



New South Wales Government  
Independent Planning Commission

Donnison Street Gosford  
Gosford Alive SSD 9813

## Statement of Reasons for Decision

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Wendy Lewin

25 September 2020

SSD 9813 Final Report ©  
State of New South Wales through the Independent Planning Commission 2020

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## DEFINED TERMS

ABBREVIATION	DEFINITION
<b>Applicant</b>	Lederer Group P/L
<b>Application</b>	SSD 9813
<b>Commission</b>	Independent Planning Commission of NSW
<b>Council</b>	Central Coast Council
<b>DAP</b>	City of Gosford Design Advisory Panel
<b>DCP</b>	Gosford City Centre Development Control Plan 2018
<b>Department</b>	Department of Planning, Industry and Environment
<b>Department's AR</b>	Department's Assessment Report
<b>EIS</b>	Environmental Impact Statement
<b>EP&amp;A Act</b>	Environmental Planning and Assessment Act 1979
<b>EPI</b>	Environmental Planning Instrument
<b>ESD</b>	Ecologically Sustainable Development
<b>FEAR</b>	Further Environmental Assessment Requirement
<b>FSR</b>	Floor Space Ratio
<b>GFA</b>	Gross Floor Area
<b>GSEPP</b>	SEPP (Gosford City Centre) 2018
<b>LGA</b>	Local Government Area
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
<b>Material</b>	The material set out in Section 4.2
<b>Minister</b>	Minister for Planning and Public Spaces
<b>Planning Secretary</b>	Planning Secretary under the EP&A Act or nominee
<b>Regulations</b>	Environmental Planning and Assessment Regulation 2000
<b>RtS</b>	Applicant's Response to Submissions
<b>SEPP</b>	State Environmental Planning Policy
<b>Site</b>	Lot 6 DP 598833 and Lot 1 DP 540292, known as 136 – 146 and 148 Donnison Street, Gosford
<b>SSD</b>	State Significant Development

# 1 INTRODUCTION

1. On 19 August 2020, the NSW Department of Planning, Industry and Environment (**Department**) referred a development application for *Gosford Alive* (SSD 9813) to the Independent Planning Commission (**Commission**) for determination under s 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). The development application is for a concept proposal under s 4.22 of the EP&A Act including an application for Stage 1 Works.
2. The Lederer Group P/L (the **Applicant**) is seeking concept approval for building envelopes comprising a basement level, 3 podiums and 5 towers, and development approval for Stage 1 Works comprising the demolition of the existing buildings, extinguishment of easements and realignment of stormwater and sewer (**Application**). The land is located at 136 - 146 and 148 Donnison Street Gosford (**Site**), in the Gosford City Centre within the Central Coast Local Government Area (**LGA**).
3. Once fully complete the development would have a capital investment value (**CIV**) of over \$345 million. Under cl 15 of Schedule 2 of *State Environmental Planning Policy (State and Regional Development) 2011* (**SRD SEPP**), development that has a CIV of more than \$75 million on land identified in the Land Application Map of *State Environmental Planning Policy (Gosford City Centre) 2018* (**GSEPP**) is State Significant Development. The Site is shown on the Land Application Map in the GSEPP.
4. The Application states that the Concept Proposal will generate 354 construction jobs and 211 operational jobs. The Stage 1 Works have a CIV of over \$3.6 million and will generate 50-60 construction jobs.
5. The Commission is the consent authority under s 4.5(a) of the EP&A Act and cl 8A of the SRD SEPP as the Department received an objection to the development application from Central Coast Council (**Council**).
6. Mr Peter Duncan AM, the then Acting Chair of the Commission, nominated Mr Chris Wilson (Chair) and Ms Wendy Lewin to constitute the Commission determining the Application.

## 2 THE APPLICATION

### 2.1 Site and locality

7. The Site is located in an area known as the 'Civic Heart' in the centre of Gosford City Centre. The Site is located within a block bounded by Donnison Street, Albany Street North, William Street and Henry Parry Drive. On the north-western boundary are nos. 37 to 43 William Street, containing commercial buildings and a dwelling. These lots do not form part of the development proposal. The Site is currently developed with a three storey vacant shopping centre with rooftop car park, known as the Kibbleplex Centre. This Site has not been used for retail purposes for a number of years. The existing building is leased to Council for use as a public car park. The south-eastern corner of the Site is vacant land.
8. To the east of the Site across Henry Parry Drive is Kibble Park, Gosford's central civic park. To the north is a commercial centre with at grade parking fronting Henry Parry Drive, to the south across Donnison Street is the Gosford Local Court and TAFE, and to the east on Albany Street North is a four storey commercial building. Rumbalara Reserve, a prominent vegetated ridge is located further east of the Site.
9. The area of the Site is 14,194m<sup>2</sup>. The Site is shown in **Figure 1**:



Figure 1: Aerial view of the Site (red outline) and surrounds.  
Source: Figure 8 Department's AR.

## 2.2 Background

10. Section 1.4 of the Department's Assessment Report (**Department's AR**) outlines the surrounding context including other development sites including the Imperial Centre (171 Mann Street) to the north of Kibble Park. Other than Henry Parry Drive which is a State arterial road, the other roads bounding the Site are local roads. The Site is located 500m south-east of Gosford Railway Station.
11. Table 1 in Section 1.5.1 of the Department's AR lists six other developments approved near the Site, the closest on the corner of Donnison and Mann Streets, (108-118 Mann Street). In 2014 development approval was granted for the development of two 39 storey towers for residential, commercial and hotel uses on this site. Construction of the development has commenced.
12. SSD 10114 is located further south on Mann Street and is referenced in Section 1.5.2 of the Department's AR. This concept approval for three towers (24, 18 and 20 storeys) on a podium for mixed use development including an hotel was approved with amendments on 24 August 2020 by the Commission, see:

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/07/mixed-use-development-at-mann-street-gosford-central-coast-quarter-ssd-10114/determination/200824-ssd-10114-mann-street-gosford--statement-of-reasons.pdf>.

This was the first significant development approved in Gosford since 2015 (based on the approval dates of the projects shown in Table 1 of the AR).

## 2.3 Strategic context

13. Section 3 of the Department's AR sets out the strategic context for the Development under the *Central Coast Regional Plan 2036 (Regional Plan)*, the *Gosford Urban Design Framework (GUDF)* and the *Draft Somersby to Erina Corridor Strategy (Draft Corridor Strategy)*. These are State government policies.
14. Section 3.1.2 of the Department's AR states that the proposal supports the revitalisation of Gosford by supporting the delivery of goals in the Regional Plan, being:
  - *Goal 1: A prosperous Central Coast with more jobs closer to home*
  - *Goal 2: Protect the natural environment and manage the use of agricultural and resource land*
  - *Goal 3: Well-connected communities and attractive lifestyles*
  - *Goal 4: A variety of housing choice to suit needs and lifestyles.*
15. The GUDF was prepared by the NSW Government Architect to support the implementation of the Regional Plan:

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

16. The Site is located directly opposite Kibble Park in the *Civic Heart Precinct*, see **Figure 2** over. In the GUDF, Kibble Park is identified as the heart of the city:

*Geographically it is in the centre of Gosford located adjacent to Mann Street connected through William Street Plaza. It is close to the station and connected in the east to the loop road of Henry Parry Drive.*

*As the only significant open space in the centre, the area has the potential to operate at a scale that can make it a regional destination. It is a central meeting place that brings the character of the bushland reserves into the heart of the city.*

*The park has a significant amount of public and private development commencing around it bringing, residents and new commercial space. Many important regional functions are focusing on this civic heart, including the new regional library, local courts and government services.*

*Significant private developments are also underway in this place, including Bonython Tower under construction and other investments along Mann Street. It is also adjacent to the main regional shopping facility of the Imperial Centre.*

17. Notably, in the GUDF, the Site is shown as having an indicative built form of one podium with four towers, with no tower opposite the Courthouse and TAFE on the southern side of Donnison Street, which is shown as a green spine. This is compared to the five tower scheme as proposed by the Applicant. The Department's AR indicates that the proposal is consistent with the key principles of the GUDF, including those relating to the provision of active frontages, protecting Kibble Park, and providing towers with 'slender east/west forms' to 'protect view corridors from Kibble Park to Rumbalara Reserve' (Section 3.2.2).

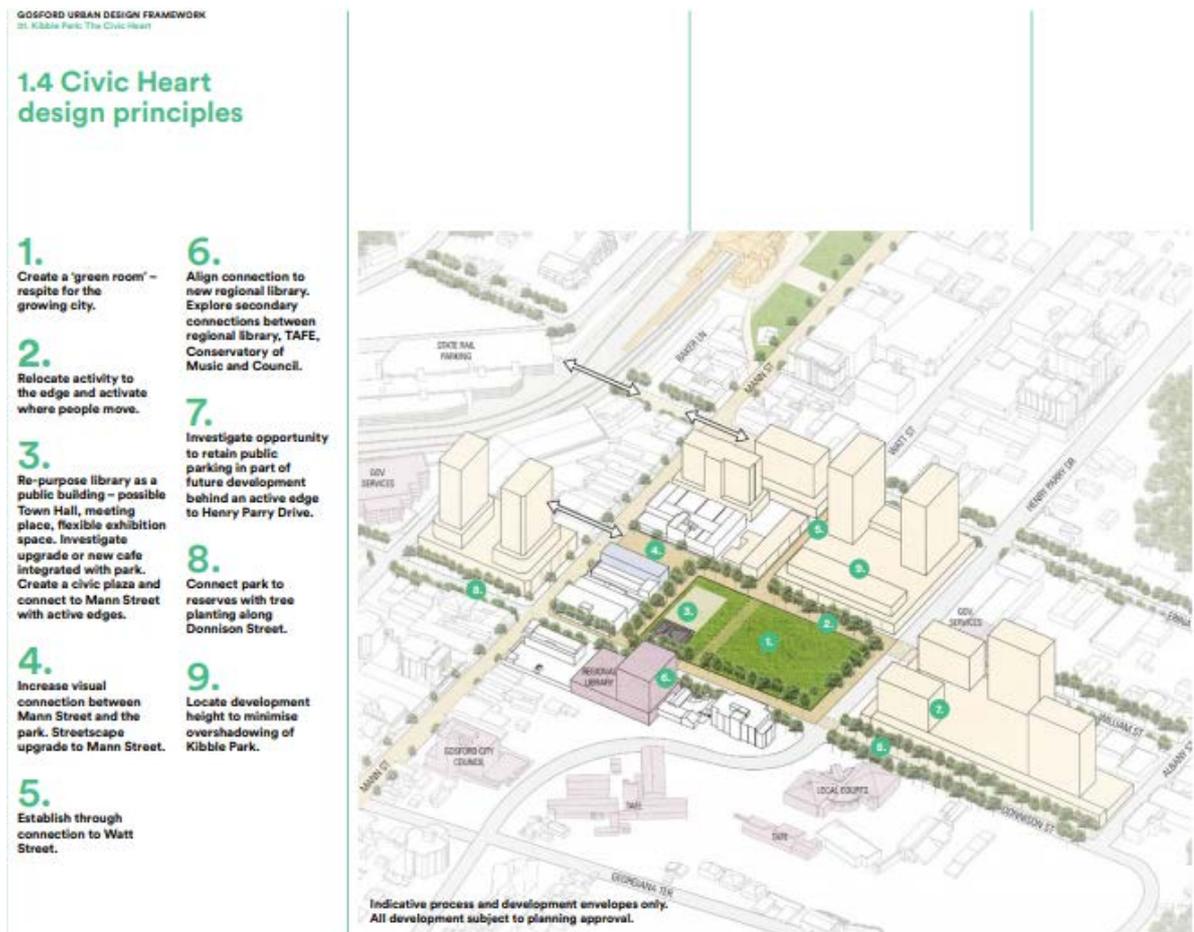


Figure 2: Extract from GUDF  
Section 2 Place-Based Framework and Recommendations Kibble Park

## 1.6 Built form principles

- 1.** Two to three storey podium height with a fine grain and active frontages to key places and streets
- 2.** Ensure ground floor facade of the plaza buildings achieves sun throughout the day.
- 3.** Provide setback to upper levels above podium.
- 4.** Slender East/West tower forms, aligned to protect view corridors to Rumbalara ridgeline.
- 5.** Setback slender north/south orientated tower forms to allow shadows to move quickly across Kibble Park.
- 6.** Protect view corridors to Presidents Hill from Kibble Park.
- 7.** Ensure solar access for four (4) hours to 50% of the park between 9am and 3pm at the winter solstice.

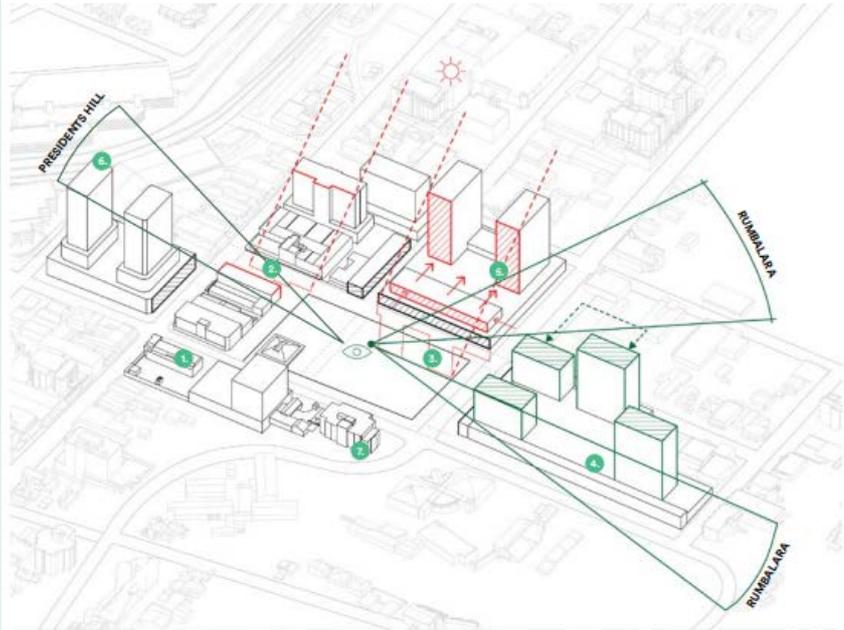


Figure 3: Extract from GUDF  
Kibble Park Built Form Principles

18. The Department in Section 3.3.2 explains that the proposal will support the delivery of key recommendations and actions in the Draft Corridor Strategy.
19. The Department's AR also concludes that the proposal is consistent with the Council's Draft Central Coast Urban Spatial Plan (Section 3.4.1); and in Section 3.5 of the AR the Department addresses the Draft Gosford City Centre Transport Plan, and the Draft Central Coast Car Parking Study.

## 2.4 Statutory context

### *State Environmental Planning Policy (Gosford City Centre) 2018 (GSEPP)*

20. The GSEPP is the principal environmental planning instrument (**EPI**) that applies to the Site. This is supported by the Gosford City Centre Development Control Plan (the **DCP**). These documents support the implementation of the GUDF and its vision to revitalise Gosford.

21. The Site is zoned 'B4 Mixed use' under the GSEPP. The SEPP has controls for maximum building height and FSR, but also includes a clause allowing exemptions to these controls (cl 8.4(4)) under certain circumstances as identified in Section 4.4.1 below. The zoning of the Site and surrounding land is shown in **Figure 4**.

Gosford City Centre (GCC) - State Environmental Planning Policy (SEPP)

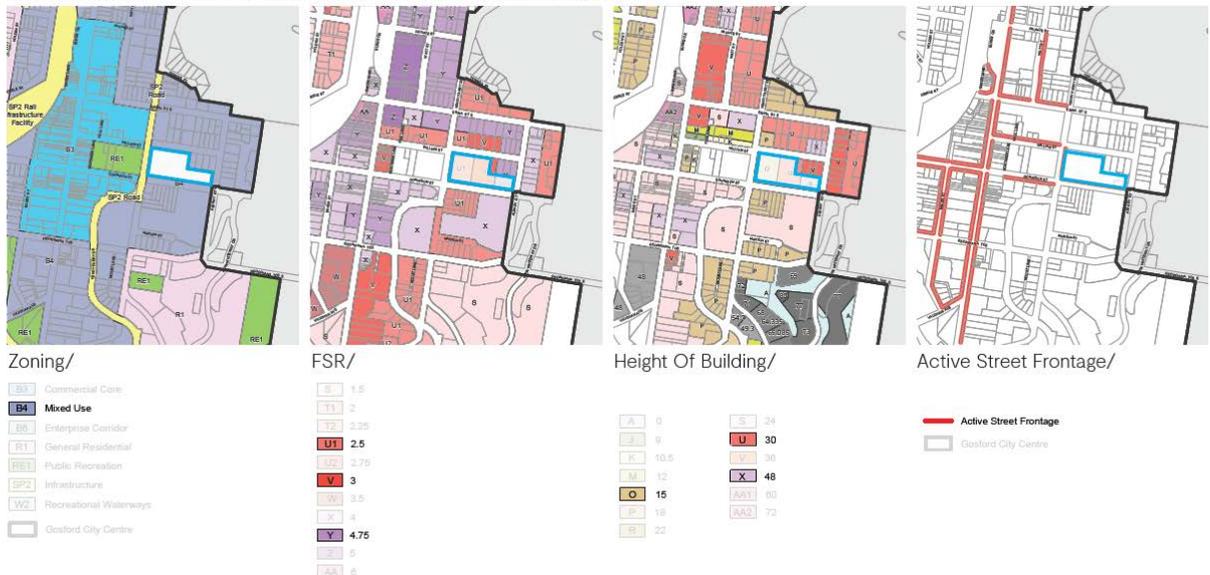


Figure 4: Key controls under the GSEPP  
 Source: Architectural Design Report, prepared by Buchan, dated 9 September 2020 Rev G, p10

**Gosford City Centre DCP 2018**

22. The Gosford City Centre DCP 2018 (the **DCP**) provides more detailed controls to support the GSEPP. The DCP “adopts the NSW Government Architect’s Urban Design Framework (adopted October 2018) for the purposes of a strategic framework to guide development proposals within Gosford City Centre. Development applications must [also] show how they address this strategic framework”. The DCP identified Key Sites that need to be master planned, this Site being Key Site 4. As well as general controls in the DCP, there are separate principles for Key Sites in the DCP.

