



## **Community Environment Network Inc.**

*An alliance of community and environment groups from Lake Macquarie and the Central Coast.*

3<sup>rd</sup> October 2020

Mr Keiran Thomas  
Director, Regional Assessments  
Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta, NSW 2124

### **Mixed Use Development at 8 – 16 Watt Street, Gosford (Gateway site) (SSD-10414)**

Dear Mr Thomas

This is a submission from the Community Environment Network regarding the development application for a mixed use development at 8 – 16 Watt Street, Gosford. In particular, this submission concerns the application for approval of a State Significant Development in accordance with State Environmental Planning Policy (State and Regional Development) 2011 and State Environmental Planning Policy (Gosford City Centre) 2018.

The Community Environment Network is an alliance of community and environment groups from the Central Coast and Lake Macquarie LGAs. We are a not-for-profit, community based organisation that works for ecologically sustainable development and against threats to it. Our membership is approximately 400 including 90 groups with an affiliated membership of approximately 5,000.

CEN is a non-political organisation and has not made any donation to a political party in the last two years.

### **Proposed development**

An overview of the proposed development and descriptions for each stage are provided below.

	<b>Stage 1A</b>	<b>Stage 1B</b>	<b>Stage 2</b>	<b>Stage 3</b>
<b>Staging</b>	Tower 1A and Public Plaza	Tower 1B	Tower 2 and Public Plaza	Tower 3 above existing building
<b>Land use</b>	Retail, commercial, hotel (with conference facilities), parking.	Entertainment, education, student living	Retail, commercial, seniors living, parking	Retail, commercial
<b>Total Gross Floor Area</b>	13530 m <sup>2</sup>	9330 m <sup>2</sup>	37550 m <sup>2</sup>	19970 m <sup>2</sup>
<b>Building Height</b>	RL 105.1	RL 78.7	RL 135.9	RL 74.9
<b>Height above ground level</b>	92.3m – 97.5m	61.1m – 65.9m	120m – 123.5m	68.4m – 70m

## Zoning and development controls

The site is zoned B3 Commercial Core under State Environmental Planning Policy (Gosford City Centre). The proposed uses are permissible on this site, except for residential accommodation for students and seniors. Residential accommodation is prohibited in the B3 zone; however, “shop-top housing” is permissible provided there are retail or business premises on the ground floor. The proposed apartments for students in Tower 1B and seniors in Tower 2 would be permissible as shop-top housing.

Under the Gosford City Centre SEPP, the maximum Floor Space Ratio on this site is 5:1, whereas the FSR of the proposed development would be 8:1. The proposed floorspace of 80,380 m<sup>2</sup> would be 59% above the permissible floorspace of 50,590 m<sup>2</sup>.

The SEPP incorporates the same height controls that previously applied under Gosford LEP 2014. The height limit for this site is 36 metres; the towers exceed the height limit as follows:

Tower 1A – 270%; Tower 1B – 183%; Tower 2 – 343%; Tower 3 – 194%.

## Why do we have development standards in Gosford CBD?

The State Environmental Planning Policy (Gosford City Centre) adopted the following objectives for height limits in Gosford CBD (which are the same objectives as in Gosford LEP 2014):

- (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.***

It is worth noting that four of the objectives explicitly apply to the relationship between a proposed development and its context, whether it is the relationship to other buildings, the impacts on public areas and open space, or views of natural topography.

The SEPP also adopted the following objectives for limits to floor space ratios in Gosford CBD:

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,***
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,***
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,***
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

Similarly, three of the objectives for floor space ratio limits apply to the relationship between the proposed development and the character of the area and the environmental impact of the development on the adjoining areas.

The achievement of these objectives is fundamental to the assessment of development proposals under the Environmental Planning and Assessment Act. So any proposal to override the development standards for height and floor space ratio in a planning instrument needs to be weighed against the objectives of those development standards.

## Reasons for CEN's Objection

### Non-compliance with height and floor space ratio limits

The Community Environment Network objects to the proposed development because it would not comply with the height of building limits specified under clause 4.3 of SEPP (Gosford City Centre); furthermore, the development would not comply with the floor space ratio limits specified under clause 4.4 of SEPP (Gosford City Centre).

The EIS for this development proposal states that Clause 8.4 of the Gosford City Centre SEPP allows the proposed development because:

*Subclause 8.4(4) allows development consent to be granted to development that results in a building with a height that exceeds the maximum height shown for the land on the Height of Buildings Map, and a FSR that exceeds the FSR shown for the land on the Floor Space Ratio Map, if the development meets the requirements of the subclause, as determined by the consent authority.*

The requirements of the subclause include a review of the development by a Design Review Panel and that the consent authority takes into account the findings of the design review panel.

