

# Central Coast

## Local Planning Panel

Central Coast  
Local Planning Panel Meeting  
Business Paper  
**12 October 2023**



# Meeting Notice

**The Local Planning Panel Meeting  
of Central Coast  
will be held remotely - online,  
Thursday 12 October 2023 at 2.00 pm,  
for the transaction of the business listed below:**

<b>1</b>	<b>Procedural Items</b>	
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Donna Rygate  
**Chairperson**

**Item No:** 1.1  
**Title:** Disclosures of Interest  
**Department:** Governance

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12 October 2023 Local Planning Panel Meeting

Reference: F2020/02502 - D14205789

The NSW Local Planning Panel Code of Conduct states that all panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting.

### **Recommendation**

***That Panel Members now confirm that they have signed a declaration of interest in relation to each matter on the agenda for this meeting and will take any management measures identified.***

**Item No:** 2.1  
**Title:** Confirmation of Minutes of Previous Meeting  
**Department:** Corporate Services

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**Central Coast**  
Local Planning Panel

12 October 2023 Local Planning Panel Meeting

Reference: F2020/02502 - D15864113

Author: Rachel Callachor, Meeting Support Officer

### Summary

*The Minutes of the following Meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, are submitted for noting:*

- ***Local Planning Panel Meeting held on 14 September 2023***

### Recommendation

***That the minutes of the previous Local Planning Panel Meeting held on 14 September 2023, which was endorsed by the Chair of that meeting, are submitted for noting.***

### Attachments

1   CCLPP Minutes - 14 September 2023      D15857417



**Local Planning Panel**  
**Minutes of the**  
**Local Planning Panel Meeting**  
**Held Remotely - Online**  
**on 14 September 2023**

**Panel Members**

Chairperson	Donna Rygate
Panel Experts	Greg Flynn Grant Christmas
Community Representative/s	Glenn Watts

**Central Coast Council Staff Attendance**

Dr Alice Howe	Director Environment and Planning
Andrew Roach	Unit Manager Development Assessment
Ailsa Prendergast	Section Manager Residential Assessments
Robert Eyre	Principal Development Planner – Residential Assessments
Brian McCourt	Development Planner – Residential Assessments
Paul Davies	Senior Building Surveyor – Building Assessment and Certification
Shannon Turkington	Unit Manager – Strategic Planning
Brad Deane	Environmental Project Manager – Asset Delivery
Lachlan Muir	Development Planner – Residential Assessments
Lisa Martin	Civic Support Officer
Rachel Gibson	Team Leader – Civic Support

The Chairperson, Donna Rygate declared the meeting open at 2:02pm and advised in accordance with the Code of Meeting Practice that the meeting was being recorded.

The Chair read an acknowledgement of country statement.

**Apologies**

***The Panel noted that no apologies had been received.***

**Minutes of the Local Planning Panel Meeting 14 September 2023 contd**

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**PROCEDURAL ITEMS**

**1.1 Disclosures of Interest**

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*Panel Members confirmed that there were no conflicts of interest identified.*

**2.1 Confirmation of Minutes of Previous Meeting**

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*The minutes of the previous Local Planning Panel Meeting held on 10 August 2023, and which were endorsed by the Chair of that meeting, were noted.*

**Public Forum**

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The following people addressed the Panel:

**Item 3.1 – DA/1107/2004/F - 30-36 Toowoon Bay Rd, 17A-21 Kitchener Rd & 11 Centennial Ave, Long Jetty - RFB comprising 7 Buildings up to 10 Storeys comprising 217 Units, Pool, Basement Carparking & Demolition of Existing Structures**

1. Sean Piper – FOR
2. Darcy Smith (Applicant) – AGAINST

**Item 3.2 – DA/2115/2022 - Lot 32 DP 7061 - 83 Booker Bay Road, Booker Bay - Demolition of existing dwelling and construction of two-storey dual occupancy and pool**

1. Francis Wiffen – AGAINST
2. Roslyn Palmer (represented by Glen Rogers) – AGAINST
3. Louise Scobie (represented by Glen Rogers) – AGAINST
4. Glen Rogers – AGAINST
5. Callan Patrick and Tim Harwood (Applicant and Arborist) – FOR

**Item 3.3 – DA/2144/2021 - 168 West Street, Umina Beach - Multi Dwelling Housing including Demolition of existing**

1. Francis Wiffen – AGAINST
2. Ravi Sharma (Applicant's representative) – FOR

The Local Planning Panel public meeting closed at 3:02pm. The Panel moved into deliberation from 3:10pm, which concluded at 4:25pm.

Minutes of the Local Planning Panel Meeting 14 September 2023 contd

PLANNING REPORTS

3.1 DA/1107/2004/F - 30-36 Toowoorn Bay Rd, 17A-21 Kitchener Rd & 11 Centennial Ave, Long Jetty - RFB comprising 7 Buildings up to 10 Storeys comprising 217 Units, Pool, Basement Carparking & Demolition of Existing Structures

Site Orientation Yes

Relevant Considerations As per Council assessment report

Material Considered

- Documentation with application
- Council assessment report
- Submissions
- Briefings

Council Recommendation Refusal

Panel Decision

1. *That the Local Planning Panel refuse application DA/1107/2004/F – Nos. 30-36 Toowoorn Bay Road, Nos. 17A-21 Kitchener Road and No. 11 Centennial Avenue, Long Jetty – Residential flat development comprising seven buildings up to 10 storeys with 217 residential units subject to the reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.*
2. *That Council advise those who made written submissions of the Panel's decision.*
3. *That Council advise relevant external authorities of the Panel's decision.*
4. *In accordance with Section 2.20(8) of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegate to appropriate Council officers the ability to give legal instruction to Council's external legal counsel at any upcoming proceedings relating to the appeal, including any conciliation conference in accordance with Section 34 of the Land and Environment Court Act 1979.*