23. Notably, the DCP states that:

*Variation of any control in this Plan may be acceptable where an application demonstrates its conformity with the objectives that are specified by this Plan, or where design excellence has been satisfactorily demonstrated.*

It also provides that:

*Where, in the opinion of the assessment and determining authority [sic], an application satisfies the objectives set out in this plan or a design review panel reviews and supports a development, the authority may grant consent to the application notwithstanding that one or more of the controls are not complied with.*

## 2.5 The proposal

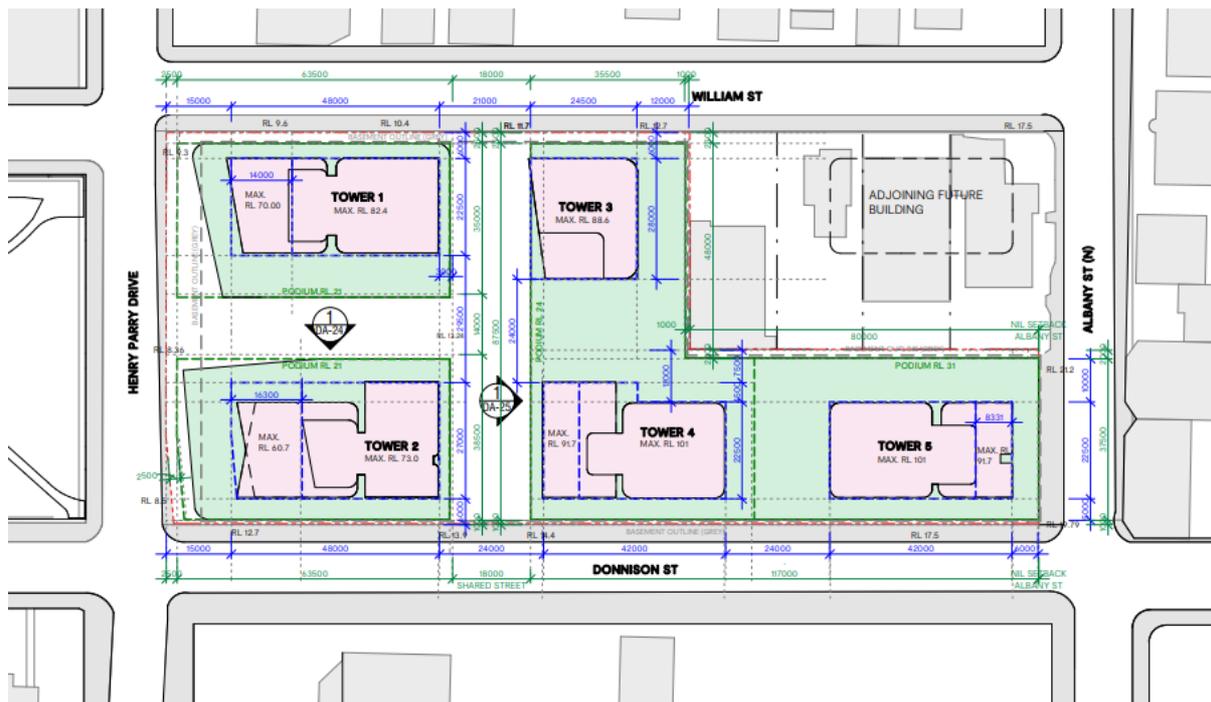
### Concept Proposal

24. As described in Section 2 of the Department's AR, the proposal seeks concept approval for envelopes for a basement, three podiums and five towers for residential and commercial use, see details in **Figure 5**:

CONCEPT PROPOSAL																
Component	Description															
Building envelopes	<ul style="list-style-type: none"> <li>• Three building envelopes, including:               <ul style="list-style-type: none"> <li>○ Tower 1 and podium comprising:                   <ul style="list-style-type: none"> <li>- podium with a maximum height of RL 21 m</li> <li>- Tower 1 with maximum heights of RL 70 m and RL 82.4 m</li> </ul> </li> <li>○ Tower 2 and podium comprising:                   <ul style="list-style-type: none"> <li>- podium with a maximum height of RL 21 m</li> <li>- Tower 2 with maximum heights of RL 60.7 m and RL 73 m</li> </ul> </li> <li>○ Towers 3, 4 and 5 and shared podium comprising:                   <ul style="list-style-type: none"> <li>- podium with maximum heights of RL 24 m and RL 31 m</li> <li>- Tower 3 with a maximum height of RL 88.6 m</li> <li>- Towers 4 and 5 with maximum heights of RL 91.7 m and RL 101 m.</li> </ul> </li> </ul> </li> </ul>															
GFA, land use and floor space ratio (FSR)	<ul style="list-style-type: none"> <li>• Maximum 72,782 m<sup>2</sup> GFA comprising:               <ul style="list-style-type: none"> <li>○ 67,360 m<sup>2</sup> GFA for residential use</li> <li>○ 5,422 m<sup>2</sup> GFA for commercial premises, including:                   <ul style="list-style-type: none"> <li>- 886 m<sup>2</sup> retail GFA</li> <li>- 4,536 m<sup>2</sup> commercial GFA to be determined in future DAs, which may comprise business and office uses</li> </ul> </li> </ul> </li> <li>• FSR 5.13:1</li> </ul>															
Parking rates	<ul style="list-style-type: none"> <li>• Car parking provided in accordance with the following rates:               <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Use</th> <th>Car Parking Rate</th> </tr> </thead> <tbody> <tr> <td rowspan="4">Residential</td> <td>1 bed</td> <td>0.9 space per unit</td> </tr> <tr> <td>2 bed</td> <td>1 space per unit</td> </tr> <tr> <td>3 bed</td> <td>1.5 space per unit</td> </tr> <tr> <td>visitor</td> <td>1 space per 7 units</td> </tr> <tr> <td>Retail</td> <td>1 space per 50 m<sup>2</sup></td> </tr> <tr> <td>Commercial</td> <td>1 space per 75 m<sup>2</sup></td> </tr> </tbody> </table> </li> <li>• Bicycle and motorcycle parking provided in accordance with the GDCP rates</li> <li>• Car-share spaces to be determined in future DAs</li> <li>• Eight on-street car park parking spaces (within the north/south through site link).</li> </ul>	Use	Car Parking Rate	Residential	1 bed	0.9 space per unit	2 bed	1 space per unit	3 bed	1.5 space per unit	visitor	1 space per 7 units	Retail	1 space per 50 m <sup>2</sup>	Commercial	1 space per 75 m <sup>2</sup>
Use	Car Parking Rate															
Residential	1 bed	0.9 space per unit														
	2 bed	1 space per unit														
	3 bed	1.5 space per unit														
	visitor	1 space per 7 units														
Retail	1 space per 50 m <sup>2</sup>															
Commercial	1 space per 75 m <sup>2</sup>															
Landscaping	<ul style="list-style-type: none"> <li>• Concept landscape masterplan, including:               <ul style="list-style-type: none"> <li>○ creation of publicly accessible through site links comprising:                   <ul style="list-style-type: none"> <li>- north/south shared link (pedestrians and vehicles) between Donnison and William Streets</li> <li>- east/west pedestrian link connecting Henry Parry Drive and the north/south link</li> </ul> </li> <li>○ large urban forecourt fronting Henry Parry Drive</li> <li>○ public and private hard and soft landscaping.</li> </ul> </li> </ul>															

Figure 5: Concept Proposal  
Source: Extract part Table 2 in Department's AR

25. The proposed concept envelopes assessed by the Department are shown on Drawing DA02 Rev F, prepared by Buchan and dated 2 June 2020. These are shown in Figure 9 of the Department's AR. These were provided in the Applicant's Response to Request for Further Information (RFFI) dated 5 June 2020.
26. In the meeting with the Commission, the Applicant was requested to clarify the dimensions on the Concept Envelope drawing in Plan (DA-22 Rev F). This drawing showed 'maximum' and 'minimum' dimensions but not all actual envelope dimensions. Updated Concept Envelope for Approval drawings, including DA-22 Rev G showing minor changes to the envelopes were provided by the Applicant on 10 September 2020, see **Figure 6** below:



*Figure 6: Proposed Concept Plan, updated by Applicant 8 September 2020  
 Source: Updated Drawing DA02 Rev G Proposed Building Envelope, prepared by Buchan,  
 dated 9 September 2020, provided to the Commission on 10 September 2020*

27. **Figure 7** shows an axonometric view of the proposed envelopes:

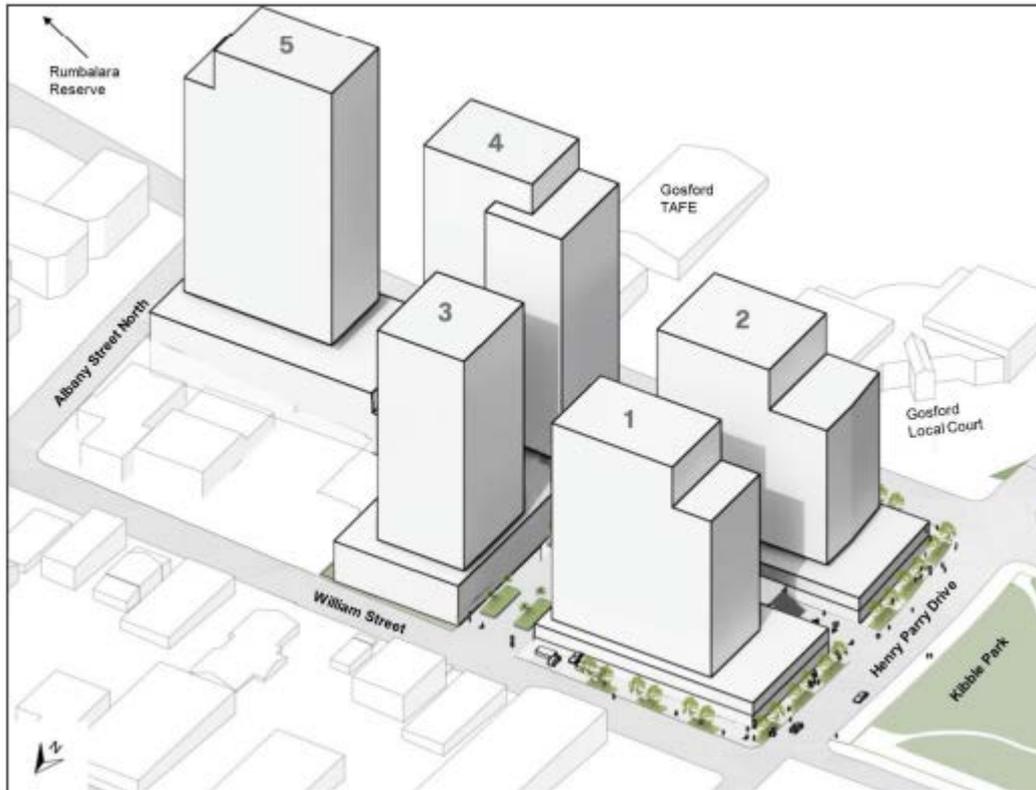


Figure 7:

*Axonometric view from south-east of the site  
Source: Figure 10 Department's AR, from Applicant's RtS*

28. The Applicant provided a summary yield table to the Department in a RFFI on 9 July 2020. Following the meeting with the Commission, the Applicant provided an updated summary Yield Table to the Commission. The GFA sought was unchanged, but this table also showed the 'volumetric fill' per building. The Commission was also provided with tables showing the quantum of floor space in the concept envelopes, GFA and volumetric fill for each building.
29. The documents forming the Applicant's response to the Commission (including the Architectural Design Report dated 9 September 2020) includes the detailed yield tables, a diagram showing a definition of 'volumetric fill', and updated concept envelopes. these have been placed on the Commission's website.
30. Table 2 of the Department's AR also shows that approval is sought for Design Guidelines, and a Design Excellence Strategy.
31. The indicative staging is for Stage 1 to commence in mid-2020 (see **Figure 8** below), with the main development progressing from Stage 2 (Tower 1 and podium), commencing at the end of 2021. The timeframe for Stage 3 through to Stage 6 (Tower 5 and the shared podium) is not yet determined

### Stage 1 Works

32. The **Stage 1 Works** are outlined in **Figure 8**:

STAGE 1 WORKS	
Component	Description
Demolition works	<ul style="list-style-type: none"><li>• Demolish the existing Kibbleplex building and substation</li></ul>
Infrastructure	<ul style="list-style-type: none"><li>• Extinguish all existing easements</li><li>• Redirect existing stormwater and sewer infrastructure</li></ul>
Vegetation	<ul style="list-style-type: none"><li>• Remove all existing vegetation on the site</li></ul>
Construction hours	<ul style="list-style-type: none"><li>• 7am to 5pm Monday to Friday</li><li>• 7:30am to 3pm Saturdays</li><li>• No work on Sundays and public holidays.</li></ul>

*Figure 8: Stage 1 Works*  
Source: Extract of part Table 2 in Department's AR

### Reference Design

33. The Applicant provided a Reference Design (in the RtS prepared by Buchan dated 3 April 2002), described in Section 2.2.2 of the Department's AR. This comprises:

- *five towers ranging in height from 18 to 27 storeys (including podium)*
- *727 dwellings, comprising 180x1 bed, 399x2 bed, 148x3 bed apartments*
- *5,422 m2 commercial premises GFA, including:*
  - o *4,536 m2 commercial GFA*
  - o *886 m2 retail GFA*
- *FSR 5.13:1*
- *1,015 on-site car parking spaces, including:*
  - o *829 resident and 104 residential visitor spaces*
  - o *60 commercial and 22 retail spaces.*
- *eight on-street car parking spaces (within the north/south through site link).*

*Source: Provided by Applicant to Commission on 10 September 2020, Architectural Design Report, dated 9 September 2020, prepared by Buchan*

### 3 THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

#### 3.1 Key steps in the Department's consideration

34. The Department advised that the Environmental Impact Statement (**EIS**) for the Application was lodged with the Department on 6 September 2019 and was accepted on 28 September 2019.
35. As set out in section 5.1 of the Department's AR, the Application was exhibited from 11 October 2019 to 7 November 2019.
36. Ten submissions were received, of which eight were from government agencies. Table 6 in Section 5.3.1 of the Department's AR sets out the issues raised by the agencies. A submission was received from Council objecting to the proposal which is summarised in Table 7 of Section 5.3.2 of the Department's AR. One public submission objecting to the proposal was received, from the Community Environment Network (**CEN**).

#### *Response to Submissions*

37. The Applicant provided a Response to Submissions (**RtS**) on 20 April 2020. The Department lists the changes to the proposal in the RtS in Section 5.4.2 of the AR. In summary, the RtS:
  - increased the commercial GFA from 3,692m<sup>2</sup> to 5,422m<sup>2</sup> and reduced the residential GFA, with an overall reduction of 276m<sup>2</sup>
  - amended the building envelopes by reducing heights, reducing the width of Tower 1 from 27m to 'max 23m' (and now 22.5m, see **Figure 6** above)
  - amended the podium envelopes including increasing the height of the Tower 5 podium by 7m and reducing the setback to Albany Street North from 2.5m to nil; reduced the setback of Towers 2, 4 and 5 and the southern podium from 2.5m to 1m.