In its recent determination of the DA for the Kibbleplex development, however, the Independent Planning Commission has stated that *cl. 8.4(4) is only an enabling clause*. In other words, although the requirements of cl. 8.4(4) are necessary conditions for a development consent to be granted for the proposed development, they are not sufficient justification on their own.

Furthermore, the Commission states in another part of that determination report:

*The Commission notes that **design excellence** is not a criterion that needs to be met in order to obtain additional height and floor space ratio using cl. 8.4(4) of the Gosford SEPP, but all development subject to cl.8.3 must exhibit 'design excellence' in order to be approved.*

### Design excellence

Clause 8.3 of the Gosford City Centre SEPP applies to development involving the erection of a new building or external alterations to an existing building. The objective of this clause is to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Gosford City Centre.

Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,
- (c) whether the development is consistent with the objectives of clauses 8.10 and 8.11,
- (d) any relevant requirements of applicable development control plans,

- (e) how the development addresses the following matters—
  - (i) the suitability of the land for development,
  - (ii) existing and proposed uses and use mix,
  - (iii) heritage issues and streetscape constraints,
  - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
  - (v) bulk, massing and modulation of buildings,
  - (vi) street frontage heights,
  - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
  - (viii) the achievement of the principles of ecologically sustainable development,
  - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,
  - (x) the impact on, and any proposed improvements to, the public domain.

### **Failure to achieve Design Excellence**

CEN considers that the proposed development fails to achieve design excellence in relation to the following criteria (under cl. 8.3(4)):

#### ***Form and external appearance of the development***

The excessive height and bulk of the proposed development do not meet design excellence criteria because they will interfere with significant views and cause excessive overshadowing of the public domain and nearby streets (see detail below).

#### ***The objectives of clauses 8.10 and 8.11***

##### *Clause 8.10 Solar access to key public open spaces*

*The objectives of this clause are :*

- (a) to protect and enhance sun access to key public open spaces, and*
- (b) to prevent adverse cumulative impacts of development.*

According to the SEARs, the EIS was supposed to provide shadow diagrams for summer and winter solstices and the equinoxes but no information was provided for the equinoxes. It is impossible for the community to make fully informed comment on a development proposal, if the applicant fails to provide the information required by the SEARs. It appears that the applicant may have deliberately omitted these shadow diagrams because the impacts at the equinox will be as serious as those at the winter solstice.

More than 65% of the proposed public plaza would be overshadowed up to 1 pm in mid-winter; even in mid-afternoon it would still be 50% overshadowed. It is likely that the overshadowing would also be significant at other times of the year. The provision of a public plaza will not be beneficial for the public if most of it will be in shade for much of the time.

Burns Place is one of the key public open spaces in the City Centre and it would be 51 % overshadowed at 9 am in mid-winter, but it would be shadow-free by 11 am. The overshadowing would be worse at the equinox because the sun is more easterly in the morning than in mid-winter. The lack of shadow diagrams for the equinox makes it impossible to assess this impact.

##### *Clause 8.11 Key vistas and view corridors*

- (1) The objective of this clause is to protect and enhance key vistas and view corridors in Gosford City Centre.*
- (2) Development consent must not be granted to development unless the consent authority is satisfied that the development is consistent with the objectives of this clause.*

See section 4.4 of the Gosford DCP for the interpretation of this clause.

### ***Applicable development control plans***

Gosford City Centre DCP 2018 applies to the area included in the Gosford City Centre SEPP. The SEARs for this DA specifically required that the application address the issues in the DCP.

### ***Section 4.4 of the DCP, Views and Vistas***, states:

“The character of Gosford is strongly defined by significant views, particularly to Brisbane Water and the ridgelines of Rumbalara Reserve and Presidents Hill. Significant views should be maintained, especially from public spaces. Vistas are views along streets that are framed by street wall buildings.”

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.

The direct line between the ridgelines of Presidents Hill and the Rumbalara Reserve passes over Gosford Station and the Gateway site. Tower 2 of the proposed development, with a height of RL 135.9, would be so high that it would directly block the view between the two significant ridgelines. The EIS fails to show this potential visual impact because it is claimed that the view along this line is blocked by vegetation on each of the ridges; however, this overlooks two issues that arise from the unique position of the proposed development:

- The vegetation on the summit of Presidents Hill or the ridge of Rumbalara Reserve could be reduced by activity such as bushfire hazard reduction or accidentally destroyed by a disastrous bushfire. This could inadvertently open up new significant views, as suggested in objective D above.
- Views of these significant landmarks are available from many streets and buildings along the line between the Gateway site and the landmarks. For example, properties on Showground Road on the line between Presidents Hill and the Gateway site, have views of Rumbalara Reserve that will be significantly impacted by the proposed Gateway development.