Reasons

1. The application is not substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified.

**Minutes of the Local Planning Panel Meeting 14 September 2023 contd**

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2. The amended architectural plans and accompanying documentation do not adequately detail the modifications suggested, meaning that insufficient detail is provided in relation to proposed changes to the building's footprint, elevations, sections, floor space ratio, pedestrian access, landscaping and overshadowing of neighbouring properties to enable a proper assessment of the impacts of the modified proposal.
3. The application fails to provide an adequate description of the expected impacts of the modified development.
4. The application fails to provide a statement by a qualified designer that verifies a qualified designer designed the modification, nor explain how the development addresses the design quality principles and objectives in the Apartment Design Guide.
5. The application and accompanying Statement of Environmental Effects do not provide adequate justification for the increase to building heights.
6. The amended building height and large new podium structure are not compatible with the zone objectives nor the desired future character of the locality.
7. Insufficient details are provided in relation to the amended stormwater design to enable a proper assessment of the conditions sought to be modified.
8. The proposed modifications to the development consent are not in the public interest.

**Votes**

The decision was unanimous



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Minutes of the Local Planning Panel Meeting 14 September 2023 contd

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3.2      **DA/2115/2022 - Lot 32 DP 7061 - 83 Booker Bay Road, Booker Bay -  
Demolition of existing dwelling and construction of two-storey dual  
occupancy and pool**

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**Site Inspected**                      Yes

**Relevant  
Considerations**                      As per Council assessment report

**Material Considered**              • Documentation with application  
• Council assessment report  
• Submissions  
• Supplementary Report and Memo  
• Briefings

**Council  
Recommendation**                      Approval

**Panel Decision**                      ***1. That the Local Planning Panel grant consent to  
DA/2115/2022 – Lot 32 DP 7061, 83 Booker Bay Road,  
Booker Bay NSW 2257- Demolition of existing dwelling  
and construction of two-storey dual occupancy and pool  
- subject to the conditions detailed in the schedule  
attached to the report, as amended below, and having  
regard to the matters for consideration detailed in  
Section 4.15 of the Environmental Planning and  
Assessment Act 1979.***

***Amended condition 6.9 Plant an advanced specimen  
replacement street tree on the road reserve, and another  
advanced specimen on the site. Advanced specimens are  
to be 4-5 meters in height. The specimen on the road  
reserve is to be evenly located and adequately  
staked/protected to prevent vandalism. The street tree  
replacement must a native tree species suitable for the  
limited available planting area. Use either Elaeocarpus  
or Corymbia as recommended in the Aboricultural  
Impact Assessment by Harwood 25/11/22.***

***Do not locate street tree within an authority's  
service easement. Where a street tree dies or is  
substantially damaged within 5 (five) years of  
planting, it must be replaced and maintained.***

***2. That Council advise those who made written  
submissions of the Panel's decision.***

**Minutes of the Local Planning Panel Meeting 14 September 2023 contd**

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**Reasons**

1. The Panel is satisfied that the provisions of the following State Environmental Planning Policies have been considered and satisfied:
  - Chapter 4, section 4.6(4) of the State Environmental Planning Policy (Resilience and Hazards) 2021
  - The NSW State Environmental Planning Policy (Biodiversity and Conservation) 2021.
2. The Panel is satisfied that the provisions of clause 7.1 Acid Sulfate Soils and 7.6 Essential Services of Central Coast Local Environmental Plan 2022 have been considered and satisfied.
3. The proposal is permitted with development consent and complies with relevant development standard provisions under the Central Coast Local Environmental Plan 2022, including height and floor space ratio.
4. The proposal aligns with the development objectives of the R1 General Residential zone under the Central Coast Local Environmental Plan 2022.
5. The proposal complies with setback and building envelope requirements under the Central Coast Development Control Plan 2022.
6. The proposal provides additional housing within an existing residential setting.
7. Although the proposal includes the removal of a street tree, this removal involves the replacement of a naturalised flora species with placement planting of an endemic flora species. Internal consultation has raised the fact that the street tree to be removed would likely have damage to structural roots in the event of any future repair of the existing Booker Bay Rd box gutter or via excavation required for construction of a footpath along the frontage of the subject site. Conditions of consent have been recommended for maintenance of street tree planting, with replacement planting required in the event that the planted tree fails to establish.
8. Approval of the proposed development is in the public interest.

**Votes**

The decision was unanimous

Minutes of the Local Planning Panel Meeting 14 September 2023 contd

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3.3 DA/2144/2021 - 168 West Street, Umina Beach - Multi Dwelling Housing  
including Demolition of existing

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Site Inspected	Yes
Relevant Considerations	As per Council assessment report
Material Considered	<ul style="list-style-type: none"><li>• Documentation with application</li><li>• Council assessment report</li><li>• Submissions</li><li>• Supplementary Report and Memo</li><li>• Briefings</li></ul>
Council Recommendation	Deferral
Panel Decision	<ol style="list-style-type: none"><li>1. <i>That the Local Planning Panel defer determination of the application for DA/2144/2021– 168 West Street Umina Beach - demolition of the existing two storey dwelling, other structures and the construction of multi dwelling housing consisting of 4 townhouses to allow the applicant to submit a revised design that provides a minimum one metre landscape strip along the eastern boundary of the site, extending from the front property boundary to the rear elevation of townhouse 4.</i></li><li>2. <i>The matter is to come back to the Panel within four (4) weeks of the date of today's meeting.</i></li></ol>
Reasons	The Panel considers that providing suitable landscaping to side and rear boundaries is an important design consideration.
Votes	The decision was unanimous