The RtS also included other amendments to (as quoted directly from Section 5.4.2 of the Department's AR):

- *introduce townhouses and small-office / home-office (SOHO) units to activate the full length of Donnison Street and the through site links (resulting in the proposal no longer seeking a variation of clause 8.6 of the Gosford SEPP (Active Street Frontages))*
- *all above ground car parking sleeved by accommodation or hidden from public view*
- *amend public domain and landscaping and remove all adjoining street trees and the William Street planted median strip*
- *amend staging diagrams and provide 170 temporary public car parking spaces during construction*
- *introduce Design Guidelines to guide future development within the building envelopes*
- *introduce a DES to ensure ongoing design review/integrity.*

38. The Department's AR in Section 5.4.2 also indicates that the RtS was placed on the Department's website and referred to Council and the relevant public agencies. An additional four submissions were subsequently received from public agencies and one from Council. The issues raised in response to the RtS by the agencies are shown in Table 8 of the Department's AR.
39. In response to the RtS, and as stated in Table 9 of the Department's AR, the Council advised that it supported the:
- *reduction in height, FSR, number of residential units, overshadowing of Kibble Park*
  - *the increase of commercial floorspace and activation of Donnison Street*
  - *division of the Tower 1 and 2 podia fronting Henry Parry Drive*
  - *removal of existing street trees and provision of 23 replacement street trees*
  - *response to detailed road / footway design (excluding kerb return treatments)*
  - *built form is acceptable other than as discussed below.*
40. However, the Council maintained its overall objection to the built form and amenity, landscape, sustainability and flooding and traffic, parking and access aspects of the proposal, as detailed in Table 9 of the Department's AR.

#### *Request for Further Information*

41. Section 5.6 of the Department's AR states that there were also several requests for further information during the assessment. These responses (**RRFI**) are on the Department's website.

### **3.2 Key Assessment Issues**

42. In Section 6.1 of the Department's AR, the key issues in the assessment of the Concept Proposal are identified as:
- design excellence
  - density
  - building envelopes
  - car parking, traffic and road infrastructure
  - public benefits
- and in Section 6.7,
- other issues.
43. In Section 6.8 of the Department's AR, the key issues in assessment of the Stage 1 Works are:
- demolition of the Kibbleplex building and associated structures
  - site preparation works, including realignment of stormwater and sewer lines and removal of existing on-site vegetation
  - decommission of existing substation and extinguish existing easements
  - other environmental impacts.

## 4 THE COMMISSION'S CONSIDERATION

### 4.1 The Commission's meetings

44. The Commission met with relevant officers from the Department on 3 September 2020. The Commission sent a follow up email to the Department on 4 September 2020 summarising the further information requested during the meeting. The Department provided a written response to the Commission's request on 14 September 2020 and on 21 September 2020 (**Department's Response to Commission**).
45. The Commission met with the Applicant on 3 September 2020. The Commission sent an email to the Applicant on 4 September 2020 summarising the additional information discussed during the meeting. The Applicant provided a written response and additional information including yield tables and revised concept envelopes (with dimensions clarified). This was provided to the Commission on 10 September 2020 (**Applicant's Response to Commission**).
46. The Commission met with officers from Central Coast Council on 3 September 2020. The Council was requested to provide additional information including comments on recommended conditions for the Stage 1 Works during the meeting. By email on 4 September 2020, additional information was also requested regarding the area of the four lot site to the north (nos. 37-43 William Street); and a request to confirm that the zoning of the TAFE and Courthouse land to the south of the Site was B4 Mixed Use. A response including comments on the draft conditions was provided by the Council to the Commission on 10 September 2020.
47. The Commission met with representatives of the community group CEN on 4 September 2020. The CEN in its submission objected to the development. The CEN provided a letter to the Commission dated 3 September 2020 at the meeting.
48. As there was only one public submission received during the formal exhibition of the proposal, the Chair of the Panel deemed it unnecessary to conduct a public meeting or provide additional time to allow for further public submissions.
49. All of the above meetings were held via Zoom, due to COVID-19 restrictions. The transcripts of the meetings were placed on the Commission's website as well as the material presented at those meetings and the follow up responses from the Department, Applicant and Council.
50. The Commission visited the Site and nearby lookouts over Gosford on 2 September 2020. The Site Inspection Notes were placed on the Commission's website.

### 4.2 Material considered by the Commission

51. In its determination, the Commission has carefully considered the following **Material**, the:
  - Secretary's Environmental Assessment Requirements (**SEARs**), issued on 1 February 2019
  - Applicant's **EIS** and appendices, dated 27 September 2017, prepared by Mecone P/L, including an Architectural Design Report dated August 2019 prepared by Buchan
  - Applicant's Response to Submissions and appendices, prepared by Mecone P/L, April dated 2020, including amended Architectural Design Report, dated 3 April 2020 Rev E (**RtS**)
  - Applicant's response to the Department's requests for further information including information dated 26 May 2020 and 19 June 2020, including updated reports, letters and

emails, referred to as the Response to Request for Further Information (**RRFI**). This information included:

- An updated Phase 1 Contamination Assessment, dated 29 May 2020
- An amended Architectural Design Report, dated 1 June 2020, Rev F
- And updated Envelopes for Approval, dated 1 June 2020 Rev F
- Department's AR, dated August 2020, received by the Commission on 19 August 2020
- Department's draft recommended Development Consent for SSD 9813
- Commission's meetings held with the:
  - Department on 3 September 2020, and presentation
  - Applicant on 3 September 2020, and presentation
  - Council on 3 September 2020
  - CEN on 4 September, and letter dated 3 September 2020 and transcripts thereof
- Responses to questions raised by the Commission at the stakeholder meetings as follows:
  - Department, dated 14 and 21 September 2020
  - Applicant, dated 10 September 2020, including Architectural Design Report dated 8 September 2020 Rev G, with updated Concept Envelopes for Approval
  - Council, dated 10 September 2020
- *City of Gosford Design Advisory Panel Guide for Proponents and Stakeholders*, prepared by the Department of Planning and Environment, undated.

### 4.3 Mandatory considerations

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

- provisions that apply to the land to which the Application relates of:
  - environmental planning instruments (**EPIs**)
  - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved)
  - development control plans (**DCP**)
  - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4
  - *Environmental Planning and Assessment Regulation 2000* (**EP&A Regulation**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act
- likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- suitability of the site for development
- submissions made in accordance with the EP&A Act and Regulations
- public interest.

### 4.4 Relevant Environmental Planning Instruments

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

- SRD SEPP (see paragraph 3 above)
- GSEPP
- State Environmental Planning Policy (Building Sustainability Index) 2004 (**BASIX**)
- State Environmental Planning Policy – Remediation of Land SEPP 55 (**SEPP 55**)
- State Environmental Planning Policy No. 65 Residential Apartment Development

- (SEPP 65) and Apartment Design Guide (ADG)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP).

#### 4.4.1 State Environmental Planning Policy (Gosford City Centre) (GSEPP)

54. The Site is zoned B4 Mixed Use under the GSEPP and is permissible with consent. The Department's AR addresses the relevant clauses in the GSEPP in Appendix D. The GSEPP contains maximum building height and FSR standards, but cl 8.4(4) *Exceptions to height and floor space in Zones B3, B4 and B6* of the GSEPP applies, see discussion on the effect of cl 8.4(4) of the GSEPP in paragraphs 66 to 75 below.

#### Building height

55. The proposed building heights which are expressed in metres as a Reduced Level (RL) (above Australia Height Datum) are shown in the table in **Figure 5** above. The maximum heights in cl 4.3 of the GSEPP, the 'base' height controls, are expressed in metres above *Ground Level (Existing)*, rather than as a maximum RL.
56. There are three height zones shown on the Height of Buildings (HOB) Map to cl 4.3 of the GSEPP. These are maximum heights of 15 /30 /48m respectively, rising from Henry Parry Drive to Albany Street North. The Applicant provided a diagram to the Commission on 9 September 2020 showing the heights of the proposed buildings in metres, as shown in **Figure 9** below.

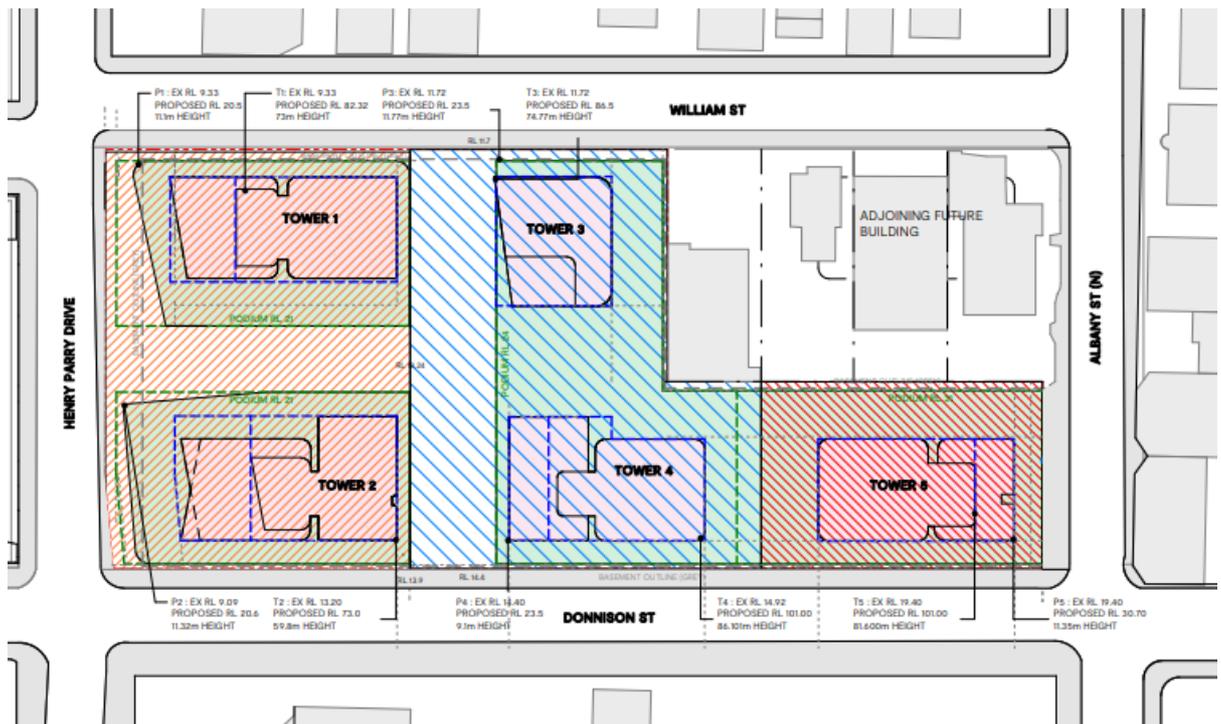


Figure 9: GSEPP cl 4.3 maximum building height comparison, extract from Drawing DA03, prepared by Buchan, dated 8 September 2020  
Source: Information provided by the Applicant to the Commission on 9 September 2020

57. The maximum heights of the proposed envelopes compared to the maximum heights under cl 4.3 of the GSEPP are:
- **73m** in the 15m height zone
  - **86.1m** in the 30m height zone
  - **81.6m** in the 48m height zone.
58. The proposed towers exceed the maximum building height standard in cl 4.4 of GSEPP, but this is enabled through compliance with the provisions of cl 8.4(4) of the GSEPP, as discussed below.

### FSR

59. As shown in Table 20 in Appendix D of the Department's AR, the Site has three FSR zones under the 'base' controls in cl 4.4 of the GSEPP. Corresponding to the maximum building height zones, the FSR Map shows the applicable FSRs as 2.5:1 /3:1 /4.75:1 respectively increasing from Henry Parry Drive to Albany Street North.
60. The proposed FSR (based on the Reference Design) was provided in the RRFI, but this was for the towers only (see Letter from Mecone to Department dated 30 June 2020). The Applicant clarified the FSR per building in the further information provided to the Commission on 10 September 2020. This indicates that the proposed FSR in each 'base' FSR zone is as follows, in **Table 1**:

Building	FSR zone area (m <sup>2</sup> )	Maximum base FSRs	Maximum GFA base controls (m <sup>2</sup> )	Proposed GFA (m <sup>2</sup> )	Proposed FSR	Increase over base FSR (%)
<b>1 and 2</b>	5,935	2.5:1	14,837	29,300	4.94:1	97%
<b>3 and 4</b>	5,823	3:1	17,469	27,355	4.70:1	56%
<b>5</b>	2,440	4.75:1	11,590	16,128	6.61:1	39%
<b>TOTAL</b>	<b>14,198m<sup>2</sup></b>	<b>3.09:1</b>	<b>43,896m<sup>2</sup></b>	<b>72,783m<sup>2</sup></b>	<b>5.13:1</b>	<b>66%</b>

*Table 1: Proposed FSR*  
 Source: Based on cl 4.4 in GSEPP and information provided to the Commission by the Applicant on 10 September 2020

### Clause 8.3 Design excellence

61. The objective of cl 8.3(1) of the GSEPP, is "to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Gosford City Centre." Clause 8.3(2) provides that the design excellence clause applies to the "erection of a new building". Under cl 8.3(3), consent must not be granted unless the development exhibits design excellence.
62. The Department addresses cl 8.3 in the AR in Section 6.2 and in Table 19 (pp 77-80) in Appendix D with reference to the sections in the AR where the relevant design excellence sub-clause criteria are discussed. These criteria are summarised in Section 6.2.2 of the Department's AR.

63. Clause 8.3(4) of the GSEPP requires the consent authority to have regard to specified matters (a) to (e) when determining whether the development exhibits design excellence. Clause 8.3(4) of GSEPP is as follows:

### **8.3 Design excellence**

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

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) *whether the development is consistent with the objectives of clauses 8.10 and 8.11,*
- (d) *any relevant requirements of applicable development control plans,*
- (e) *how the development addresses the following matters—*
  - (i) *the suitability of the land for development,*
  - (ii) *existing and proposed uses and use mix,*
  - (iii) *heritage issues and streetscape constraints,*
  - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
  - (v) *bulk, massing and modulation of buildings,*
  - (vi) *street frontage heights,*
  - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
  - (viii) *the achievement of the principles of ecologically sustainable development,*
  - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
  - (x) *the impact on, and any proposed improvements to, the public domain.*

64. The Commission notes that some of the specified matters (e.g. cl 8.3(4)(a)) are more applicable to the assessment of a more detailed development proposal rather than a concept plan. Nevertheless, the Commission has considered the development against this clause in its determination.

65. *Design Excellence* is a Key Issue discussed in Section 6.2 of the Department's AR. The Commission considers that the Department has adequately addressed the various design excellence provisions. The City of Gosford Design Advisory Panel (the **DAP**) has an advisory role (under cl 8.4(4) of the GSEPP, as discussed in paragraph 67, but under cl 8.3 of the GSEPP the consent authority is to determine if a development exhibits design excellence, prior to granting consent. The Commission's consideration as to whether the proposal exhibits design excellence is discussed in this Report in Section 5 and in particular in Section 5.2.8.

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

66. Clause 8.4 of the GSEPP enables a variation to the building height and FSR standards as shown on the HOB Map in cl 4.3 and the FSR Map in cl 4.4 of the GSEPP (the base controls), provided the criteria specified are met. As the Site is in excess of 5,600m<sup>2</sup> in area, sub-clause (4) is applicable. As the consent authority, the Commission must take into account/be satisfied with regard to the matters in cl 8.4(4), reproduced below, prior to granting consent:

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

- (1) *This clause applies to land in the following zones—*
- (a)...
  - (b) *Zone B4 Mixed Use,*
  - (c)...
- (2) ...
- (3) ...
- (4) *Development consent may be granted to development that results in a building with a height that exceeds the maximum height shown for the land on the Height of Buildings Map, or a floor space ratio that exceeds the floor space ratio shown for the land on the Floor Space Ratio Map, or both, by an amount to be determined by the consent authority, if—*
- (a) *the site area of the development is at least 5,600 square metres, and*
  - (b) *a design review panel reviews the development, and*
  - (c) *if required by the design review panel, an architectural design competition is held in relation to the development, and*
  - (d) *the consent authority takes into account the findings of the design review panel and, if held, the results of the architectural design competition, and*
  - (e) *the consent authority is satisfied with the amount of floor space that will be provided for the purposes of commercial premises, and*
  - (f) *the consent authority is satisfied that the building meets or exceeds minimum building sustainability and environmental performance standards.*
- (5) ...
- (6) *In this clause, **design review panel** means a panel of 3 or more persons established by the consent authority for the purposes of this clause and approved by the NSW Government Architect.*
67. The Department addresses the provisions of cl 8.4(4) of the GSEPP in Table 21 in Appendix D in the AR. It is also mentioned in the AR in Sections 6.2 *Design excellence* and 6.3 *Density*. In Table 21, the Department concludes that the:
- site area (14,194m<sup>2</sup>) meets the required area (minimum 5,600m<sup>2</sup>) (cl 8.4(4)(a))
  - DAP has reviewed the proposal (cl 8.4(4)(b)) – see paragraph 70 below
  - DAP did not require a design competition (cl 8.4(4)(c)) - see Section 5.2.8 below.