The DCP also identifies many streets, including Faunce Street, that have long distance vistas of the surrounding ridgelines. From the western end of Faunce Street (near Presidents Hill), there is a vista of the western ridgeline in Rumbalara Reserve; about half of this vista would be obscured by the proposed development. This is demonstrated by View Analysis 11 in the Visual Impact Analysis (Appendix O), in which the photomontages are taken from Showground Road near the Faunce Street intersection.

Similarly, from the eastern end of Faunce Street (east of Watt Street), there is a vista of Presidents Hill, which would be obscured by the proposed development. This is demonstrated by View Analysis 7 in the Visual Impact Analysis (Appendix O), in which the photomontages are taken from the Faunce Street intersection with Watt Street.

The first objective of Section 5.2.5 of the DCP, ***Slender towers with high amenity***, is “Achieve high amenity for the public domain including access to sun light and views”. The section includes the following controls to achieve slender buildings:

1. For development within the B zones (B3, B4 and B6), the maximum floorplate size for towers is:
  - a. **750sqm GFA for residential uses, serviced apartments and hotels.**
  - b. **1500sqm GFA for commercial uses (office space)**

2. In other zones, the maximum GFA of a tower level is 20% of the total GFA and up to 500sqm GFA max.
3. **The maximum building length for towers in any direction is 45m.**
4. **All tower forms must be set back a minimum 8m from the street wall frontage**

Towers 1A and 1B are really just one tower built in two stages; they share a common service core and lift shafts and there is no physical separation in the structure. So in relation to the maximum floorplate criteria, the floorplate area for Tower 1 is 980 – 1000 sq.m. GFA.

The dominant uses in Tower 1 are a hotel, education and student living with 64% of the floorspace; commercial office space comprises 23% of the floorspace and the rest (13%) would be retail/entertainment. On this basis, a slender tower should have no more than 750 sq.m. GFA floorplate size.

The east-west dimension of Tower 1 is estimated to be about 58 metres, which is 29% more than the maximum length of 45 m. in the DCP. So Tower 1 does not meet either of these requirements for a slender tower.

Tower 2 has a typical floorplate area of 1400 – 1450 sq.m. GFA, which is acceptable for a tower that is predominantly commercial office space. However, the north-south dimension of this tower (up to RL 52) is over 50 metres which is 11% more than the maximum required by the DCP.

It is concluded, therefore, that neither Towers 1 or 2 meet the requirements in the DCP for a slender tower and should be re-designed.

#### ***Heritage issues and streetscape constraints***

Section 6.3 of the DCP, **Key Sites – Gateway Centre**, has specific principles for development of this site, including:

*The appropriate height for development of this site will be determined through the master planning process, which must include design testing and consideration of impacts on views and overshadowing. In particular, the master planning process should test options to achieve glimpses of Rumbalara Reserve from Burns Park. The master planning process will also need to consider the building's potential impacts to the heritage listed Burns Park, including the fountain, spaces and layout and the cultural plantings.*

The EIS has not adequately considered the impacts on views and overshadowing, as discussed above. In particular, the impacts on Burns Place have not been fully assessed because the EIS only shows shadow diagrams in mid-winter, whereas the overshadowing is probably a significant issue for most of the year.

#### ***Relationship of the development with other development (existing or proposed) on neighbouring sites.***

##### ***Environmental impacts such as sustainable design, overshadowing, wind and reflectivity.***

The Urban Design and Implementation Framework recommended expanding the B4 (Mixed Use) zone to encourage more mixed use development and increase the number of residents in the city centre. As a result, the Gosford City Centre SEPP rezoned the block bounded by Watt Street, Faunce Street, Henry Parry Drive and Erina Street from B3 to B4.

The SEPP, therefore, applied the B4 zone that allows high density residential development on the east side of Watt Street and across the road from the Gateway site. The shadow diagrams for the Gateway proposal indicate that 29% of the area of this block will be overshadowed at 2 pm in mid-winter and by 3 pm 44% will be overshadowed. The worst affected areas will be on the western side of the block and towards the

southern end. The areas overshadowed could be as great in spring and autumn, although the most affected areas will be towards the northern end of the block.

The proponents of new residential development on the eastern side of Watt Street could have difficulty in achieving adequate solar access in the areas of the block that will have serious overshadowing by the proposed Gateway development. A west facing apartment will not have solar access until 11 am – 12 noon; so if it loses its solar access before 2 pm at the winter solstice, it will have less than 3 hours of solar access. A development in the 29% of the block that is overshadowed by 2 pm would probably not be able to achieve solar access for 70% of the apartments, as required by the Apartment Design Guide.