Minutes of the Local Planning Panel Meeting 14 September 2023 contd

3.4 DA/62950/2021 - 23 MacDonald Street, Killcare Heights - Alterations and Additions

Site Inspected	Yes
Relevant Considerations	As per Council assessment report
Material Considered	<ul style="list-style-type: none"> <li>• Documentation with application</li> <li>• Council assessment report</li> <li>• Submissions</li> <li>• Briefings</li> </ul>
Council Recommendation	Approval
Panel Decision	<p>1. <i>The Local Planning Panel is satisfied with the applicant's clause 4.6 written request demonstrating that compliance with the Height of Buildings development standard is unreasonable in the circumstances of this application because of the steep sloping nature of the block and the proposed alterations and additions are a substantial reduction in the current constructed height, and because is satisfied that there are sufficient environmental planning grounds to justify contravening that development standard.</i></p> <p><i>Further, the Local Planning Panel is satisfied the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.</i></p> <p>2. <i>The Local Planning Panel assumes the concurrence of the Secretary of the Department of Planning to permit the non-compliance with the development standard under clause 4.6 of the Gosford Local Environmental Plan 2014, in accordance with the provisions of clause 64 of the Environmental Planning and Assessment Regulation 2000.</i></p> <p>3. <i>That the Local Planning Panel grant development consent to DA62950/2021 – 23 MacDonald Steet, Killcare Heights to construct the alterations and additions subject to appropriate conditions as detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act and other</i></p>

Minutes of the Local Planning Panel Meeting 14 September 2023 contd

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**relevant issues.**

**Reasons**

1. The Panel is satisfied that the application complies with the provisions of Section 4.14 of the Environmental Planning and Assessment Act 1979.
2. The Panel is satisfied that the Proposal is compliant with Clause 4.6 of the Gosford Local Environmental Plan, 2014 as the assessment of the application has concluded that:
  - a. The applicant's written request in respect to the noncompliance with the development standard (height) adequately addresses the matters required to be addressed under clause 4.6(3) of the *Gosford Local Environmental Plan 2014*; and
  - b. The development is in the public interest because it is consistent with the objectives for development in the zone; and
  - c. The concurrence of the Secretary can be assumed.
3. Assessment of the application has concluded the proposed development is permitted with the current R2 – Low Density Residential zone under the provisions of the *Gosford Local Environmental Plan 2014* and meets the objectives for the zone.

**Votes**

The decision was unanimous

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**Minutes of the Local Planning Panel Meeting 14 September 2023 contd**

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**PLANNING REPORTS- OUTSIDE OF PUBLIC MEETING****4.1 Request to Prepare a Planning Proposal - Reclassification of Council Land**

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The Local Planning Panel advises as follows:

1. **The Panel supports the reclassification of land except those sites zoned SP2 – Infrastructure or RE1 – Public Recreation. Such sites should be deferred until the completion of an environmental assessment of their rezoning potential. Once completed, appropriate classification of the sites can be determined. If required any future planning proposal would include:**
  - **Rezoning of the land including supporting environment assessment studies, and**
  - **Reclassification of the land under the Local Government Act 1993.**

**Item No:** 3.1  
**Title:** DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development  
**Department:** Environment and Planning

**Central Coast**  
Local Planning Panel

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12 October 2023 Local Planning Panel Meeting

Reference: DA/146/2022 - D15855686  
Author: Sian Holmes, Development Planner Consultant  
Manager: Ailsa Prendergast, Acting Unit Manager, Development Assessment  
Executive: Andrew Roach, Director Environment and Planning (Acting)

### Summary

An application has been received for the demolition of existing structures and construction of a five storey mixed use building (shop top housing) comprising 23 residential dwellings and ground floor retail at 275 Ocean View Parade, Ettalong Beach. The application has been examined having regard to the matters for consideration detailed in section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The Central Coast Local Environmental Plan 2022 (CCLEP 2022) was notified on 24 June 2022 and came into effect 1 August 2022. The subject application was lodged on 8 February 2022 (i.e. prior to the commencement of CCLEP 2022) and according is subject to saving provisions under clause 1.8A of *Central Coast Local Environmental Plan 2022*. Under the savings provision the application is to be determined as if this plan had not commenced. The subject assessment and determination has therefore been made under *Gosford Local Environmental Plan 2014* (GLEP 2014) the environmental planning instrument in place at the date of lodgment.

The application is referred to the Local Planning Panel due to the extent of the proposed variations to the building height and FSR development standards and the number of objections received:

- The subject application proposes variations to both the maximum building height (proposed 19.4% variation) and floor space ratio (FSR) (proposed 15% variation) development standards that apply to the site under the GLEP 2014.
- The application was placed on public exhibition from 18 February 2022 to 7 March 2022 and following submission of amended plans again notified from 14 October 2022 to 9 November 2022. A total of 48 submissions objecting to the proposal were received in response to the first public exhibition and a total of 26 submissions objecting to and one (1) submission in support of the proposal were received in relation to the second public exhibition.

The application is recommended for refusal.

**Applicant** Mr Ziad Chanine  
**Owner** Giuseppe Forese and Pasquale Forese

**3.1 DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH -  
Commercial/residential development (contd)**

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<b>Application No</b>	DA/146/2022
<b>Description of Land</b>	Lot 22, DP10650, 273 Ocean View Road, Ettalong Beach NSW 2557 and Lot 23, DP10650, 275 Ocean View Road, Ettalong Beach NSW 2557
<b>Proposed Development</b>	Demolition and Mixed Use Development (Shop Top Housing)
<b>Site Area</b>	1,020.8m <sup>2</sup>
<b>Zoning</b>	Zone B2 - Local Centre
<b>Existing Use</b>	Commercial Building
<b>Employment Generating</b>	Yes
<b>Estimated Value</b>	\$11,430,781.00

**Recommendations**

- 1** *That the Local Planning Panel refuse consent to DA/146/2022 – 275 Ocean View Parade, Ettalong Beach for the demolition of existing structures and construction of a five storey mixed use building – subject to the reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.*
- 2** *That Council advise those who made written submissions of the Panel's decision.*
- 3** *That Council advise relevant external authorities of the Panel's decision.*

**1. Key Issues**

The key issues in the consideration of the application, are:

1. Non-compliance with Clause 4.4 Floor Space Ratio (FSR) under GLEP 2014
2. Non-compliance with Clause 4.3 Height of Buildings under GLEP 2014
3. Height, bulk, and scale
4. Character and design quality
5. Non-compliance with Apartment Design Guideline (ADG) requirements including deep soil, visual privacy and daylight and solar access
6. Non-compliance with GDCP 2013 provisions
7. Lack of activation and retail floor space at street level
8. Internal amenity, and
9. Matters raised in public submissions.



