

Table 11 APZ and Bushfire Attack Level Summary

Block	Aspect	Setback/APZ Provided	Bushfire Attach Level (BAL)
Block A	South	57m	29

Block B	East/South-East	~90m	29
Block C	North/North-East	45m	29
Block D	North-West	45m	29
Block D	West	37m	29

A classification of BAL 29 requires the implementation of specific construction standards over and above compliance with the standard construction requirements of the Building Code of Australia. The purpose these controls is to provide increased levels of building protection against particular types of bushfire behaviour impacts, including radiant heat and embers.

Furthermore, the development will require an Asset Protection Zone completely surrounding it. The APZ will need to be over 40 metres wide around towers C and D and 60 – 90 metres wide around towers A and B. The landscaping within the APZ will need to be maintained in accordance with the RFS guidelines to minimize bushfire hazards.

Visual Impacts

SEARs required the following information to be provided concerning the Visual Impact of the proposed development:

- Prepare a comprehensive Visual Impact Assessment and view analysis of the proposal to/from key vantage points including Brisbane Water and the Point Clare to Gosford railway bridge crossing. Photomontages or perspectives should be provided showing the project.
- Provide a visual analysis of the proposed development against the existing silhouette of surrounding hilltops demonstrating how the height of the proposal would not detract from the skyline.
- Demonstrate how the proposal respects and maintains key view corridors (for example to the ridgelines of Rumbalara Reserve), street vistas and sightlines to nearby parks.
- Demonstrate how the proposal respects Gosford's landscape character and integrates into the surrounding landscape to prevent adverse visual impacts.

There are shortcomings with the report provided with the EIS:

1. The quality of the photographs used for the photomontages is not adequate for this assessment. They appear to have been taken on an overcast day and/or at a time when daylight was not very bright.
2. The photographs appear to be taken with a wide angle lens in order to reduce the visibility of buildings near the ridgelines in distant views.
3. The photomontages for viewpoints west and south-west of the site have hypothetical developments superimposed and they partially block views of the proposed development. There is no certainty that the Waterside or Creightons developments will be built as approved and the Central Coast Quarter development has not even been approved. If those developments do

proceed, their residents will suffer a loss of amenity from the visual impact of the proposed development on the Quarry site.

4. In several photomontages, the proposed development is screened by existing vegetation either on the site or adjacent to it. However, the Bushfire Report recommends an extensive APZ around the development; the Vegetation Management Plan proposes that there should only be 15% canopy cover in the APZ, as required in the Planning for Bushfire Guidelines. The Visual Impacts need to be assessed for the proposed development with the APZ managed as required by the RFS.

Comments on the photomontages:

- Views from Swimming Pool Car Park and Waterfront Park
 - Buildings C and D are clearly visible on the ridge line. Buildings A and B will probably be visible when the APZ is implemented.
- Views from Brian McGowan Bridge and Donnison Street (West)
 - The proposed development is partly blocked by hypothetical buildings in the CBD. If the Waterside development and the Central Coast Quarter do not proceed, Buildings C and D will be clearly visible on the ridgeline.
- View from Point Clare suburb
 - Photo quality is inadequate. Buildings A and B are visible on the ridgeline and Buildings C and D are visible against backdrop of Rumbalara Reserve.
- View from Rumbalara Reserve
 - Buildings C and D are visible and when the APZ is implemented, it is probable that those buildings will be on the ridgeline.
- View from Brisbane Water and Point Clare shore.
 - All four buildings are visible on the ridgeline and implementation of the APZ will probably exacerbate their impact.

Conclusion

Despite the shortcomings in the Visual Impact report, it is concluded that Buildings C and D would be visible from most, if not all, viewpoints to the west and south-west of the site. It is likely that they will be on the ridgeline in those views, especially when the APZ is implemented.

It is concluded that the proposed development does not meet the objectives of Gosford DCP 2018, in particular Section 10.3 Special Area – John Whiteway Drive Precinct. Specifically, the development would fail to achieve the objectives:

- To protect the western section of the ridgeline from visual encroachment by development when viewed from specified public viewing locations.

- To provide the northern section of the ridgeline and non-ridgeline influenced properties with development controls referenced to appropriate visual impact analysis and relevant site specific constraints.

Clause 4.6 Variation Request

The applicant has submitted a request for variation of the maximum building heights under Gosford City Centre SEPP. As discussed above, the variation in the maximum building height would exceed 300% for Buildings C and D and would be between 135% and 190% for Buildings A and B.

Such massive variation in development standards using Clause 4.6 (or SEPP No.1) have historically given rise to major controversy and complaints about abuse of the planning system. Such reactions would be exacerbated in a situation where the environmental plans have been reviewed and approved by the Minister and Department only 18 months before.

The building height controls are prescribed under Clause 4.3 of the Gosford City Centre SEPP. The applicant has claimed in the Variation Request that the increase in building height would be consistent with the objectives of Clause 4.3, including 4.3(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.

This submission has argued in the previous section that an unbiased visual assessment would find that the proposed development would have significant visual impact at most, if not all, of the viewpoints to the west and south-west of the site. Furthermore, the higher buildings would significantly impact on the Rumbalara ridgeline if the APZ is implemented and maintained.

The applicant has submitted that the increased building height limits would allow the development of taller towers with smaller footprints. It is claimed that the residents will benefit from greater separation of the buildings, with increased privacy and improved solar access, as well as more open space.

This is a classic planning trade-off: the developer and their clients would like to have the private benefit of increased development potential whereas the wider community wishes to minimize the public cost of a reduction in the quality of the wider environment.