68. The Commission notes that ‘design excellence’ is not a criteria that needs to be met in order to obtain additional height and FSR using cl 8.4(4) of the GSEPP, but as identified in paragraph 61 above, all development subject to cl 8.3 must exhibit ‘design excellence’ in order to be approved. The Commission’s decision on the merits of the proposed height and FSR of the proposal is discussed in Sections 5.2.4 and 5.2.5 of this Report.

*City of Gosford Design Advisory Panel –cl 8.4(4)(b) and (d)*

69. Of relevance to the assessment of this Application is the role of the DAP. The Department’s AR in Section 5.5 states:

*5.5.1 The DAP was established by the NSW Government in October 2018 to provide independent and expert design advice on development proposals in the Gosford City Centre. The DAP operates as the design review panel under Clause 8.4 of the Gosford SEPP to encourage design excellence.*

*5.5.2 In accordance with Clause 8.4 of the Gosford SEPP, the DAP has reviewed the proposal on the following three occasions:*

- *25 June 2019 prior to the lodgement of the application*
- *31 October 2019 in response to the exhibition of the EIS*
- *27 March 2020 prior to lodgement of the RtS.*

*5.5.3 In the DAP’s most recent review of the proposal (as set out in the RtS), it concluded:*

***‘The Panel believes the proposal, for this stage of the concept masterplan process, exhibits design excellence and notes that sufficient amendments have been made in response to the Panel’s previous comments’.***

70. With regards to cl 8.4 (d) in terms of the review of the application, the Minutes of the Meetings of the DAP are in Appendix F of the Department’s AR and additional minutes of workshops were provided to the Commission on 14 September 2020 by the Department.
71. The Department addresses the findings of the DAP in Section 6.2 of the AR. The DAP provided comments on various aspects of the development including the Design Excellence Strategy, the Design Guidelines, building height, height of the podiums, the above ground parking, access to Kibble Park across Henry Parry Drive, landscaping of the through site links and future compliance with the Apartment Design Guide (**ADG**).

*Design competition - cl 8.4(4)(c) and (d)*

72. Clause 8.4(4)(c) of the GSEPP allows for the DAP to require a design competition as part of the consideration for buildings where the Applicant seeks to vary the based height and FSR controls. The Department’s assessment of this provision and the Commission’s views are discussed in Section 5.2.8 below.

*Quantum of commercial floorspace - cl 8.4(4)(e)*

73. Clause 8.4(4)(e), the quantum of commercial floor space in the development, is addressed by the Department under *Other issues relating to the Concept Proposal* in Table 15 in Section AR (pp 59-60). The Department states:

*The Department concludes the retail / commercial component of the proposal is sufficient, provides new employment opportunities and complements existing floorspace in the Gosford City Centre. The proposal therefore meets the requirement of clause 8.4(4)(e) of the Gosford SEPP.*

This is discussed in Section 5.2.10 of this Report.

*Meeting or exceeding minimum building sustainability and environmental performance standards - cl 8.4(f)*

74. An assessment of the development with respect to the principles of Ecologically Sustainable Development (**ESD**) is outlined in Section 4.6.10 of the Department's AR. In Section 6.7 of the AR *Other issues relating to the Concept Proposal*, under ESD, cl 8.4(4)(f) of the GSEPP is addressed. In Table 15 the Department states:

- *The Department agrees with Council that future DA(s) should strive to improve on minimum standards, particularly as the Applicant intends to deliver a development that achieves design excellence. The Department also notes the GDCP recommends as a minimum, developments commit to achieve at least a 4-star rating under the Australian Building Greenhouse Rating Scheme and that buildings comply with or where possible exceed the BASIX requirement by 10% for residential development.*
- *The Department therefore recommends a FEAR requiring future DA(s) to demonstrate how ESD principles have been incorporated into the proposal and achieve the following sustainability measures and targets:*
  - o *a minimum 4-star Green Star Design and As Built rating o a minimum 4-star NABERS Energy and Water rating*
  - o *BASIX certification*
  - o *explore the potential to achieve increased stretch targets beyond minimum standards.*
- *Subject to the above FEARs, the Department is satisfied the proposed development is consistent with ESD principles and future detailed f [sic] the EP&A Act. Furthermore, the Department recommends a section be included in the Design Guidelines setting out how the detailed design will achieve ESD and general sustainability principles.*

75. The Commission's consideration of the proposal with respect to the principles of ESD is in Section 5.2.9 of this Report.

*Other clauses in GSEPP*

76. The Department has addressed other relevant clauses of the GSEPP in Appendix D, including Table 19 of the AR (pp 76-80). Clause 5.10 Heritage conservation regarding Aboriginal archaeology is discussed in Section 6.7 of the AR. Other key clauses addressed in Section 6.4 of the Department's AR include:

- *cl 8.5 Car parking in B4 zones*
- *cl 8.6 Active street frontages*
- *cl 8.10 Solar access to key public open space*

- cl 8.11 *Key vistas and view corridors*.

77. The Commission's consideration of the above clauses is in Section 5 below.

#### 4.4.2 BASIX

78. The BASIX SEPP is addressed in Appendix D (p 73) of the AR. The Department includes a Further Environmental Assessment Requirement (**FEAR**) in its recommended consent which requires a BASIX assessment for future residential DA(s). The Commission agrees that this will address the requirements of the BASIX SEPP, and has imposed a FEAR to this effect.

#### 4.4.3 SEPP 55

79. In Appendix D (pp 73-74), the Department's AR states:

*The EIS includes a P1CA, 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 P1CA confirmed that the site has been in use since the early 1950s. Although, the use of the site prior to the development of Kibbleplex in 1978 is not well known, the P1CA indicates evidence of saw milling and former industrial uses on the site. The P1CA confirmed it is not known whether surface soils on the site were removed or imported fill material was used during the construction of Kibbleplex. As the proposal is for a Concept Proposal, the P1CA did not undertake soil and ground water testing and a conclusive assessment of land contamination status cannot therefore be made at this stage. Based on the history of the site, the P1CA predicts there is a medium potential for soil contamination. Potential site contaminants could include asbestos, lead paint, copper / chrome / arsenic compounds, Benzene, Toluene, Ethylbenzene and Xylenes, Polycyclic Aromatic Hydrocarbons, Organochlorine Pesticides, Organophosphorous Pesticides and volatile organic compounds.*

80. The Department lists the recommendations of the report on page 74 of the AR and states that "The Department recommends a FEAR requiring future DA(s) include a detailed site contamination assessment in accordance with the findings of the P1CA".

81. The Commission notes that a complete historical review of the Site has not been undertaken. As identified above, the Stage 1 Report identifies that there is a medium likelihood of past contamination. The Commission acknowledges that it is difficult to conduct the appropriate Stage 2 Detailed Investigation until after the existing buildings are demolished. Consequently, the Commission accepts the approval of the Concept Proposal will only establish building envelopes and land uses, but (other than the Stage 1 approval) not enable physical works.

82. The Stage 1 Works include earth works to re-align the sewer and stormwater infrastructure (**Infrastructure Works**) which will disturb the ground. Post demolition of the existing building and prior to the commencement of the Infrastructure Works would be an appropriate time to undertake Stage 2 Site Investigations and to identify if a Remedial Action Plan (**RAP**) is required for any part of the Site. If remediation is required for that part of the Site associated with the Infrastructure Works, a RAP will be required, and this work must be notified and completed as Category 2 remediation in accordance with the provisions of SEPP 55. Likewise, the next stage development application/s will also need to be accompanied by a RAP if the Stage 2 report shows that remediation is required.

83. Therefore, in the Concept Proposal the Commission has imposed a FEAR which requires a Stage 2 Detailed Site Investigation be carried out within 6 months of the demolition of the building or prior to the commencement of the Infrastructure Works (whichever is the earliest), and if necessary, a RAP for any future development applications. As well, in the Stage 1 Works approval, a condition is imposed requiring that SEPP 55 Stage 2 Investigations be completed for the whole Site (given the Site may sit vacant for possibly some years) following the demolition of the existing shopping centre. The condition also requires that a RAP be prepared and implemented in accordance with the requirements of SEPP 55 if contamination is identified on that part of the Site subject to the Infrastructure Works.

#### 4.4.4 SEPP 65 and ADG

84. In Table 15 *Future residential amenity* under Section 6.7 *Other issues relating to the Concept Proposal*, the Department addresses the compliance of the envelopes and future buildings with SEPP 65 and the ADG.
85. The compliance of the Reference Design with some key 'amenity criteria' of the ADG is assessed and the Department states on page 53 that:

*The Department concludes the residential component of the development is capable of meeting the ADG recommended amenity standards and the minor non-compliances relating to buildings separation and deep soil areas are acceptable or can be addressed in the future DA(s).*

86. Given that the proposal is a concept, the Department has addressed the SEPP 65 *Design Quality Principles* at a high level in Table 18 in Appendix D (pp 74-76). The Department identifies non-compliances of the building envelopes with requirements for building separation, solar access and deep soil. The Commission's consideration of the proposal against issues relevant to SEPP 65 and the ADG is discussed in Section 5.2.13 of this Report.

#### 4.4.5 ISEPP

87. The requirements of the ISEPP are discussed on page 73 in Appendix D of the Department's AR. This indicates that:

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

*The proposal is located adjacent to a road specified under clause 102 of the ISEPP. The Department has considered construction and operational noise at Section 6.7 and concludes noise impacts can be managed and/or mitigated. The Department recommends a FEAR requiring future DA(s) consider construction and operational noise impacts.*

88. The Commission is satisfied that the ISEPP has been addressed. *Car parking, traffic and road infrastructure* is a Key Issue and is discussed in Section 5.2.11 of this Report. The Commission has also considered the submissions from TfNSW and the Council as relevant.

## 4.5 Draft Environmental Planning instruments

89. The **Draft Remediation of Land SEPP** was exhibited in 2018. This is addressed in Appendix D (p74) of the Department's AR that states "As the proposal has demonstrated it can be suitable for the site, subject to future DA(s), the Department considers it would be consistent with the intended effect of the Remediation of Land SEPP". The consideration of the Commission in regard to contamination is in Section 4.4.3 above.

## 4.6 Gosford City Centre Development Control Plan 2018

90. The Gosford City Centre Development Control Plan 2018 (the **DCP**) was prepared by the then Department of Planning and Environment to support the objectives of the GSEPP.
91. In Section 4.6.2 in Table 3 addressing the s4.15(1), Matters for Consideration under the EP&A Act, the Department states:

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

92. In addition to discussion under the Key Issues in Section 6, the provisions of the DCP are assessed in detail in Appendix D of the Department's AR (pp 81-92).
93. The Commission notes that the GSEPP calls up consideration of the DCP when determining if a development exhibits design excellence (see cl 8.3(4)(d) in paragraph 61 above). The Commission is of the view that the DCP therefore carries weight as a matter for consideration in this DA, and relevant clauses of the DCP are addressed throughout Section 5 of this Report.

## 4.7 Other section 4.15(1) considerations

### 4.7.1 Relevant planning agreements

94. The Department's AR states in Table 3 in Section 4.6.2 that "No existing planning agreements apply to the site".

### 4.7.2 EPA Regulation

95. The EPA Regulation prescribes in cl 92 (1)(b) that if development involves demolition of a building then the provisions of AS 2601 applies. The Stage 1 Consent includes conditions addressing this Standard.

### 4.7.3 The likely impacts of the development

96. The Department addresses cl 4.15(1)(b) of the EP&A Act in Table 3 in Section 4.6.2 of the AR and states that impacts are "Appropriately mitigated or conditioned as discussed in **Section 6**". The Commission's consideration of the likely impacts of the development are addressed in Section 5 of this Report.

### 4.7.4 The suitability of the site for development

The Department's AR addresses cl 4.15(1)(c) in Table 3 in Section 4.6.2 and states "The site is suitable for the development as discussed in Section 6". The Commission agrees that the Site is suitable for the development as outlined in Section 5 of this Report.

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

97. The Commission has considered the submissions made by government agencies, the CEN and the Council. As noted in Sections 4.1 and 4.2 above, further submissions were made to the Commission by the CEN and the Council as part of the meetings with the Commission. The Commission has made reference to the issues raised in these submissions under the relevant parts of Section 5 of this Report.

#### 4.7.6 The public interest

98. The public interest is addressed in Section 5.4 below.

## 5 COMMISSION'S CONSIDERATION OF KEY ISSUES

### 5.1 Summary of Commission's findings - Concept Proposal

99. The Commission has considered the Material relating to the Application, including the Responses to the Commission by the Applicant and the Department. It has also carefully considered all submissions received, including the submissions and concerns of both Council and the CEN. The Commission agrees that with respect to the Concept Proposal that the Key Issues assessed in Section 6 of the Department's AR cover the range of issues relevant to the determination of this Application.
100. After considering the Material and visiting the Site and lookouts over Gosford, the Commission generally supports the assessment and conclusions of the Department and considers that the Concept Proposal should be approved. While the Commission has a number of residual concerns relating to the bulk and scale of the proposed tower envelopes and their impacts, and the extent of activation proposed on Donnison and Albany Street North, the Commission concludes that with modifications to the proposed envelopes, these impacts can be satisfactorily ameliorated. The proposed amendments to the Concept Proposal are outlined below with the Commission's reasoning discussed throughout Section 5.
101. These amendments will make the towers more slender by reducing the east–west lengths:
- on the eastern side of the Towers 1 and 2
  - on the western side of Tower 4, retaining the same stepped profile
  - on the western side of Tower 5, retaining the stepped profile on the eastern side.
102. The envelope height is reduced for:
- Tower 1 and Tower 4
  - the Building 5 podium on Albany Street North/Donnison Street, by one level.
103. These amendments are shown diagrammatically in **Figures 10, 11 and 12** below. The reasons for the amendments are discussed in Sections 5.2.2 (floorplate size), 5.2.4 (height), 5.2.6 (impacts of envelopes), 5.2.10 (quantum of commercial floor space), and generally throughout Sections 5.2.2 - 5.2.13 below.

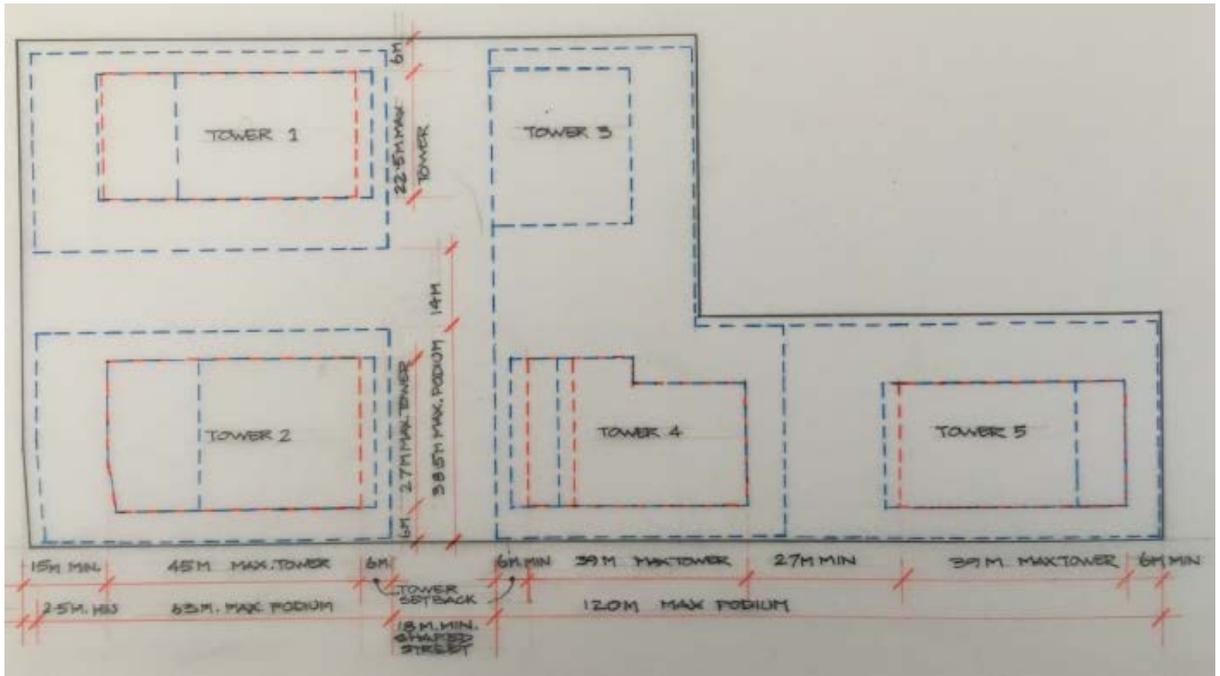


Figure 10: Plan view – Amendments to the envelope lengths of Towers 1, 2 4 and 5 (reduction shown dashed red)