### 3.1 DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)

#### Precis:

<b>Proposed Development</b>	Demolition of existing structures and construction of a five-storey mixed use building (shop top housing) comprising 23 residential dwellings, ground floor retail and two levels of basement parking.
<b>Permissibility and Zoning</b>	<p>Permissibility: The proposed development is defined as a <i>commercial premises and shop top housing</i>, which are both permissible with consent in the zone.</p> <p>Zoning: B2 Local Centre under the provisions of the Gosford Local Environmental Plan 2014.</p>
<b>Relevant Legislation</b>	<p>The following planning policies and control documents are relevant to the development and were considered as part of the assessment:</p> <ul style="list-style-type: none"> <li>• <i>Environment Planning and Assessment Act 1979 - section 4.15 (EP&amp;A Act)</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i></li> <li>• <i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</i></li> <li>• <i>Gosford Local Environmental Plan 2014</i></li> <li>• <i>Gosford Development Control Plan 2013</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2022</i></li> </ul>
<b>Current Use</b>	Commercial premises
<b>Submissions</b>	The application was publicly exhibited twice for comment with a total of 75 submissions received noting a number of parties made submissions in response to both exhibitions. Key issues raised in the submissions were: height, character, traffic and parking impacts, FSR exceedance, bulk and scale, setbacks, overshadowing of the public domain, privacy.

## 2. Variations to Policies

### 2.1 Gosford Local Environmental Plan 2014

Clause	Standard	Departure basis
<b>4.3 Height of Buildings</b>	Maximum height of building: 17m	The application proposes a maximum height of 20.31m, which represents a 19.4% departure from the height development standard.
<b>4.4 Floor Space Ratio</b>	2:1	The application proposes a FSR of 2.3:1 (as measured by assessment staff), which represents a 15% departure from the FSR development standard.

### **3. Background**

Council's records show the below history of applications relevant to the site.

<b>Application number</b>	<b>Description</b>	<b>Status</b>	<b>Decision</b>	<b>Lodged</b>
DA/32004/2006	Commercial Premises (2) and Residential Apartments	Approved	Approved	09/05/2006
DA/35896/2008	Retail – Hardware Store	Withdrawn	Withdrawn	03/11/2008
DA/35881/2008	Pharmacy	Approved	Approved	31/10/2008
DA/37545/2009	Childcare Centre	Withdrawn	Withdrawn	02/02/2010
DA/41344/2011	Establishment of Use & Fit Out for Italian Restaurant	Withdrawn	Withdrawn	20/10/2011
DA/43279/2013	Establishment Of Use Cafe/Restaurant	Approved	Approved	7/01/2013
CC/43279/2013	Shop Fitout Cafe/Restaurant	Refused	Refused	13/03/2013
DA/43279/2013/A	Section 96 - Delete Condition 2.4 Carparking Contribution	Approved	Approved	19/09/2013

### **4. Site & Surrounds**

The site is legally described as Lot 22 and Lot 23 in DP10650. The site is located at 273 – 275 Ocean View Road, Ettalong Beach (Figure 1). The site is located on the northern side of Ocean View Road on the corner of Memorial Avenue and Ocean View Road and has an access laneway to the rear.

The site is generally rectangular in shape. The site's total area is approximately 1,020.8m<sup>2</sup>, with a primary street frontage of 23.77m to Ocean View Road, a secondary street frontage of 38.81m to Memorial Avenue and a third frontage of 29.38m to the rear laneway to the north of the site. The topography of the site is generally level.

The site is currently occupied by a single storey brick commercial building with metal roof, comprising a mix of commercial development (Figure 2 to 4) and open hardstand car parking area to the rear (north).

The site is not identified as "bushfire prone land" on Council's bushfire maps.

The property is not impacted by the 1% AEP flooding from the Brisbane Water estuary. However, it does fall within the 'Precinct 1: Probable Maximum Flood' Flood Precinct area identified under Council's Online Mapping Tool.

Adjoining development to the immediate east of the site comprises a commercial/retail development at 271 Ocean View Road. Commercial and retail developments are also located south of the site across Ocean View Road and west of the site across Memorial Avenue. Low Density single storey residential development is located to the north of the site across the laneway.

**3.1 DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)**



Figure 1: Site context (Source: Nearmap, Image 12 August 2023)