It is concluded, therefore, that the proposed Gateway development will have significant impact on the development potential of the block on the eastern side of Watt Street, which was rezoned two years ago to encourage higher density residential development.

### ***Bulk, massing and modulation of buildings***

The analysis above has demonstrated that Towers 1 and 2 do not meet the DCP criteria for slender towers. This shows, therefore, that the bulk of these buildings is excessive and results in the adverse impacts that have been described under other criteria.

For example, the excessive width and height of the towers results in the overshadowing of Burns Place in the morning. The width of Tower 1 will cause most of the proposed public plaza to be overshadowed for most of the day in winter. Even in spring and autumn, most of the public plaza will be overshadowed from mid-morning to mid-afternoon. So it will not be attractive for outdoor cafes in the middle of the day in the seasons with a moderate climate.

The excessive width and height of Tower 2 will cause excessive overshadowing of buildings on the eastern side of Watt Street on winter afternoons. From 2pm onwards the shadows will extend east of Henry Parry Drive and south of Erina Street.

The height and bulk of these towers will also have the significant visual impacts on long range views of Rumbalara Reserve and Presidents Hill that were described above.

### ***Pedestrian, cycle, vehicular and service access***

#### ***The impact on the public domain***

Section 4.1 of the DCP, ***Pedestrian Network***, includes an objective to “retain and enhance existing through site links”. Although the proposed development would remove the existing through site link in the Gateway Centre, it would replace it with the proposed public plaza. It is not clear whether the public plaza will cater for the same desire lines as the existing link – this may require modification of the public access through Tower 2 to Watt Street.

The more significant change proposed for pedestrian access would be the removal of the existing pedestrian overbridge from Burns Place to the Gateway Centre. The DA does not propose a replacement for the overbridge; it assumes that pedestrian traffic between Gosford Station and the proposed public plaza will cross Mann Street at grade.

The impacts on pedestrian safety is not acceptable; a signalized crossing would probably be justified if the existing pedestrian volumes are likely to continue. A preferable alternative could be adaptation of the open air link to connect Faunce Street East and West across the railway line, as shown in Fig. 2 of the DCP.

Section 4.1 of the DCP states:

*Open air links for pedestrians are to be provided as shown in Figure 2. These shall:*

- a. be open to the air and publicly accessible.*
- b. have a minimum width of 6m clear of all obstructions unless otherwise noted.*
- c. connect with existing and proposed through block lanes, shared zones, arcades and pedestrian ways and opposite other through site links.*
- d. have active frontages or a street address.*
- e. be clear and direct through-ways for pedestrians.*
- f. have signage at street entries indicating public accessibility and the street to which the through site link connects.*

The proponent of the re-development of the Gateway site should be required to provide a new open air link across Burns Park and Mann Street to replace the existing pedestrian overbridge. This is the least that can be provided as a public benefit to compensate for the adverse impacts of the development on the public domain.

### **Gosford City Centre SEPP**

The proposal in the Gosford City Centre Revitalisation report to introduce a SEPP that declares any development over \$75 million as State Significant Development specifically targets development applications for major retail/commercial developments and residential developments. Furthermore, SEPP (Gosford City Centre) 2018 allows the consent authority to approve on large sites development proposals that exceed the development standards for the height of buildings and floor space ratios.

Not only have these development applications been removed from Council's assessment process and from determination by the Joint Regional Planning Panel, but the SEPP also overrides the development standards in the Gosford LEP. The introduction of clauses 8.3 and 8.4 has not only introduced flexible development standards for the Gosford City Centre, it has provided a process where the goal posts can be moved, i.e. the development controls can be changed, as a development progresses from the masterplan stage to the development application stage.

The corruption risk that could arise from the State and Regional Development SEPP has been exacerbated because of these clauses in SEPP (Gosford City Centre). ICAC identified the application of "flexible" development standards with no objective reference points as potentially providing the opportunity for massive windfall gains for developers.

### **Conclusion**

The development proposal for the Gateway site is the third application for State Significant Development that has been lodged for a Key Site identified in Gosford City Centre DCP 2018. Each application has sought to exceed both the height and floorspace controls in Gosford City Centre SEPP by the use of clause 8.4(4).

It is worth noting that both the applications for concept development were approved conditionally by the Independent Planning Commission; it was a condition of the approval that the bulk of the proposed tower buildings should be reduced in future development applications. The IPC stated that the reduction in floorspace/bulk of the proposed towers is necessary to ensure that design excellence is achieved as required by clause 8.3(3).

Yours sincerely



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