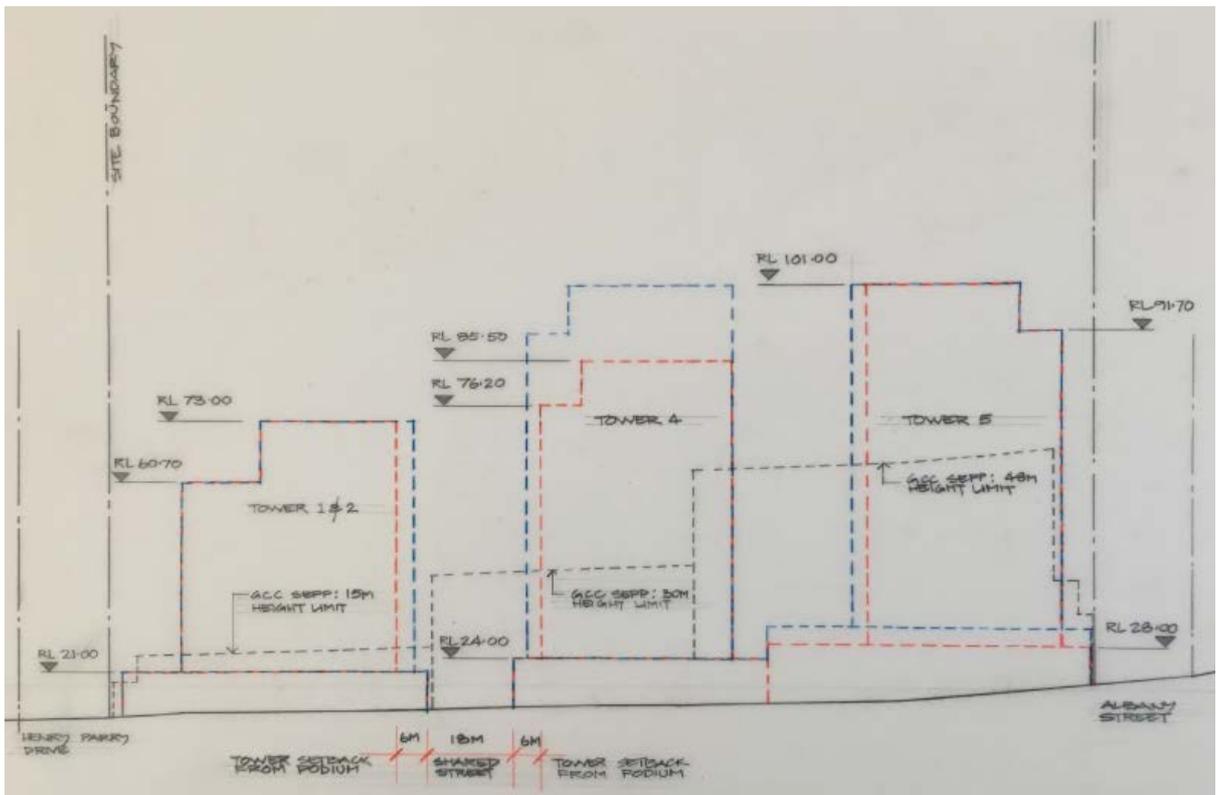


Figure 11: Elevational view from Donnison Street  
Amendment to height of Towers 1 and 4; reduction of length of Towers 1, 2, 4 and 5 and; reduction in podium on Donnison Street/Albany Street North (reduction shown dashed red)

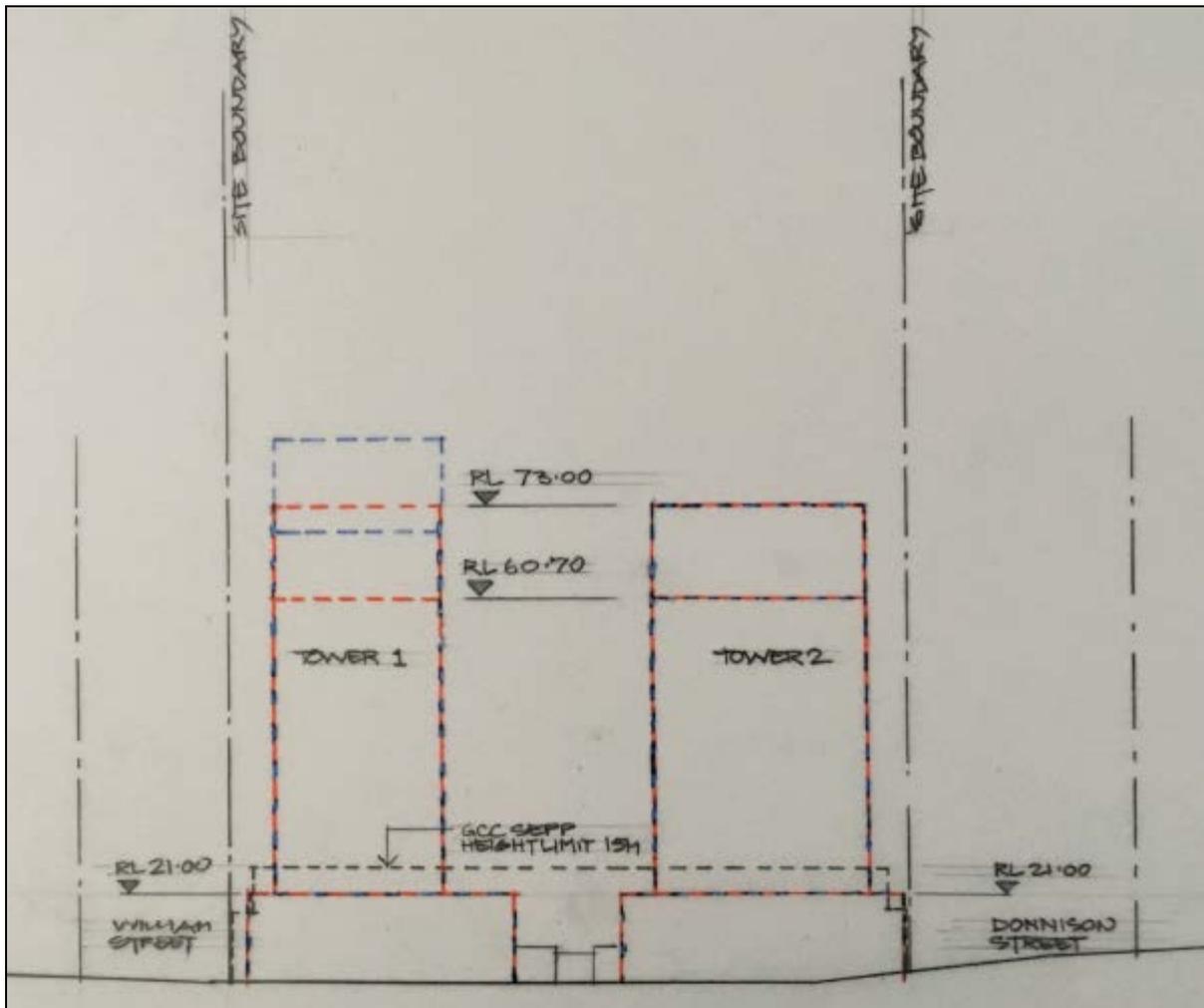


Figure 12: Elevational view from Henry Parry Drive  
Amendment to heights of Tower 1 to match Tower 2; (reduction shown dashed red);

104. Other amendments required, for reasons discussed in Section 5.2.3 and 5.2.10 below, are to:
- replace the lowest level of residential apartments in the western section of the podium of Tower 5 on Donnison Street with commercial or retail floor space
  - replace traditional residential apartments proposed on the ground level of the podium of Building 5 on Albany Street North with SOHO type apartments or other non-residential use to provide increased activation.

## 5.2 Commission's response to key issues – Concept Proposal

105. The Commission's consideration of the Concept Proposal component of the Application, including the reasons for the amendments to the proposal is set out in the following sections of the Report. Sections 5.2.1 - 5.2.8 consider issues specific to the proposed concept envelope including:
- Proposal in context of other approvals
  - Floor plate and building massing
  - Volumetric fill

- Height of podiums and towers
- Density
- Impacts of building envelopes
- Through-site links
- Design excellence.

106. The other relevant aspects of the concept proposal are discussed in Sections 5.2.9 to 5.13:

- ESD
- Quantum of commercial floorspace
- Car parking, traffic generation and road infrastructure improvements
- Public benefits
- Other issues identified in the Concept Proposal in the Department's AR.

### 5.2.1 Proposal in context of existing approvals

107. The Department discusses the *Building Envelopes* in Section 6.4 of the AR. In Section 6.49, the AR states:

*New developments, including tall buildings, have been approved and constructed along the central spine of the Gosford City Centre (Mann Street), which establishes a new built form character and an evolution away from the low-rise valley-floor character of Gosford (Section 1.5 and Appendix A). These approvals and developments reinforce the new strategically planned direction/vision for Gosford established by the Gosford SEPP and outlined within the GUDP and the GDCP.*

108. The Commission agrees with the Department that generally the scale of development proposed is comparative to other approvals in the City Centre, noting that other than SSD 10114 approved by the Commission in August 2020, these were approved under the previous Gosford LEP 2014 planning controls.
109. The Department's assessment discusses envelope height, bulk scale and overshadowing impacts in Section 6.4 of the AR. The Commission addresses these aspects of the proposed envelopes separately below.

### 5.2.2 Floor plate size and building massing

#### *DCP control for slender towers*

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

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

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

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

- The maximum building length for towers in any direction is 45m.*

- All tower forms must be set back a minimum 8m from the street wall frontage, however reductions may be accepted (from 8m to 6m) on some sites where it is demonstrated that this control would compromise the ability to design the podium or tower appropriately.*

111. Under the issue of *Tower floorplates and the volumetric fill of building envelopes* in Sections 6.4.44 and 6.4.45 of the AR, the Department addresses the DCP controls:

*6.4.44 The GDCP recommends tower floorplates be no greater than 750m<sup>2</sup> to promote slender towers with high amenity. SEPP 65 and the ADG recommends that, as a starting point or rule of thumb, residential building envelopes should be 25% - 30% greater than the achievable floor area to allow flexibility in the building design.*

*6.4.45 Council raised concern the tower floorplates should be no greater than 750m<sup>2</sup> in accordance with the GDCP.*

*6.4.46 Four of the five tower envelopes exceed the GDCP recommended floorplate size. However, the indicative scheme shows that future tower floorplates within the envelope largely comply with the requirement, with four of the five buildings complying with the 750 m<sup>2</sup> requirement (Table 11).*

112. Table 11 of the Department's AR shows that the Applicant's 'Indicative Scheme' identifies that all the floor plates of the towers will be less than 750m<sup>2</sup>, with the exception of Tower 2 (800m<sup>2</sup>). Further, the Department identifies in Table 11 that the floor plate of the concept envelope for all towers, except for Tower 3, also exceeds the 750m<sup>2</sup> control. In Section 6.4.49 of its AR the Department states this is acceptable as follows:

*The Department acknowledges the Tower envelopes exceed the GDCP recommended maximum tower floorplate size. However, this is acceptable as the:*

- *proposal is for concept approval and the exact floorplate size (and associated impacts) will be considered as part of the assessment of future DA(s)*
- *Design Guidelines require the future developments to be appropriately modulated, articulated and include building separation gaps to reduce the visual bulk and scale of the towers*
- *indicative scheme demonstrates that future tower floorplates generally comply with the requirement ...*

### *Towers 1 and 2*

113. Towers 1 and 2 are orientated such that the shortest dimension is north-south, facing onto Kibble Park and allowing views through the Rumbalara Reserve ridgeline. The Commission is of the view that the north-south width of these towers is acceptable.

114. However, the Commission is of the view that while the north-south dimension is relatively slender, the towers are sited at the minimum distance from each other as required by the ADG for building separation. The CEN raised this issue in the Meeting with the Commission particularly with regards to the effect of the development on the views from Kibble Park through to Rumbalara Reserve; noting that there are limited locations in the Park where a view through the buildings occur.

115. The Commission agrees with the comments made by the CEN, but notes that the dimension of towers facing onto Kibble Park is established in the GUDF. The important view corridors identified in the GUDP and the DCP are diagonally across to the Ridgeline, not through the centre of the Site (see **Figure 2**).

116. As identified in paragraphs 66 to 68, exceedance of the base FSR control is assessed on meeting cl 8.4(4) of the GSEPP and on merit. The Commission identifies that Towers 1 and 2 with an east-west length of 48m, exceed the DCP control referred to in paragraph 111 above. There is no justification provided in the assessment on the issue of the length of Towers 1 and 2 with the assessment referring only to the floorplate size and fill.
117. The east-west dimensions of Towers 1 and 2, combined with their height will individually and collectively along with Towers 3, 4 and 5 result in unacceptable overshadowing of the TAFE and Court House, to the south and south-east. These are public spaces, the Courthouse having a tree lined setback and a plaza at the entry on the corner of Henry Parry Drive. The TAFE is a large site, also zoned B4 Mixed Use, that may have future redevelopment potential. It comprises buildings and opens space used by students.
118. In relation to the TAFE, the CEN in its submission to and in the meeting with the Commission identified that the:
- ...major TAFE buildings will be in shadow from 9 a.m until 3 p.m in mid-winter. The overshadowing of the Court building should be less serious because the north-south through site link will allow sunlight though in the middle of the day....the shadow diagrams indicate that there will be shadow on a major part of the building during every hour of daylight. No consideration has been given to the type of activity in the building and the need for natural light.*
119. Further, as also identified by the Commission, the CEN is of the view that:
- The problem is basically caused by the excessive floorplates of Towers 2 and 4; and they may be relatively slender in the north-south dimension, but not in their east-west dimension. The impact could be mitigated by reducing the east-west length of these towers and locating the through site links to reduce the overshadowing of the public buildings south of Donnison Street.*
120. The overshadowing impacts are also evident on Donnison Street itself, which was designated in the GUDF as a tree lined link from Kibble Park to the Reserves (see **Figure 2** above).
121. In order to ensure the more slender east-west orientation of Towers 1 and 2, the Commission has imposed **Modification B3a** which requires that the concept envelope be amended to reduce both towers at the eastern end by 3m, thereby reducing the overall lengths of the envelopes from 48m to 45m. This will assist in future buildings being able to demonstrate design excellence, as discussed in Section 5.2.8.

## Towers 4 and 5

122. Towers 4 and 5 also overshadow the TAFE lands and Donnison Street. Although meeting the maximum length control in the DCP, consideration of the impacts of the tower envelopes is also required to determine whether an envelope is acceptable. Together with Tower 3, all towers present as an east-west wall which has significant overshadowing impacts on the lands to the south and south-east. The overshadowing is expected to also compromise the civic future of Donnison Street. The Commission considers that both Towers 4 and 5 should also present as more slender towers when viewed from the southern elevation. This would assist in maximising solar access to the land to the south, south-east and Donnison Street, and help improve views from the public domain, including the three-dimensional view corridor through to Rumbalara Reserve.
123. Consequently, the Commission imposes **Modification B3b**) that requires Tower 4 to be reduced in length by 3m on the western side. The current stepped profile shall remain. This will identify the corridor along the north-south through site link and provide improved solar access. The future Tower should also chamfer, in the same way as Tower 3. The envelope does not show a chamfer, so this will be an addition to the Design Guidelines (discussed in Section 5.2.8 below).
124. Likewise, Tower 5 is reduced by 3m on the western side in **Modification B3c**). This will not affect the proposed step in the profile on eastern Albany Street North side.
125. The Commission considers that these amendments are required to ensure residual impacts associated with the bulk and scale of Towers 4 and 5 can be addressed and design excellence achieved for future built form. The impacts associated with the proposed envelopes and Design Excellence are discussed in more detail in Section 5.2.8 below.
126. The Commission is satisfied that Tower 3 presents as a slender tower in all dimensions.

## Volumetric fill

127. In Section 6.4.49 of the AR, in addition to the dot points quoted in paragraph 112, the Department also refers to the proposed volumetric fill, with reference to the tower floorplates:

*The Department acknowledges the Tower envelopes exceed the GDCP recommended maximum tower floorplate size. However, this is acceptable as the...*

  - *indicative scheme demonstrates that towers can be designed at 85% building envelope efficiency, so that residential floors provide an appropriate level of façade articulation and a high standard of internal residential amenity.*
128. The Department intended that the size of the building within the envelopes would be limited to 85% volumetric fill. FEAR C4c) in the draft consent specified a “building efficiency target of 85% volumetric fill” of the building envelope to be demonstrated in future development applications. As stated in the Department’s AR (Section 6.4.50), the purpose of the FEAR was “To ensure future buildings do not fill the envelopes in their entirety (at the expense of building articulation or other amenity impacts)...”
129. The concepts of ‘building efficiency’ and volumetric fill need to be clarified. The Commission’s understanding is that:
  - ‘building efficiency’ is the proportion of GFA within an envelope to the total envelope size. This is referred to in the ADG in Part 2D with reference to the amount of GFA that may fill an envelope. Not all parts of a building count as GFA
  - ‘volumetric fill’ is the proportion of built form to the total envelope size. This is the amount that the building overall fills the envelope.