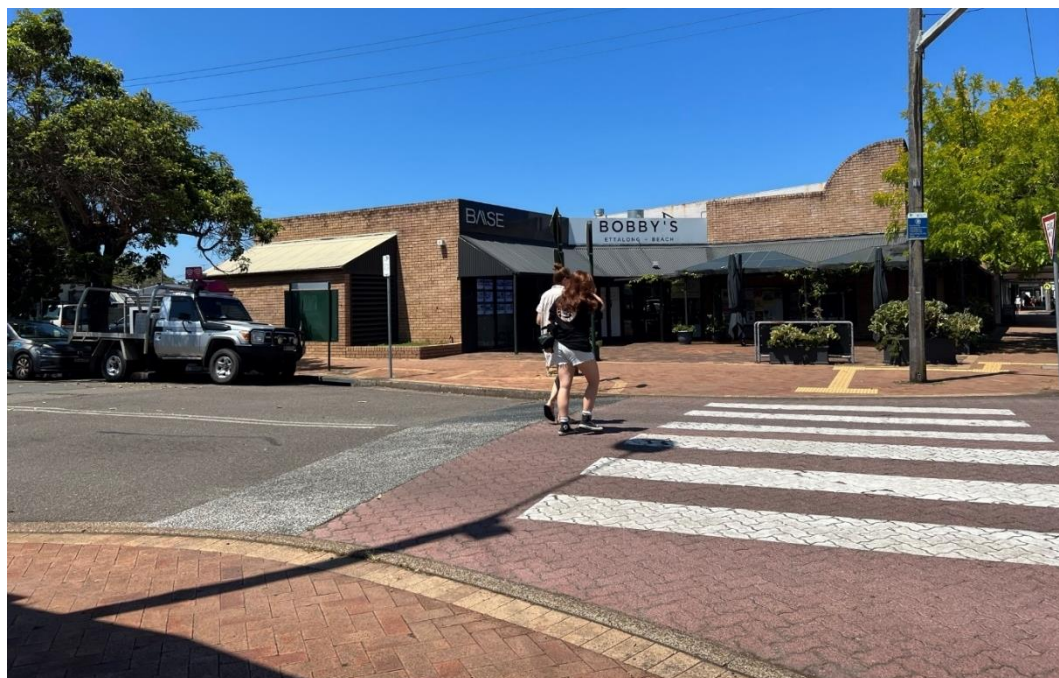


Figure 2: Existing building (273-275 Ocean View Road) facing north-east (Source: Keylan)





Figure 3: Existing building (273-275 Ocean View Road) facing North (Source: Keylan)



Figure 4: Existing building (273-275 Ocean View Road) facing East (Source: Keylan)



Figure 5: Ocean View Road facing West towards the site (Source: Keylan)





Figure 6: Rear frontage (laneway) of the property, facing south-west towards the existing site (Source: Keylan)



Figure 7: Adjoining commercial building, 271 Ocean View Road, facing North (Source: Keylan)



Figure 8: Commercial building opposing the site, 277 Ocean View Road, facing north-west (Source: Keylan)

## 5. The Proposal

The proposal comprises:

- Site preparation works including demolition of the existing single storey commercial building and hard stand carpark, tree removal, and earthworks;
- Construction and use of a five-storey mixed use development equating to approximately 2,242m<sup>2</sup> of GFA (FSR of 2.2:1), comprising:
  - 2 levels of basement parking for 36 vehicles comprising 24 residential spaces (12 accessible spaces) and 12 commercial spaces (1 accessible space), car wash bay and basement storage areas
  - Ground floor retail tenancies comprising a total of 130m<sup>2</sup> GFA being 1 x restaurant space (100m<sup>2</sup>) and 3 retail shops (10m<sup>2</sup> per shop), residential lobby and residential and commercial waste storage areas
  - four levels of residential apartments totalling 23 units (comprising 6 x 1 bedroom, 14 x 2 bedroom, 2 x 3 bedroom and 2 x 3 bedroom plus study) including 3 adoptable units; and
  - roof top communal open space including BBQ area with lift access
- Landscaping works; and
- Extension and augmentation of infrastructure and services as required.

Proposed materials and finishes comprise brick base, painted render and James Hardi cladding, aluminum windows and doors and clear glass. Perspectives and a selection of plans and elevations of the Proposal are provided at Figure 9 to 7 below.



Figure 9: Proposed site plan (Source: CDA Architects)



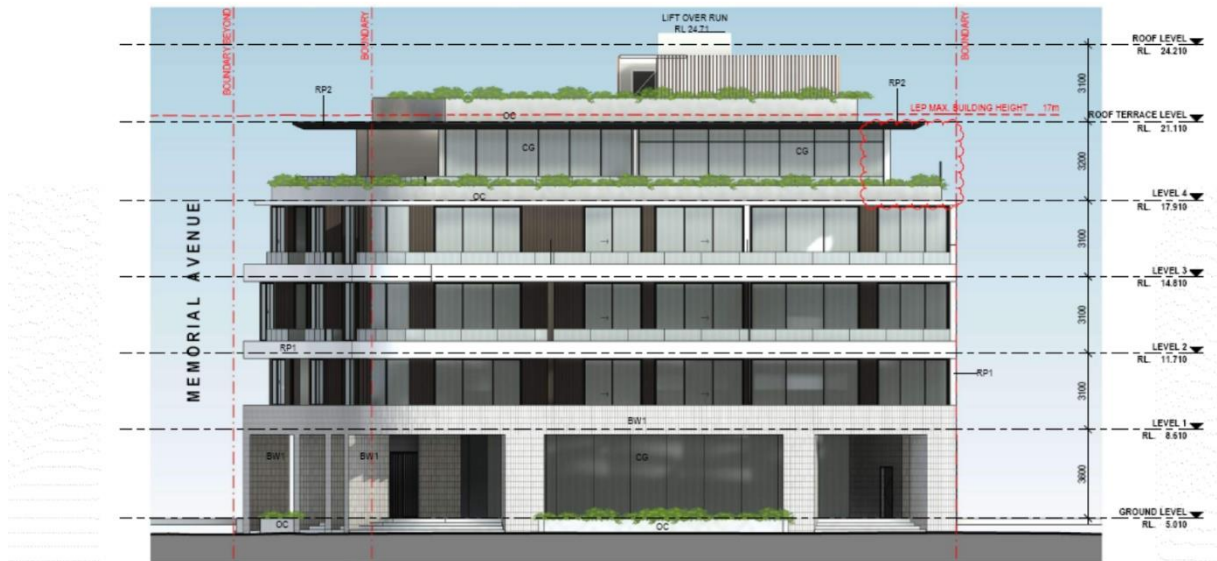


Figure 10: South (Ocean View Road) elevation – (Source: CDA Architects)