CEN does not accept that the public loss of amenity that this development would cause is negligible. The applicant has not “justified the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary”, as required by clause 4.6(3)(a).

Furthermore, CEN considers that the consent authority should not be satisfied that the proposed development will be in the public interest: the applicant has not shown that the development would be consistent with the objectives of the development standard, in particular clause 4.3(e) of the SEPP.

Clause 4.6(5) requires the Secretary to consider whether contravention of the development standard raises any matter of significance for State or regional environmental planning. The Central Coast Regional Plan lists a number of actions under **Direction 1: Grow Gosford City Centre as the region's capital**. CEN considers that contravention of the height limit on this site would be contrary to *Action 1.9: Ensure that development in Gosford City Centre responds to its natural setting and complements the public domain*.

In addition to the usual considerations of clause 4.6, there is a prohibition in clause 4.6 (8) of allowing development consent for a development that would contravene clause 8.11 of the SEPP. The objective of clause 8.11 is to protect key vistas and view corridors in Gosford City Centre. The Clause 4.6 Variation Request has not addressed this matter or even provided an argument in this submission that clause 8.11 should or should not apply.

CEN considers that Clause 8.11 should be considered because the proposed development is at the southern end of the Rumbalara ridge, which is a significant view corridor. The Clause 4.6 Variation Request should be dismissed because it has not addressed this matter.

Construction impacts

The subject site is heavily constrained by the remaining rock headland and is burdened by a Restriction to User on the title deed under the Conveyancing Act 1919. Subsequently, this area is deemed as 'non - buildable area' and is addressed in State Environmental Planning Policy (Gosford City Centre) as having a '0 metre' height limit and is acknowledged as 'non - buildable area'.

Gosford City Centre DCP 2018 outlines specific requirements for this subject site regarding the 'non - buildable area' on site in Chapter 10.3. Providing sufficient evidence of geotechnical stability on the site is a quintessential component of the application that needs to be addressed further.

To meet the requirements of Section 10.3 Special Area - John Whiteway Drive Precinct, the following needs to be addressed in the geotechnical report:

- Any unacceptable stability risk to the ridgeline proposed by the development;
- Any risk to the existing and approved potential development;
- An assessment of potential impacts on the neighbouring residential developments is required, including the construction and stabilisation methodology to be implemented; and
- Appropriate measures to minimise this risk to both the ridgeline and the proposed development, including recommendations for acceptable setbacks.

Truck traffic

It is estimated by Council staff that 220,000 tonnes of excavated material would be removed from the site in the anticipated first stage of the development. Further detail regarding initial construction methodology is required so as to confirm the traffic and road safety impact. It is also noted that this substantial volume of material being removed from site has the potential for ongoing and adverse impacts to Council infrastructure and adjoining developments. Furthermore, it is noted the maximum capacity of a Class 3 haulage truck and trailer is 50 tonnes.

Hours of construction for the initial site disturbance stage, anticipated to be 10 hours per day 7 days week, are not supported. The standard hours are Monday-Saturday 7am -5pm. Given the above an estimated conservative duration of the haulage construction would be as follows:

- Daily rate (5 trucks & trailers) @ 30 tonnes x 4 x 5 =600 tonnes.
- Weekly rate 600 tonnes x 6 days = 3600 tonnes.

Total weeks of haulage $200,000/3600=56$ weeks, say 60 weeks allowing for contingencies like wet weather, rubble spoil material, road dilapidation and breakdowns

The applicant is required to correctly identify the impacts with the initial stage of the development having regard to the issues raised above. The EIS has only identified a route for this truck traffic through the CBD without assessing the environmental impacts of this traffic.

Construction Noise

EPA Guidelines adopt differing strategies for noise control depending on the predicted noise level at the nearest sensitive receivers.

In regard to residential properties, the 'noise effected' level occurs when construction noise exceeds ambient levels by more than 10dB(A)Leq(15min). The 'highly noise effected' level for residential properties occurs when construction noise exceeds 75dB(A)Leq (15min).

The level of construction noise will be dependent on the activity being undertaken and where the activity is occurring. The predictions for the construction noise levels are detailed in Noise and Vibration Impact Assessment (Appendix L of the EIS). EMM Consulting has measured a background noise level of 37 dB(A) at locations on John Whiteway Drive, so the existing properties would be considered "noise affected" if construction noise exceeds 47 dB(A).

EMM Consulting has separately assessed the predicted noise emissions during: Stage 1 (Excavation); and Stage 2 (General Construction).

During Stage 1 (Excavation), the most noise intensive activity will be the removal of the sandstone outcropping and excavation of the basement levels, which will require rock hammering and sawing. During Stage 2 (General Construction), the most noise intensive activity will be concrete pouring and concrete sawing.

EMM Consulting's assessment indicates that during both Stage 1 and Stage 2, under the 'worst case' scenario, construction noise levels are expected to exceed the 'noise affected' level at all residential assessment locations but will remain below the 'highly noise affected' level.

Detailed results in Appendix L of the EIS show that existing residences on the western side of the site (91-95 JWD and 97-99 JWD) would be exposed to 67 – 75 dB(A) from rock hammering, which is 30 dB(A) above the background noise level. Such noise impacts would not be considered tolerable in a residential environment. Even rock sawing would cause noise levels of 63 – 71 dB(A) for these residences.

The proponent should have proposed a detailed plan to mitigate these potential noise impacts as required by the SEARs.