130. The Commission is of the view that although the volumetric fill of the total envelope in the Reference Design average is 89%, according to the information provided to the Commission by the Applicant, the fill in Towers 3, 4 and 5 is greater. This is shown in **Table 2** below. Therefore, the concept envelope for these towers will be very close to the limits of the built form as shown in the Reference Design. The Commission is also of the view that the Department's proposed FEAR is likely to be broadly interpreted, noting the rider to the clause that the provision shall be met "unless the increase maximises the articulation and does not have an adverse architectural design, visual, amenity or heritage impact".

Tower	Gross Concept Envelope (m <sup>2</sup> )	Volumetric Fill (m <sup>2</sup> )	Volumetric Fill (%)	Volumetric Fill Typical Floor %
1	20,869	17,935	86%	88% - 91%
2	20,846	15,853	76%	81%
3	14,568	12,856	88%	93%
4	25,071	22,734	91%	95%
5	22,276	20,665	93%	96%

*Table 2: Proposed envelope fill of Reference Design and revised concept envelopes (Rev G)  
Source: From yield tables in Architectural Design Report Revision G dated 8 September 2020, provided to the Commission by the Applicant on 10 September 2020*

131. Given that the envelopes and hence the future buildings will be reduced by the amendments imposed by the Commission to the tower envelopes, the Commission has not imposed a FEAR specifying a volumetric fill target.

### 5.2.3 Height of podiums and towers

132. The Department's assessment in Section 6.4.13 of the AR states that:

*6.4.13 The GDCP identifies the site as 'Key Site 4' and confirms the height of future development should be determined through a master planning process and that tall towers should be slender and have limited impacts on key views and Kibble Park.*

*6.4.15 Concerns were raised in the public submission that the proposal exceeds the Gosford SEPP height of building development standards for the site. Council objected to the proposal stating the tower heights are overly dominant.*

*6.4.16 The Applicant contends the proposed height is acceptable as the clause 8.4(4) criteria have been met. In addition, the height of the proposed towers has been arrived at following consideration of the DAP's advice and recommendations and is appropriate for the site.*

133. The Department notes in Section 6.4.17, that the proposed heights of the towers have been lowered, and Figures 15 and 16 in the AR show these changes.

*In response to concerns about the proposed height and built form raised by the Department, the Applicant amended the tower envelope heights (as summarised at paragraph 5.4.2) to:*

- *reduce the maximum heights of Towers 1, 3 and 5 by between 3.4 m and 9 m (Figure 15)*
- *step tower height of Towers 1, 2 and 4 (eastern ends) and Tower 5 (western end) (Figure 16)*

134. The Department also states that “The DAP confirmed it supports the revised proposal, noting it exhibits design excellence and it did not raise any concerns with the proposed maximum envelope height.”
135. The Department in Section 6.4.19 summaries that the proposed envelope heights “While at the upper limits of what could be supported”, the site is “capable of accommodating” the height as:
- *the proposal satisfies the criteria for additional height and floor space under Clause 8.4(4) of the Gosford SEPP, as assessed in Appendix D (Table 21)*
  - *it has been developed in consultation with the DAP and the DAP supports the development concluding the proposal exhibits design excellence*
  - *the proposal promotes the GDCP and GUDF principles for slender east / west tower forms, which help preserve solar access to Kibble Park and protect view corridors from Kibble Park to Rumbalara Reserve*
  - *the emerging character of Gosford, as established by planning policy and recent planning approvals, includes the provision of tall buildings either side of Mann Street (Section 1.5)*
  - *the tower envelopes step down in height to the eastern (Henry Parry Drive) and western (Albany Street North) boundaries, which provides a dome-shaped graduation of built form across the site and an appropriate built form transition between Kibble Park and Rumbalara Reserve (Figure 18)*
  - *the maximum height is lower than recent approvals at 50-70 Mann Street (290 m north-east of the site) and consistent with approvals at 108-118 Mann Street (220 m east of the site). In this regard:*
    - *the height of Towers 4 and 5 (the tallest towers at RL 101 m) are:*
      - *16 m shorter than the tallest 50-70 Mann Street tower (RL 117 m)*
      - *1.3 m taller than the tallest 108-118 Mann Street tower (RL 99.7 m)*
    - *the height of Tower 2 (the shortest proposed tower, RL 73 m) is:*
      - *15.6 m shorter than the smallest 50-70 Mann Street tower (RL 88.6 m)*
      - *20.6 m shorter than the smallest 108-118 Mann Street tower (RL 93.6 m)*
  - *the proposed tower heights contribute to an emerging cluster of towers within Gosford City Centre and establish visual markers that positively enhance the built environment*
  - *the development provides a western ‘bookend’ to Kibble Park and balances the height and scale of development provided east of Kibble Park by 108-118 Mann Street*
  - *the proposed articulation of the envelopes will help the future towers appear slender and create an interesting and varied skyline*
  - *a reduction in envelope height may make the future towers appear less slender with less height variance, therefore potentially compromising design excellence*

- *the proposal does not have adverse view or overshadowing impacts (as discussed below).*

136. With regards to the reasons for supporting the heights, with reference to the dot points in the paragraph above, the Commission:

- agrees that the criteria in cl 8.4(4) of the GSEPP that allows a variation or height (and FSR) over the base control have been met – as outlined in paragraph 67 above. However, cl 8.4(4) is only an enabling clause. The Commission does not support the proposed heights of all of the towers based on the visual and overshadowing impacts, as discussed above and in paragraphs 144 to 146 below.
- as the consent authority, having had the benefit of the Department's assessment and considering the Material, does not consider that the proposal is capable of exhibiting design excellence without amendment, as discussed in Section 5.2.8 below (dot point 2)
- notes the emerging character of Gosford (see Section 5.2.1 above), however considers the actual heights must be determined on merit, not only with reference to the fact that there are other approvals for tall buildings nearby (dot points 4, 6, 7 and 8)
- does not agree that the “proposal does not have adverse view or overshadowing impacts” (dot point 11), as discussed in Section 5.2.6 below.

137. The issues identified in dot points 5, 9 and 10 in paragraph 135 regarding the stepping of the envelopes, articulation, and implications of reducing the towers are discussed below.

#### *Height as it relates to slender tower forms*

138. As stated in paragraph 135 above, and discussed in Sections 5.2.2 and 5.2.3 above, the Department is of the view that:

- *the proposal promotes the GDCP and GUDF principles for slender east / west tower forms, which help preserve solar access to Kibble Park and protect view corridors from Kibble Park to Rumbalara Reserve*

139. It is agreed that the overshadowing to Kibble Park is within the control established in the DCP and the narrowest width of the towers assist with maintaining a view to Kibble Park (discussed further in Section 5.2.6 below) - depending where it is viewed from. However, the location of the towers is not as shown in the GUDF noting that it does not show a tower between Towers 5 and 2 (see **Figures 2 and 3**). Furthermore, there is no DCP control that specifies that the towers should be slender only in the east-west direction.

#### *Stepping of tower heights*

140. The GUDF diagrams shown in Figures 2 and 3 above show that the tower heights should step up towards Rumbalara Reserve. The Department states in paragraph 135 that:

*The tower envelopes step down in height to the eastern (Henry Parry Drive) and western (Albany Street North) boundaries, which provides a dome-shaped graduation of built form across the site and an appropriate built form transition between Kibble Park and Rumbalara Reserve (Figure 18)*

141. As proposed, and as shown in Figure 18 of the Department's AR, Towers 4 and 5 are both at the same height. The 'dome' does not provide for a graduation of heights. It is not consistent with the stepped effect shown in **Figures 2 and 3** above in the GUDP. This clearly shows two southern towers stepping up from Kibble Park and likewise, the two northern towers. No tower is shown between what is now Towers 2 and 5. The Commission concludes that Tower 4 should be stepped consistent with the height controls shown on the HOB Map in cl 4.3 of the GSEPP (see paragraphs 56 and 57 above). This is also consistent with the DCP provisions requiring a variation in tower heights, as follows:

#### *Variation in heights of towers*

142. DCP clause 5.2.5 *Slender towers with high amenity* in the GDCP, specifically Control 6 states:

*Tower heights should be varied. Where two towers are provided on one site, their height above ground level should have a minimum of 15% variation between each tower (e.g. with three towers, the tallest should be minimum 30% taller than the shortest).*

143. The assessment of the DCP in Table 22 p86 in Appendix D of the Department's AR states "The maximum height of the tower building envelopes are varied. However, the variance between the towers is less than 15% between each tower."
144. The Commission is of the view that the height of Tower 4 has not been adequately justified and that greater consistency with the stepped building form across the site as promoted by the GUDF would result in a more beneficial urban design outcome for the Site and Gosford CBD. The graduation of the height of buildings from east to west, from Henry Parry Drive to Albany Street North (and to Rumbalara Reserve beyond) is also consistent with the principle established in the graduated height limits shown on the HOB Map in cl 4.3 of the GSEPP (see paragraph 56 above, and **Figure 11**).
145. Taking the height of Tower 5 (RL101m) as the reference point, Tower 4 should be lower than Tower 5 by 15%; and Tower 1 should be lower than Tower 3 by at least 15%. To achieve this Tower 4 should be reduced to RL76.2m and RL85.5m; and Tower 1 reduced to RL60.7m and 73m, to match Tower 2. Towers 1 and 2 will therefore present as a matching pair when viewed from Kibble Park.
146. Reducing the maximum height of Tower 4 will further reduce overshadowing on the public domain (Donnison Street) and the adjoining B4 zoned land (TAFE). As shown in **Figures 2 and 3** above, the GUDP envisaged no built form on this part of the Site. Furthermore, lowering Tower 1 will also improve overshadowing to Kibble Park, reduce the visual impact of the towers when viewed from the Park and mitigate the effects of overshadowing to the north south internal shared through site zone - and to a lesser extent, the TAFE and Donnison Street.
147. The Council in its submission is supportive of lowering the towers and ensuring the 15% variation was provided. In the meeting with the Commission, the Council indicated that Tower 4 should be reduced by at least two storeys, and that this would also allow units in Tower 5 to obtain views to the water (Transcript, p8).
148. The Commission is satisfied that the height of Tower 2 which would be approximately 15% lower (RL 73m) than Tower 4 as amended is appropriate.

### *Tower articulation*

149. The other dot points (9 and 10) in paragraph 135 refer to the support of the Department to the proposed heights as:
- *the proposed articulation of the envelopes will help the future towers appear slender and create an interesting and varied skyline*
  - *a reduction in envelope height may make the future towers appear less slender with less height variance, therefore potentially compromising design excellence*
150. The Commission considers there is minimal articulation provided in the concept envelopes. The envelopes in elevation show only a slot (not dimensioned, but possibly 1m wide) in Towers 1, 2, 4 and 5. Without a reduction in the mass of these towers as proposed by the Commission, it is difficult to ascertain how slots of minimal width will attenuate the tower bulk and make them appear 'more slender'.
151. The Commission notes that Controls 5a and 5b in cl 5.2.5 of the DCP require that buildings greater than 30m in length be expressed as two vertical forms, with a vertical break of not less than 1m (see Section 6.4.42 of the Department's AR). However, this is a minimum requirement and is coupled with the other provisions in Control 5c that require a "stepped height difference of minimum two storeys" be provided.
152. The Department also refers to proposed amendments to the Applicant's Design Guidelines in Section 6.2.42 of the AR to ensure that future buildings are carefully designed to provide appropriate modulation, façade articulation and use of materials. The Guidelines are discussed further in section 5.2.8 below.
153. The reduction in the tower heights imposed by the Commission, together with the amendments to reduce the bulk, will ensure that the Towers are more slender and that design excellence is able to be achieved in the future developments.

### *Podium heights*

154. Table 10 and Figure 19 in Section 6.4 of the Department's AR shows the proposed podium heights with reference to the controls in the DCP. This identifies that the height of the podiums to:
- Henry Parry Drive (Buildings 1 and 2) is 4.5m higher than DCP control
  - Donnison Street is lower (1.7m) for Building 4, and higher for Building 5 (by 3m)
  - William Street is compliant (14m) for Building 1, but under (1.7m for Building 3)
  - Albany Street North is lower by 2.4m for Building 5.
155. The Commission agrees that the higher podium on **Henry Parry Drive** is acceptable for reasons stated in Section 6.4.29 of the AR. It is also appropriate to concentrate the commercial and rail floor space in this location. The heights on **William Street** are also acceptable.
156. The AR notes in Section 6.4.30, that the podium height on **Albany Street North** was increased in the RtS from RL 21m to RL 31m. The AR states that:

*The Department supports this amendment, as the revised podium height is an appropriate scale fronting Albany Street North. However, the amendment in the RtS also increased the Tower 5 podium height fronting **Donnison Street** to approximately 17 m (where the Tower 4 and Tower 5 podia meet).*

157. In response, the Department has recommended amendments to the Design Guidelines to “require future developments to consider the height and scale of the Tower 5 podium to ensure it is acceptable within the Donnison Street streetscape”. The Commission is of the view that the proposed Design Guidelines need to be strengthened, as outlined in Section 5.2.8 below.
158. The Commission does not support the height of the Building 5 podium on Albany Street North as it wraps around to Donnison Street. Consequently, the Commission has imposed a condition that requires the podium height be lowered from RL31m to RL28m. This will, as the Department identified, improve what would have been an adverse visual impact on the Donnison Street streetscape, and also provide a better relationship to the existing and future redevelopment along the eastern side of Albany Street North opposite the Site. Overshadowing of Donnison Street will also be improved. This amendment is in **Condition B3g**).

#### 5.2.4 Density

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

*The proposal seeks approval for 72,782m<sup>2</sup> of residential and commercial floorspace (a FSR of 5.13:1). This exceeds the base FSR in the Gosford SEPP by approximately 29,000m<sup>2</sup>, which is allowed under Clause 8.4(4) when the proposal meets certain criteria.*

160. The Applicant’s justification for the density is that the proposal meets the cl 8.4(4) criteria, the GFA is appropriate for the site, and would not result in additional adverse environmental impacts (Section 6.3.2 of the AR).
161. The concerns of the Council and the CEN in relation to this aspect of the development are summarised in Sections 6.3.2 and 6.3.3 of the Department’s AR, the Commission notes concerns over the density as represented by the proposed envelopes was raised with the Commission at the meeting with these stakeholders.

#### *Merits of proposed density*

162. The Commission notes that an increase in height could support a variation to increase the FSR, and agrees with the Department in Section 6.3.4 that “an acceptable density is informed by the appropriateness of the built form and having regard to potential impacts of the floorspace, such as traffic generation, amenity impacts and demand on existing/future infrastructure”. The Commission however does not agree that the proposed density is acceptable given the overshadowing and view impacts to and from the public domain. In particular the Commission does not agree with a number of the reasons justifying the proposed FSR in Section 6.3.6 of the Department’s AR.
163. The Department considers the Site can accommodate the proposed floor space as:
  - *the proposal satisfies the criteria for additional floor space under Clause 8.4(4) of the Gosford SEPP, as assessed in Appendix D (Table 21)*

- *the proposal achieves design excellence and has been reviewed, and is supported, by the independent DAP (Section 5.5)*
  - *the building height and scale is appropriate within its context and compatible with the emerging character of the Gosford City Centre (Section 6.4)*
  - *the building envelopes have acceptable amenity impacts in relation to view impacts and overshadowing (Sections 6.4 and 6.7)*
  - *future developments will be designed in accordance with ESD principles and meet appropriate sustainability targets, including exploring stretch-targets (Sections 4.6 and 6.7)*
  - *traffic impacts can be managed and mitigated and future DA(s) will undertake detailed assessments to determine the appropriate on-site car parking provision (Section 6.5)*
  - *future DA(s) will include publicly accessible through site links, which represent a public benefit and the Department recommends future DA(s) consider additional appropriate public benefits (Section 6.6).*
164. As identified in paragraph 67, the Commission agrees that an FSR above the base controls in cl 4.4 of the GSEPP can be considered as the criteria in cl 8.4(4) of GSEPP have been met (dot point 1 in the above paragraph).
165. With regards to dot point 2 in paragraph 162 above, whilst the Commission accepts that the proposal has been the subject of ongoing consultation with the DAP, the Commission does not share the view that all of the provisions of cl 8.3 of GSEPP have been adequately met, and considers that without modification to the development envelope, design excellence will not be able to be achieved in future development applications (see Section 5.2.8 below).
166. The building heights may be justifiable having regard to the wider context in so far as there are other buildings of similar height approved in Gosford (as noted in Section 5.2.1 above) (dot point 3). However, the Commission does not support the proposed bulk and scale of the towers other than Tower 3, specifically in terms of overshadowing and the impact on the amenity of the adjoining public domain and B4 zoned lands to the south (dot point 4). The Commission does conclude however, that with amendments to the envelopes and the adoption of strengthened Design Guidelines, design excellence can be achieved all for future built forms on this Key Site.
167. The Commission accepts the fundamental desire to reinvigorate the Gosford CBD.
168. However, the Commission does not agree that the 66% uplift in GFA sought above the base FSR control in the GSEPP (see **Table 1** above) has been adequately justified given the residual impacts, and the inconsistency of these impacts with the objectives of the GUDF. Furthermore, the proposal is not supported by the delivery of broader civic outcomes (see discussion in Section 5.2.12). Issues relating to ESD, Traffic and Parking and quantum of commercial floor space are discussed in Sections 5.2.9, 5.2.11 and 5.2.10 below.