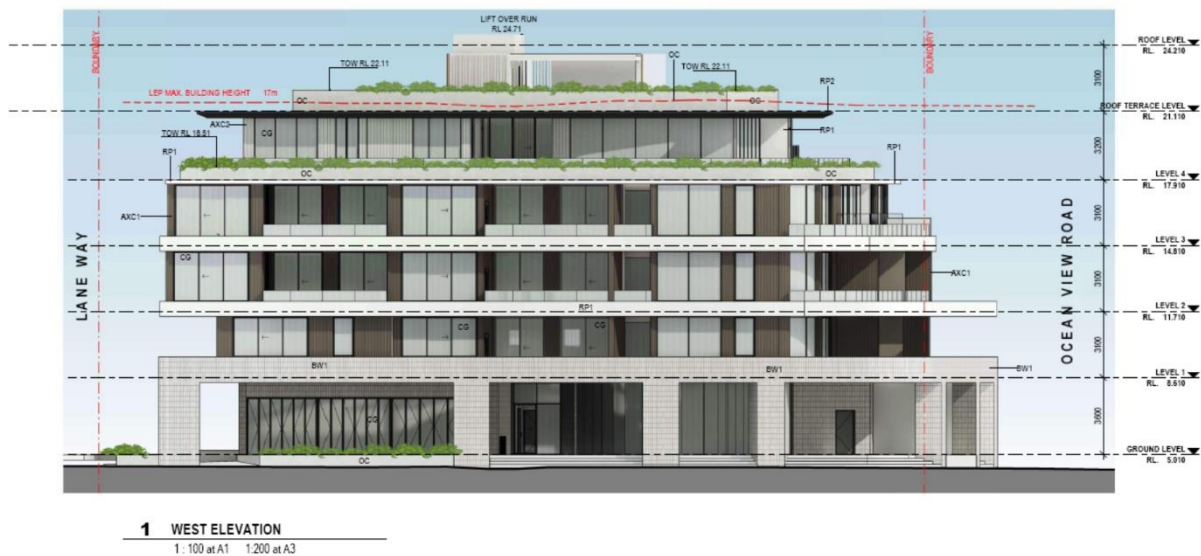


Figure 11: West (Memorial Ave) Elevation (Source: CDA Architects)

**2 NORTH ELEVATION**

1:100 at A1 1:200 at A3

Figure 12: North (Laneway Ave) Elevation (Source: CDA Architects)

**1 EAST ELEVATION**

1:100 at A1 1:200 at A3

Figure 13: East (side) Elevation (Source: CDA Architects)



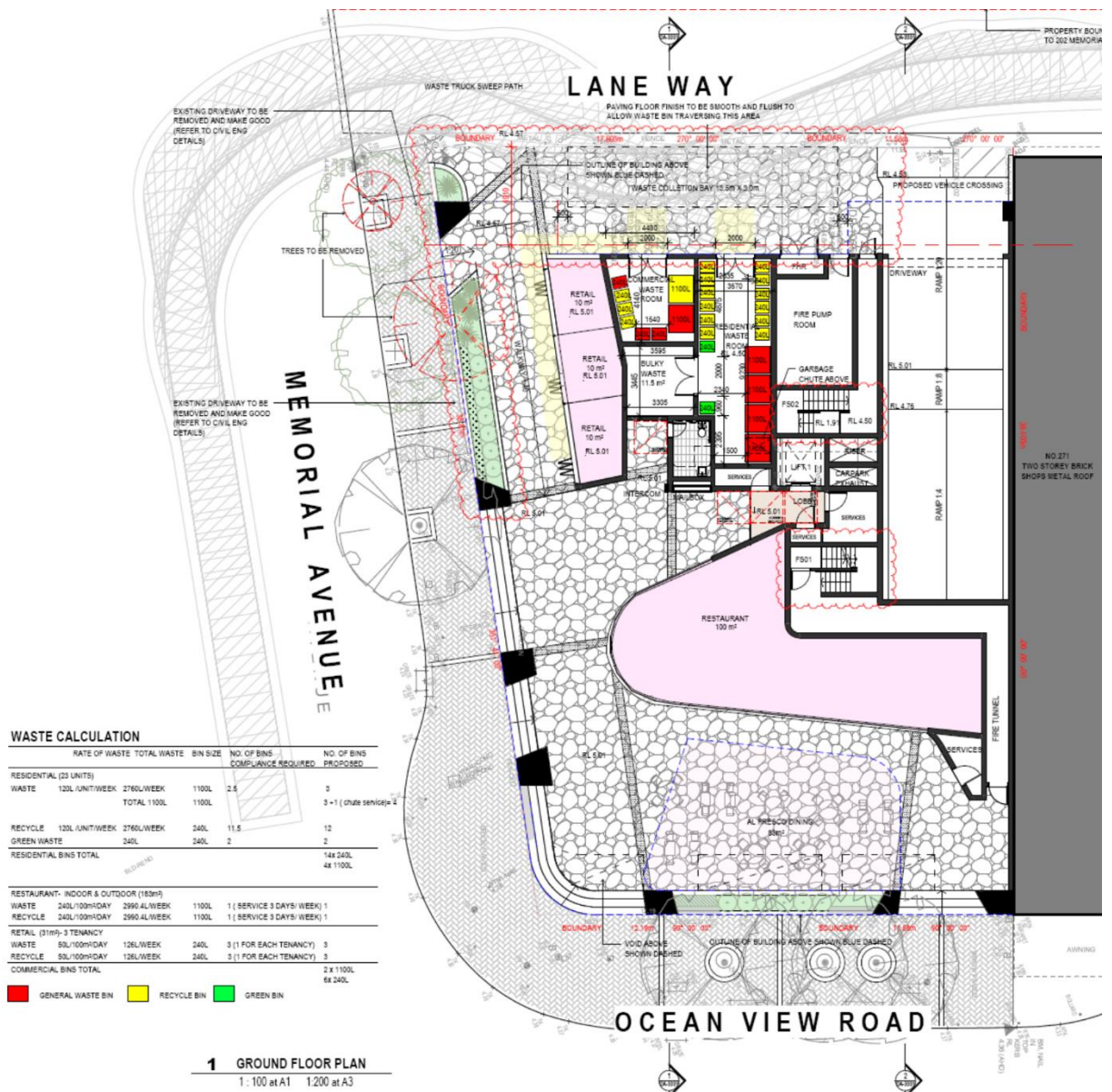


Figure 14: Ground (Source: CDA Architects)