### 5.2.5 Impacts of building envelopes

169. Section 6.4.1 *Building envelopes* of the Department's AR identifies that the key issues for consideration are height of the tower and podiums, (discussed in Section 5.2.4 above), bulk and scale and visual impact, and overshadowing of through site links (Section 6.4.12 of the AR).
170. As already identified, the Commission is not satisfied that the bulk of the building envelopes of Towers 1, 2, 4, and 5 are acceptable.

## *Views from the public domain*

171. Clause 8.11 of the GSEPP states that:

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

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

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

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

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

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

*d) any relevant requirements of applicable development control plans*

172. The important view corridors for this part of the City Centre, as identified by the Department in Section 3.34, are "views of the ridgeline of Rumbalara Reserve from the centre of Kibble Park". Figure 20 in the AR which reflects Figure 4 of the DCP, also identifies that a key view is from Brian McGowan Bridge, on the waterfront.
173. The Commission viewed the Site from various points, including the middle of Kibble Park, and reviewed the Applicant's Visual Impact Analysis (**VIA**).
174. The Department concludes that the views from Kibble Park to Rumbalara Reserve along the two view corridors to the left of Tower 1 and the right of Tower 2 are acceptable as outlined in the dot points in Section 6.4.39 of the AR. This according to the Department, is as result of the setbacks of Towers 1 and 2 from Williams Street, Henry Parry Drive and Donnison Street.
175. The Department notes that the Council objected to the bulk and scale of the development based on the "adverse view impacts towards Rumbalara Reserve from Kibble Park". The CEN and Council raised this in their meetings with the Commission.
176. The Commission considers that the views to the Reserve provide character and context to the Site. Whilst the Department contends that the towers are slender, and view corridors are created through the towers, this view corridor is very narrow. The towers are close together, creating the effect of a wall of buildings when viewed from any angle other than from a central position in Kibble Park. This is evident in the VIA. The Commission considers that the amendments reducing the heights and widths of the towers will improve the views to the development and improve the extent of visibility of the backdrop of Rumbalara Reserve from Henry Parry Drive (both south and north), from Kibble Park, and from the waterfront and Brian McGowan Bridge.
177. The Commission's conditions imposed to reduce the tower lengths, bulk and height will serve to improve view impacts compared to the proposed scheme. As noted above it will also reduce the imposing presence of Towers 1 and 2 for users of Kibble Park.

## Overshadowing impacts to open space

### Kibble Park

178. As stated in Sections 6.4.66 of the Department's AR:

*6.4.66 Clause 8.10 of the Gosford SEPP and Section 4.3 of the GDCP states that developments should ensure at least 60% of Kibble Park receives four hours of sunlight between 9 am and 3 pm on the winter solstice. The GDCP also recommends solar access should be contiguous and impacts should be considered cumulatively.*

179. The Department states that the Applicant's analysis shows that the proposal meets the above control and that the proposal will overshadow a corner of Kibble Park for approximately one hour (from 9 am to 10am).

180. The Department states that the Council originally objected to the overshadowing, but that the "Council confirmed the revised building envelopes in the RtS improve solar access to the park and the proposal only affects a small area of the park. CC Health noted the proposal should not overshadow Kibble Park" (Section 6.4.48).

181. The Commission concurs with the Department's assessment and with the Department's conclusion in Section 6.4.69 of the AR that the proposal complies with the control in cl 8.10 of the GSEPP. Reducing the height of Tower 1 will increase solar access to Kibble Park.

### TAFE and Courthouse

182. The AR in Section 6.4.70 and 6.4.71 refers to the *Neighbouring sites to the south*:

*6.4.70 The Department notes the proposal would overshadow the Gosford Local Court and Gosford TAFE to the south of the site (Figure 24). However, this impact is considered acceptable is the:*

- *Gosford Local Court is not a use that requires specific protection of amenity, although the overshadowing impact is significantly reduced after midday*
- *Gosford TAFE is a large 'L' shaped site and the proposal would only affect the Donnison Street frontage of that property*
- *Taller, slender towers provide faster moving shadows, than other development options on site, improving solar access opportunities for neighbouring sites.*

*6.4.71 The Department concludes the overshadowing impact on the through site link, adjoining public open spaces and buildings to the south is acceptable. Notwithstanding, the Department recommends FEAR(s) requiring future DA(s) include overshadowing analysis to demonstrate that the overshadowing impact to these spaces has been minimised.*

183. As seen in Figure 24 of the AR, the northern TAFE buildings will be overshadowed all day in mid-winter. Reducing the heights and bulk of Towers 1, 2, 4, and 5 will improve both the cumulative extent and length of solar impacts resulting from the development. It will also enable greater solar access to Donnison Street.

### Amenity of through-site links

184. As discussed in Section 6.4.62 of the Department’s AR, the concept proposal provides two through site links – a 18m wide link north-south and a 14m wide link east-west.
185. In mid-winter, these links will be “largely overshadowed and the north-south through site link will receive approximately 1.5 hours of direct sunlight” (Section 6.4.63 of the Department’s AR). The Commission agrees that given the orientation of the links, the building separation distances and the heights of the proposed buildings, this overshadowing is ‘inevitable’.
186. The Department notes that the provision of the through site links is required by the DCP. The Site (Key Site 4) is the subject of a provision that requires that “North-south through site links should be provided to improve pedestrian connectivity and to break up the length of the street block”. The diagram in Figure 4 of the DCP shows the Site having a north-south link in the middle of the block, further east from where it is currently proposed.
187. Donnison Street is identified in the GUDF as being a tree lined link from east to Kibble Park. However, it too will be overshadowed in mid-winter, and as discussed in Section 5.2.10 below, is difficult to activate. The Commission considers that the master planning process should have addressed the potential extension of the east-west link through to Albany Street North as an appropriate civic outcome. This would also have provided additional activation within the Site and opened up views to the east and Rumbalara Reserve.
188. Any potential extension of the east-west link could be shared with the adjoining development site to the north, at 37 - 43 William Street. This Site is just over 4,000m<sup>2</sup> in area, and if consolidated would have access to potential height uplift under cl 8.4(3) of the GSEPP. It is unclear as to why the whole block was not identified as a Key Site in the DCP, to enable the integration of development on both sites. Consideration of the future link is recommended in **FEAR C5** of the Concept Approval. The proposed link is shown hatched red in **Figure 13**:

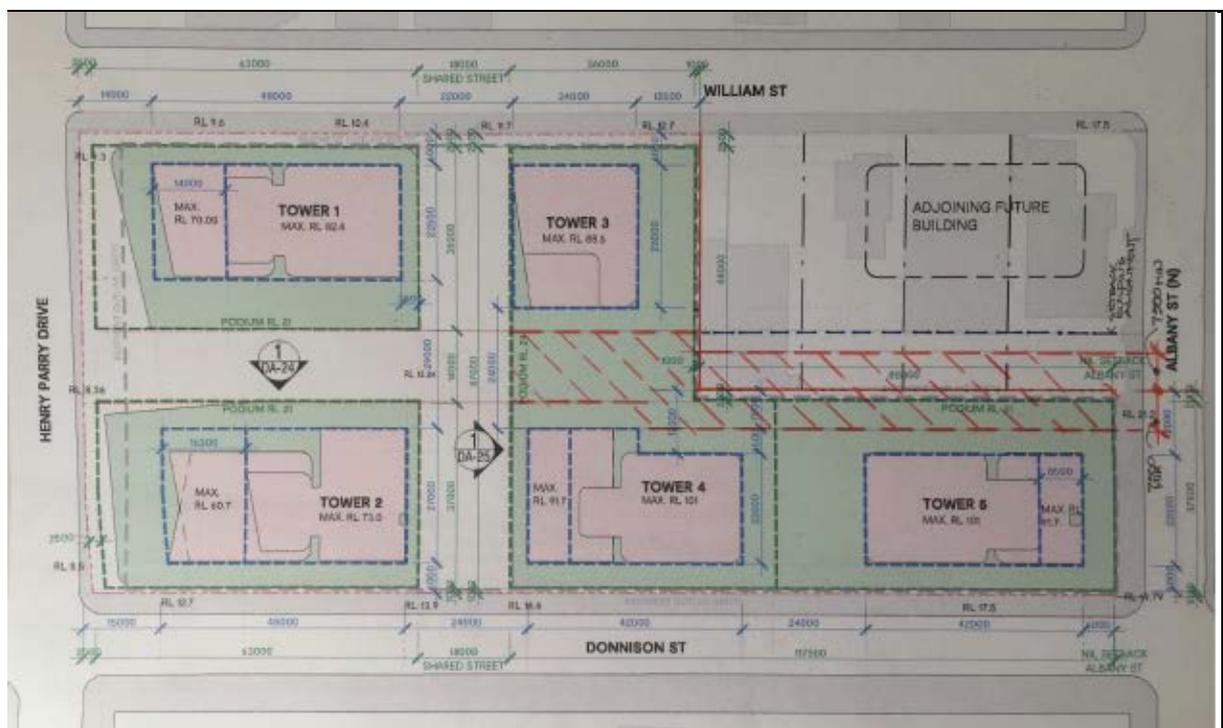


Figure 13: Possible future extension of the east-west through the Site to Albany Street North, hatched in red

### Accessibility of the links

189. The east-west link has a gradient change at Henry Park Drive and in this respect the Landscape Concept Plan shows steps and ramps to move to the street level.
190. The Commission has imposed a FEAR requiring that landscape plan/s for the future development must show that publicly accessible areas will have all abilities access (in accordance with the *Disability Discrimination Act 1992*). This is consistent with the need to have considered cl 8.3(4) “(ix) pedestrian, cycle, vehicular and service access, circulation and requirements, in *order to exhibit design excellence*”, and DCP provisions cl 4.1 *Pedestrian Network*, cl 7.2 *Pedestrian Access and Mobility* and cl 7.2 Control 5: “All development must provide continuous access paths of travel from all public roads and spaces as well as *unimpeded internal access*”

### 5.2.6 Design excellence

191. Design excellence is discussed in Section 6.1 of the Department’s AR. The Department refers to cl 8.3 of the GSEPP in Section 6.2.1, and states that the provisions of the GSEPP have been “considered in this section and in Appendix D”.
192. As indicated in the AR, concern was raised by the Council and the CEN that design excellence had not been achieved. To ensure future built form exhibits excellence, the Department required the Applicant to prepare a Design Excellence Strategy (**DES**).

### Design Excellence Strategy

193. The DES in Appendix 9 of the RtS (April 2020) states that the Strategy for the final design includes:
  - *ensuring only recognised high quality architectural firms are selected*
  - *preparing designs in accordance with, and assessing designs against, endorsed Design Guidelines*
  - *incorporating ESD commitments made at the concept application phase into subsequent tower designs*
  - *having the scheme reviewed by another architectural firm*
  - *engaging with the Design Advisory Panel (DAP).*

### Design competitions

194. The above Strategy does not include an intention to hold a design competition/s for the future stage buildings. For the Concept Proposal, the Department’s AR states in Section 6.2.3 that “Under clause 8.4(c) of the Gosford SEPP, the proposal is not required to undertake a design excellence architectural competition (Section 6.4 / Table 21) and one is not proposed”.
195. The Commission interpreted that this decision only applies to the subject Concept Proposal, and that it was open to the DAP to require design competitions in the future, as cl 8.4(4) needs to be considered afresh in each future stage DA. This was discussed by the Commission at the meeting with the Applicant, and from this it appeared that the Applicant was of the understanding that the DAP had decided that no design competitions would be required in the future. The Department undertook to clarify this with the DAP.

196. On 21 September 2020, the DAP provided advice to the Department’s assessment team, which advised the Commission that:

*On 17 April 2020, the City of Gosford Design Advisory Panel (the Panel) formed the opinion that for a concept masterplan process, the proposal exhibits design excellence under the State Environmental Planning Policy (Gosford City Centre) 2018 (the SEPP).*

*It is at the Panel’s discretion when it requires an architectural design competition, and in this instance of a concept masterplan it decided that it was not required. An architectural design competition may be beneficial as the development progresses and more detailed design is undertaken.*

*Any subsequent development application will also be subject to clause 8.4(4) of the SEPP and will require the Panel to decide whether an architectural design competition is required.*

197. In section 6.2.6 of the AR, the Department explains the process of consultation undertaken with the DAP. The Department indicates that provided the DAP continues to be involved, “the Department considers future developments are capable of being designed to achieve design excellence and maintain design integrity”. The Department also proposed amendments to the DES in draft Modification B1. This refers to additional criteria for selecting future architects, and collaboration with various architects “to foster appropriate architectural diversity throughout the precinct”.
198. The Commission is of the view that diversity in the future buildings should be provided by the design competition mechanism in cl 8.4(4)(c) and (d) of the GSEPP, i.e. that design competitions should be held for all future stages of the development. This is particularly relevant given the scale and prominence of the development in the Civic Heart of Gosford.
199. Unlike the drafting of other EPIs that allow the consent authority to determine the need for a design competition to demonstrate design excellence or as a pre-requisite of achieving additional FSR and height, there is no such provision in the GSEPP (or in the DCP). The GSEPP provides that the decision to hold a competition remains at the discretion of the DAP. This is also set out in the *City of Gosford Design Advisory Panel Guide for Proponents and Stakeholders*. The Commission notes that the decision to hold a design competition must be made by the DAP and not the consent authority. **FEAR C1** imposed by the Commission requires the Applicant, prior to the lodgment of future development application(s), to conduct a design competition unless the DAP agrees it is not required.

### *Design Guidelines*

200. The Applicant prepared Design Guidelines, as amended with the RtS, dated March 2020. The Design Guidelines are discussed in Sections 6.2.14 to 6.2.18 of the Department’s AR. The Commission agrees with the Departments assessment in Section 6.2.17 of the AR that:

*The Department notes, although the Design Guidelines are high-level in nature, they generally provide an appropriate starting point for the design of future buildings and spaces. However, as discussed in **Section 6** and **Appendix G**, the Department recommends several amendments to strengthen the guidelines, including in relation to:*

- *ESD and general sustainability principles*
- *appropriate modulation, façade articulation and use of materials*

- *visual and physical connection between podia and the surrounding streets*
- *a high standard of design, layout, permeability, usability and amenity of the through site links*
- *screening of above ground car parking be designed, screened, treated to ensure it is not visible from the surrounding streets, public open spaces and the through site links.*

201. Amendments to the Design Guidelines based on the advice of the DAP and the Department's assessment are provided in Attachment A of the Concept Approval. The Commission proposes that prior to seeking the Planning Secretary's endorsement of the amended Guideline, the Design Guidelines should also be strengthened to require that the architectural design/resolution of the towers and podiums must be appropriately articulated, proportioned and composed according to following principles:

- solar access is to be maximised to all public and private areas within and without the development site from March 22 to September 23 annually
- views to Rumbalara Reserve from Kibble Park through the site are to be maximised
- the scale and relationships of the podiums and towers should not create 'blind' street walls
- the elements designed to address or mitigate adverse environmental impacts technological systems and visual separation are substantially integrated into the design of the fabric of the building structure(s)
- Tower 3 is to be chamfered on the western side as shown on drawing DA-02, and Tower 4 is also to be chamfered in the same manner on the western side.

202. The Design Guidelines will also need to be updated to address the Conditions/FEARs of this approval including providing:

- a stepped graduation of heights to Rumbalara Reserve
- extension of the east-west link to Albany Street North.

### *GSEPP cl 8.3 Design excellence*

203. The issue of whether the development exhibits design excellence was raised in the submissions from CEN and the Council. In the meeting with the Commission, the Council stated that "...merely complying with minimum controls, the minimum setbacks, does not ...exhibit design excellence" (Transcript p 5).

204. In consideration of the Department's AR, submissions and after visiting the Site, the Commission concludes that future applications will not be able to exhibit design excellence. However, acknowledging that this is a concept only, the Commission is of the view that design excellence can be achieved in future built form subject to the amendments to the Concept Proposal as summarised in Section 5.1 above and discussed throughout Section 5 of this Report. The amendments to the envelopes will address clause 8.3(4) including subclauses (b), (c), (e) (ii), (iv),(v), (vi), (v(ii) and (x)(v), (vii) and (x) of the GSEPP anticipating that a modified Concept Proposal and future development on the Site would be capable of exhibiting design excellence.

### 5.2.7 ESD

205. As identified in paragraph 66 above, cl 8.4(4)(f) of the GSEPP requires the consent authority to be satisfied that the building “meets or exceeds” minimum building sustainability and environmental performance standards in order to grant consent above the base height and FSR in the GSEPP.
206. An ESD Report was submitted by the Applicant with the EIS and a Supplementary ESD Report with the RtS. The Department’s AR in this regard under Section 6.7 *Other Issues relating to the Concept Proposal* addressed ESD in Table 15 which states:
- *Concern was raised in public submissions that insufficient information has been provided on sustainability and environmental performance standards. Council recommends the proposal comply with, and be encouraged to go beyond, minimum standards.*
  - *The proposed ESD initiatives are set out Section 4.6.*
  - *The Department agrees with Council that future DA(s) should strive to improve on minimum standards, particularly as the Applicant intends to deliver a development that achieves design excellence. The Department also notes the GDGP recommends as a minimum, developments commit to achieve at least a 4-star rating under the Australian Building Greenhouse Rating Scheme and that buildings comply with or where possible exceed the BASIX requirement by 10% for residential development.*
207. In Table 21 in Appendix D (the assessment against cl 8.4(4) of the GSEPP), the AR states that the “The future buildings are capable of being designed to achieve ESD”. The Department proposed draft FEARs C17 and C18 to ensure this requirement is addressed in the future stages of the development. As it is a prerequisite to the granting of consent for higher density and FSR above the base controls, the Commission has imposed **FEAR C18** to require that future development applications must:
- definitively ‘meet or exceed’ the targets (instead of future development needing to ‘explore opportunities’ to exceed the targets as worded in draft FEAR 17), and
  - address the *National Construction Code of Australia 2019*, which the Commission understands has 5.5 NABERS (or equivalent) rating requirements for energy and water efficiency.

### 5.2.8 Quantum of commercial floorspace

208. A further requirement of the GSEPP cl 8.4(4) is consideration of commercial floor space in the development. The *Quantum of commercial floorspace* is assessed by the Department under *Other Issues* in Table 15 on pp 59-59 of the AR. This indicates that there were concerns raised in submissions that the amount of commercial floorspace provided was not sufficient. Initially 3,692m<sup>2</sup> was proposed and this was increased to 5,422m<sup>2</sup> in the RtS. This space is located on the ground floor facing streets and the through site links. The AR states that:

*The Department is satisfied the indicative scheme demonstrates the proposed retail / commercial floorspace is appropriately located to activate existing and proposed streets and through site links and appropriately screen above-ground car parking levels.*

209. The amount of commercial floorspace proposed is 7.45% of the total GFA. The Commission notes that the Site is zoned B4 Mixed Use under the GSEPP, and an objective of the zone is:

*To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities, social, education and health services and higher density residential development.*

#### *Activation on Donnison Street and Albany Street*

210. Notwithstanding that the amount of commercial GFA has increased through the assessment, the Commission is of the view that the eastern end of Donnison Street requires greater activation, and that the proposed townhouses in the podium of Building 5 would not deliver this outcome. The townhouses will also face south and have poor solar access. The SOHO units in the Tower 4 podium offer greater opportunity for activation, and in the Concept Envelopes to be approved, the ground floor areas are at least designated 'commercial' (although the SOHO units have contributed to the residential GFA sought, not the commercial floorspace).
211. In the meeting with the Commission the Council raised that there needs to be activation on Donnison Street noting the current shopping centre provides a poor visual and amenity outcome. Council stated that "...the whole purpose of the DCP is to try and get some activation up that street" (p 12 Transcript).
212. The Commission agrees that greater activation of Donnison Street needs to be achieved and has imposed a condition to amend the Concept Proposal (**Modification B3f**), which requires the deletion of the ground floor of the townhouses in the podium of Building 5 to be replaced at this level with commercial/retail (or other non-residential uses). The quantum of approved commercial GFA is imposed as a minimum.
213. The podium on Albany Street North (wrapping around to Donnison Street) has been amended, as discussed in paragraph 158 above. The activation needs to continue to Albany Street North, hence the townhouses on Albany Street are to be converted to SOHO units or other not wholly residential use, as per **Modification B3h** in the Concept Approval. With these amendments the Commission is satisfied that the amount of floor space to be provided for commercial premises, would be sufficient to ensure activation can be supported and achieved consistent with cl 8.4(4)(3)(d) of the GSEPP.

#### **5.2.9 Car parking and traffic**

##### *Car parking*

214. Section 6.5 in the Department's AR addresses the Key Issue of *Car parking, traffic and road infrastructure*. There are car parking rates for residential apartments derived from the ADG that references the RMS Guide to Traffic Generating Development and cl 8.5 of the GSEPP sets a minimum rate for car parking for retail and commercial activities uses. In Section 6.4.2 the Department states that "Based on the indicative scheme, the proposal suggests a car parking rate approximately midway between the Gosford SEPP / GDGP and RMS Guide rates (Table 14)". Table 14 in the AR shows the comparison between the rates required by the RMS, the GSEPP and also those in the DCP.
215. The Department explains that originally the Council objected to the parking rates proposed, then in its response to the RtS did not reiterate its objection while TfNSW recommended a Green Travel Plan (**GTP**) "in order to manage car parking demand and develop travel strategies for the site"; CC health supports the GTP (Sections 6.5.5 and 6.5.6)).

216. In Section 5.5.10 of the AR, the Department notes that the Applicant proposes ‘bespoke’ rates for the residential component, but this is “without supporting justification (e.g., no needs based assessment, parking surveys, analysis of car ownership, comparative analysis with other similar schemes or GTP initiative)”.
217. For the residential component, the car parking required in the DCP is greater than that under the RMS Guidelines. The Commission agrees with the Department’s position that a positive strategic aim is to minimise car parking in the City Centre. A FEAR is proposed by the Department that a more detailed parking assessment is required with future development applications ‘to ensure the correct balance is struck between car parking demand and minimising traffic impacts’. The Commission imposes this FEAR.
218. The Commission also imposes **FEAR 20** which requires a Traffic Impact Assessment and a Car Parking Assessment Report (**CPAR**) to be submitted with future applications. In **FEAR 20** the Commission has required that car parking comply with the parking rates in cl 8.5 of the GSEPP for “commercial activities”, which are defined in the cl 8.5(4) of the GSEPP as:

*the use of the building for the purposes of office premises, business premises, hotel or motel accommodation (but not hotel or motel accommodation that is subdivided under a strata scheme), food and drink premises or other like uses or a combination of such use*

#### *Traffic generation and road infrastructure improvements*

219. With regard to Traffic Generation, the Applicant’s Traffic Impact Assessment (**TIA**) Report is considered by the Department in Sections 6.5.14 to 6.5.16 of the AR. The Henry Parry Drive/Donnison Street intersection will experience some congestion, and improvements to the state and local network to address the operation of the intersection would be required. As stated in Section 6.5.18, “The Department considers that the proposal would not have an adverse impact on the operation of the surrounding road network and the performance of nearby intersections...”.
220. In Sections 6.5.19 to 6.5.26 of the AR, the Department discusses the application of the Gosford City Centre Special Infrastructure Contribution Levy (**SIC**). In Sections 6.5.20 and 6.5.21, the AR states:
- 6.5.20 TfNSW noted the impacts of the development and cumulative impacts of new developments within the Gosford City Centre should be considered to inform road network improvements. The cost of future road upgrade works should be shared equitably between development sites.*
- 6.5.21 Council requested road infrastructure improvements to the Henry Parry Drive / Donnison Street and Henry parry Drive / William Street intersections be undertaken by the Applicant or paid for via the SIC. Council has also requested the development provide or contribute to a pedestrian bridge linking the site to Kibble Park over Henry Parry Drive.*
221. The issue of the need for a pedestrian link to Kibble Park from the Site, including a pedestrian bridge, was also raised by the Council at the meeting with the Commission. The AR indicates that the Applicant does not object to a SIC levy/work in kind condition being imposed for future DAs and that “a pedestrian crossing / connection linking the site to Kibble Park over Henry Parry Drive (State road) would only be provided should it be deemed necessary by TfNSW (the roads authority)”.
222. Noting that the subject Application seeks concept approval (besides the Stage 1 Works), the Commission has imposed FEARS requiring a TIAs be prepared as part of future development applications which consider traffic generation and operational traffic impacts.

223. Given the uplift proposed, it would have been preferable to apply the SIC contribution and/or requirements for intersection upgrades with this DA, as this sets the quantum of GFA. However, the Commission accepts that the final requirements for traffic works should be informed by a future TIA and CPAR (referred to in the FEARs) and also the Draft Gosford City Centre Transport Plan.

#### 5.2.10 Public benefits

224. The public benefits of the proposal are discussed in the Department's AR in Section 6.6. The Applicant presented a Social and Economic Assessment (**SEA**) that set out the economic benefits of the proposal particularly with regard to new jobs, investment and retail expenditure. In 6.6.3 of the AR, the Department states that the SEA concluded that "The incoming resident and worker population will generate some demand for social infrastructure and recommended consideration be given to the provision of a multi-purpose community space and childcare centre". The provision of the through site links is also mentioned as a public benefit in the Application.
225. The Commission agrees with the Department in Sections 6.6.6 and 6.6.8 of the AR that "it is reasonable to require future developments to consider the provision of additional public benefits proportionate to the development of the site".
226. It is unfortunate there is no direct provision in the GSEPP requiring public benefits associated with the increase in height and FSR (aside from meeting the strategic intent of the GSEPP), or specific consideration of the provision of public benefits in cl 8.4 of the GSEPP. The Department and Council have not negotiated any planning agreements for public benefits at this concept proposal stage, when the uplift in height and FSR will be approved. The Commission is of the opinion that given the departures from site controls and the uplift realised, the proposal should deliver broader community benefits and has consequently imposed a FEAR requiring that a community facility, childcare facility or equivalent public benefit be provided as part of the development. The FEAR requires that this occur, not just 'be considered', and at an early stage of the development, in consultation with Council.
227. The need for affordable housing was raised by the Council, and in the AR the Department refers to the Council's Strategy in this regard, and that future developments should "investigate the potential for the development to accommodate affordable housing" (Section 6.69). The Commission imposes **FEAR C14** in this regard.

#### 5.2.11 Other issues identified in the Department's assessment

228. The Commission agrees with the Department's assessment of the *Other issues* discussed in Section 6.8 in the Department's AR. The issue of *Future Residential amenity* has been mentioned in Section 5.2.2 regarding amendments proposed to ensure that the future residential towers will meet the minimum building separation distances in the ADG. *Contamination* is discussed in Section 4.4.3 above.

## 5.3 Stage 1 Works

### 5.3.1 Summary of Commission's findings – Stage 1 Works

229. The Application seeks consent for Stage 1 Works, assessed in Section 6.8 of the Department's AR. These works are as identified in **Figure 8**. The Commission has considered the Material relating to the Stage 1 Works, including the Responses to the Commission by the Applicant, Department and Council. It has also carefully considered all submissions received including the submissions and concerns of both Council and the CEN. The Commission is satisfied that with respect to the Stage 1 Works, the Key Issues assessed in Section 6.8 of the Departments AR cover the range of issues relevant to the determination of Stage 1 of the DA. These issues are:

- demolition
- realignment of Council's infrastructure
- removal of existing on-site public parking
- other environmental impacts

#### *Demolition*

230. In Sections 6.8.2 and 6.8.3 of the AR, the Department states that demolition of the existing shopping centre will take 3-4 months. The Department was provided with a Demolition and Construction Management Plan and the Commission imposes conditions on the Stage 1 consent to mitigate impacts during these works.

#### *Realignment of Council's infrastructure*

231. The development requires the relocation of Council's stormwater drainage infrastructure and sewer pipes that affect the Site. This is shown in Figure 26 of the Department's AR. The existing easement will be extinguished, and new easements will then be created over the infrastructure. This part of the Application has been prepared in consultation with Council. The Commission is satisfied that the conditions of consent reflect Council's requirements.

#### *Removal of existing on-site public parking*

232. At present the rooftop of the vacant shopping centre is used for free all-day parking, through an arrangement between the owners and the Council. The existing 535 car spaces will be removed as a result of the project. In Section 6.8.9 of the AR, the Department explains that the Applicant will firstly create a 170 space temporary car park followed by a 120 space temporary car park during the staged development of the site. The Department states that it supports the temporary car parking. The Commission has imposed **FEAR 35** in the Concept Proposal consent to require the provision of 170 car spaces in accordance with the staging plan.

233. however, in response to concerns raised by the Council at the Meeting with the Commission, the parking spaces are conditioned to have a two-hour time limit. The condition is imposed in order to ensure an appropriate turn-over of the parking spaces.

#### *Other environmental impacts*

234. As the demolition is a significant project, the Department states in Sections 6.8.20 and 6.21 of the AR that:

6.8.20 *The Department acknowledges due to the size of the site and the nature of demolition works, the proposed works may have additional environmental impacts on surrounding properties in terms of traffic, noise, waste, air quality and dilapidation.*

6.8.21 *To address these impacts, the Department has recommended Council's conditions relating to the management and mitigation of demolition impacts together with other conditions requiring the preparation of appropriate demolition environmental management plans to ensure the demolition works do not have an adverse impact on the surrounding area or the environment.*

235. Conditions to ensure the mitigation of impacts during demolition and the infrastructure works have been imposed by the Commission on the Stage 1 Work consent.
236. The only other issue not directly identified in the Department's AR relates to contamination, particularly once the building has been demolished. The Commission is of the view that a Stage 1 Investigation should be undertaken after demolition. This is discussed in section 4.4.3 under SEPP 55 above.

#### **5.4 Objects of the EP&A Act and Public Interest**

237. The Department's AR has assessed the Development in accordance with the Objects of the EP&A Act in Sections 4.6.7 and 4.6.8 including Table 4 in the AR. The Commission agrees with the Department's Assessment of the Objects in Table 4, and subject to the amendments outlined in Section 5 above, the Commission is satisfied that that the Application accords with the objects of the EP&A Act.
238. The Department's AR states that "The proposal is in the public interest as discussed at Section 6" (Table 4 in Section 4.6.2). The Department concludes in the Executive Summary of the AR that "... the proposal would result in benefits to the local community and is therefore in the public interest, subject to appropriate conditions". The Commission concurs with the assessment in Section 6 of the Department's AR, that the Application should be approved subject to the Commission's additional amendments as identified in Section 5 of this Report.
239. The Commission has addressed the public interest by balancing the strategic aims for redevelopment of the Gosford City Centre with the impacts of the proposed development, including the concerns raised by the Council and the CEN. The Commission notes that this development is also important given that there are likely to be future applications, particularly for other Key Sites in the Civic Heart Precinct identified in the GUDF and DCP.

## **6 THE COMMISSION'S FINDINGS AND DETERMINATION**

240. After considering the Material and visiting the Site and lookouts over Gosford, the Commission generally supports the assessment and conclusions of the Department and considers that the Concept Proposal should be approved. However, the Commission has residual concerns relating to the bulk and scale of the proposed towers and the extent of activation proposed on Donnison and Albany Street North and has addressed these residual concerns through the imposition of conditions of consent.
241. The views of the community were expressed through the submissions received from the Council and the public. Both the Council and the CEN (which made a formal submission) were afforded the opportunity to address the Commission. The Commission has carefully considered these submissions in making its decision. The way in which these submissions were taken into account by the Commission is set out in Section 5 above.

242. The Commission has also carefully considered the Material before it and determines that the Application should be approved. Conditions have been imposed as recommended by the Department and additional conditions imposed by the commission to address compliance with SEPP 55, the GSEPP, the DCP and to address residual environmental, amenity and social impacts.
243. The key conditions imposed will reduce the bulk and scale of the future built form of the towers, other than Tower 3. The reasons to amend the tower envelopes is to ensure that the future built form of these towers is more slender to:
- improve impacts on views from the public domain
  - increase the building separation distances, which will improve future compliance with SEPP 65 and the ADG
  - improve solar access within the Site
  - improve overshadowing impacts to Donnison Street, and to the land to the south - the Gosford Local Court and the Gosford TAFE site.
244. Additionally, the height of Towers 1 and 4 have been conditioned to be lower in order to:
- improve the extent of overshadowing on land to the south
  - ensure a gradation in height from Kibble Park to the ridgeline of Rumbalara Reserve
  - improve overshadowing to Kibble Park (Tower 1)
  - pair Tower 1 at the same height as Tower 2.
245. The conditioned changes to the height of the Albany Street North podium and requirement for the provision of additional commercial uses are to improve the activation of these streets and meet the requirements of the GSEPP.
246. These amendments are also required to ensure that design excellence as required under cl 8.3 of the GSEPP and improved environmental and amenity outcomes can be achieved through future development applications.
247. The Commission determines that consent be granted to SSD 9813, a Concept Proposal and the Stage 1 Works, subject to the conditions in the consent, which includes those identified in Section 5 and summarised above.
248. The reasons for the Decision are given in this Statement of Reasons for Decision dated 25 September 2020.



**Chris Wilson (Chair)**  
Member of the Commission



**Wendy Lewin**  
Member of the Commission