Figure 15: Level 2 Plan (Source: CDA Architects)



Figure 16: Level 4 Plan (Source: CDA Architects)

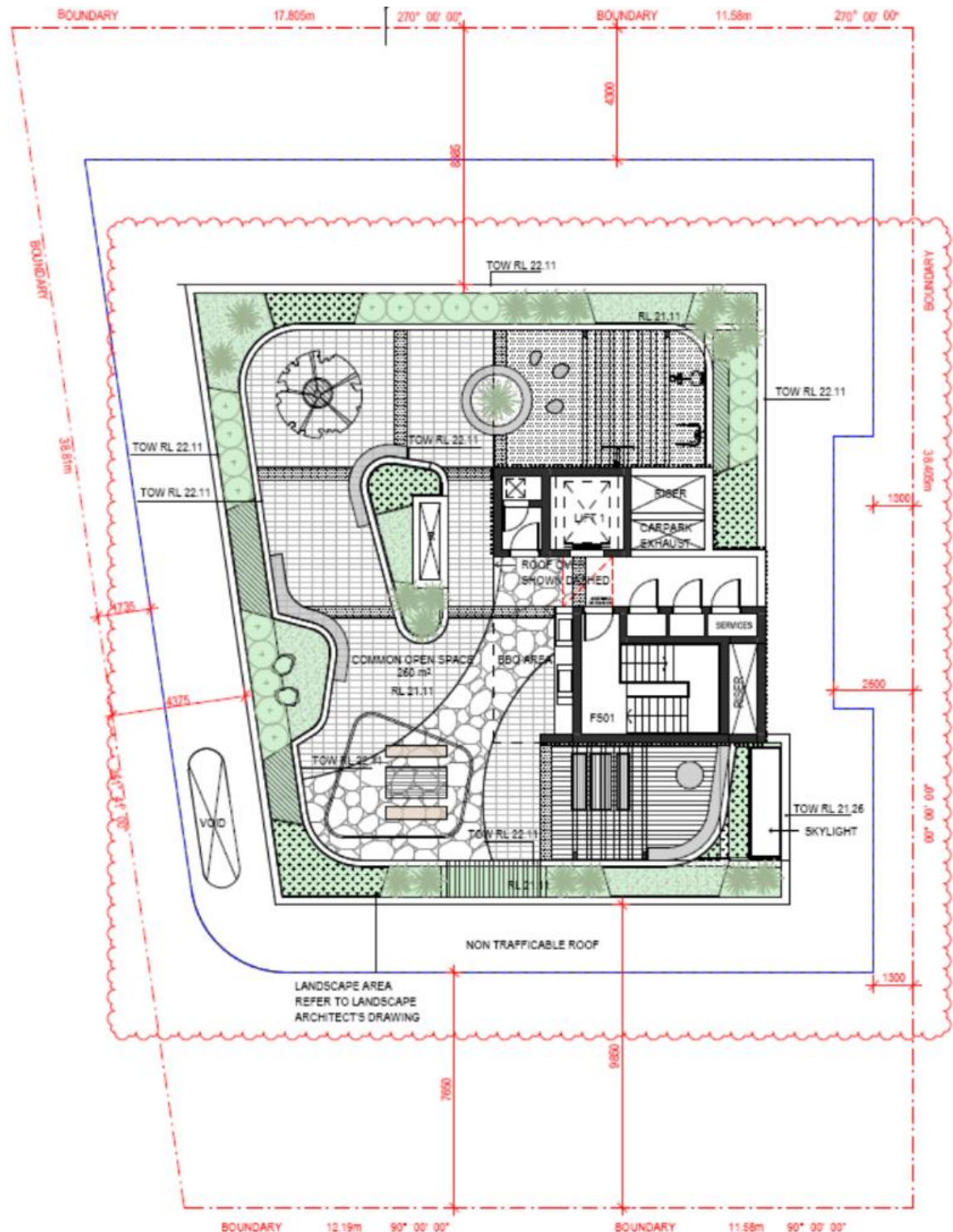


Figure 17: Level 4 Plan (Source: CDA Architects)

It should be noted that the submitted application documentation states that the Proposal seeks an FSR of 2.2:1 (2,242m<sup>2</sup> GFA), which exceeds the development standard by 10%.

However as measured the Proposal demonstrates a GFA of 2,352.1m<sup>2</sup> which equates to an FSR of 2.3:1 or exceedance of 15%. The discrepancy in calculation appears to have arisen from the



Applicant's failure to include parts of corridors, recycling rooms and an enclosed space on roof with unspecified use in the GFA calculation.

Accordingly, the application has been assessed herein as having a GFA of 2,352.1m<sup>2</sup> and FSR 2.3:1.

## **6. Assessment**

Having regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for the information of the Local Planning Panel.

### **6.1. Section 4.15(1)(a) – Assessment against relevant EPIs, DCPs etc.**

Relevant applicable planning controls for the purposes of this application include:

- *Environmental Planning & Assessment Act 1979 – Section 4.15*
- *State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Gosford Local Environmental Plan 2014*
- *Gosford Development Control Plan 2013*

At the date of lodgment, *Central Coast Local Environmental Plan 2022* was a draft Environmental Planning Instruments and accordingly was also a relevant consideration.

An assessment against relevant provisions of the above is provided below.

#### **6.1.1. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

The proposal is considered to be consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The Panel can be satisfied that the provisions of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* have been considered and satisfied.

#### **6.1.2. State Environmental Planning Policy (Resilience and Hazards) 2021**

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*State Environmental Planning Policy (Resilience and Hazards) 2021* commenced on 1 March 2022 incorporates and repeals the provisions of 3 SEPPs including *State Environmental Planning Policy 55 – Remediation of Land* and *State Environmental Planning Policy (Coastal Management) 2018*. The SEPP applies to the proposed development and as such relevant provisions are addressed below:

#### Chapter 2 Coastal Management

The aims of Chapter 2 are to be considered when determining an application within the Coastal Management Areas defined on maps issued by the NSW Department of Planning & Environment. The subject property falls within the mapped coastal management areas including: the 'Coastal Environmental Area' and 'Coastal Use Area' under Chapter 2.

The proposal is consistent with the relevant provisions of Section 2.10 in respect of the Coastal Environment Area as it will not cause an adverse impact on the following:

- the integrity and resilience of the environment
- coastal environmental values and natural coastal processes
- water quality
- marine vegetation, native vegetation and fauna and their habitats
- existing public open space and safe access to and along the foreshore
- aboriginal cultural heritage practices and places or
- the use of the surf zone,

Further the proposal is consistent with relevant provisions Section 2.11 in respect of the Coastal Use Area in that it is not likely to cause an adverse impact on:

- existing, safe access to and along the foreshore, beach, etc.
- overshadowing, wind funnelling and the loss of views from public places to foreshores
- the visual amenity and scenic qualities of the coast, including coastal headlands
- Aboriginal cultural heritage, practices and places or
- cultural and built environment heritage.

The relevant matters have been considered in the assessment of this application and the application is considered to be consistent with the stated aims, objectives and relevant provisions.

#### Chapter 4 Remediation of Land

Section 4.6 of Chapter 4 of the SEPP requires that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if so whether it can and will be remediated such that it is suitable for the proposed use.

The current use of the site is for commercial purposes, and there are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use. Further Council's Environmental Health Team has not raised any contamination concerns in relation to

the site. It is therefore considered that the requirements of the SEPP in relation to remediation of land have been satisfied.

The Panel can be satisfied that the provisions of Chapter 2 and Chapter 4, section 4.6(4) of the *State Environmental Planning Policy (Resilience and Hazards) 2021* have been considered and satisfied.

**6.1.3. State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Apartment Development**

*State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Apartment Development* (SEPP 65) applies to residential flat buildings that are three or more storeys in height and that comprise four (4) or more dwellings. The proposal seeks approval for a five-storey residential flat building with 23 residential dwellings and is therefore subject to the provisions of SEPP 65 and the Apartment Design Guidelines (ADG).

As required by clause 29 of the EP&A Regulations 2021 a design verification statement prepared by Liljana Ermilova of CD Architects was submitted with the application verifying that the proposal was designed and undertaken by the office of CD Architects, under her direction. The statement indicates that the design objectives SEPP 65 have been considered in the design and are met. However, the Regulations require that the statement explains how the development addresses:

- (i) *the design quality principles, and*
- (ii) *the objectives in Parts 3 and 4 of the Apartment Design Guide.*

A statement addressing the relevant matters has not been submitted with the application as required by clause 29 of the EP&A Regulation.

In absence of an assessment prepared the relevant designer, an assessment of the development against the SEPP's design quality principles outlined in Schedule 1 is provided below:

<b>Design Quality Principal</b>	<b>Assessment</b>
<i>Principle 1: Context and neighbourhood character</i>	<p>The proposal is located in a mixed-use area comprising of single and two-storey commercial buildings on both the northern and southern side of Ocean View Road. Larger mixed-use buildings are located further to the east and south of the proposal. There are several low-density single dwellings to the north. The proposal will impact the character of these surrounding dwellings.</p> <p>The proposed development is not considered to be consistent with the context and neighbourhood character providing for a development which demonstrates significant bulk and height and reduced setbacks. The character of the building is not consistent with the DCP provisions which apply to the Ettalong Beach local centre and does not reinforce the two-storey street wall and local centre character as required.</p>

<b>Design Quality Principal</b>	<b>Assessment</b>
<i>Principle 2: Built form and scale</i>	<p>The proposal exceeds both the height and FSR controls substantially seeking a variation of 3.31m (20.31m) to the height of building control and exceeding the maximum permissible FSR by 15% having an FSR of 2.3:1 where 2:1 is allowed.</p> <p>The proposed exceedances give rise to a building which is of a scale and form that is not compatible with either the existing or future context and which would result in significant amenity impacts on the street and within the development itself. Most notably the inadequate setbacks, floor to floor heights which exceed standards and inclusion of an internal planter within the building add to the bulk and scale.</p>
<i>Principle 3: Density</i>	<p>The proposed density of the development substantially exceeds the LEP controls (exceedance of approx.. 306.24m<sup>2</sup> GFA or 15% above the maximum FSR).</p> <p>The density is considered to be inappropriate given the prevailing planning controls, interface issues and the level of amenity afforded to units within the development.</p>
<i>Principle 4: Sustainability</i>	<p>The BASIX certificate supplied demonstrates that the proposal complies with the minimum sustainability requirements.</p> <p>The proposal incorporates reasonable sustainable design measures however the number of units achieving natural cross ventilation only just meets the 60% requirement where the proposal has argued that the higher design quality of the proposal justifies the proposed FSR and Height exceedances.</p> <p>Further in respect of solar access it is noted that the application indicates compliance with requirement that a minimum of 70% of units achieve 2 hours of solar access to POS and living rooms identifying that 17 out of 23 units comply. However, after review, it is evident that only 15 units comply which equates to 65.2% rather than the required minimum of 70%. The discrepancy is that the Applicant has including Units 106 and 402 as complying where it is evident from the sun view plans that these units will not receive adequate solar access to living rooms and POS. Unit 106 is setback within the building and has balconies overhanging which will present solar access. Unit 401 has its living room and POS oriented to the south and only receives direct solar access through a skylight which is not considered acceptable.</p>
<i>Principle 5: Landscape</i>	<p>The application includes landscaping plans which include a range of trees, shrubs and groundcover planting. This will soften the scale of the building, resulting in an attractive development with good amenity that positively contributes to the streetscape.</p> <p>Despite this, the application does not propose any deep soil. This is considered acceptable, given the site's location within the local centre.</p>
<i>Principle 6: Amenity</i>	<p>The proposal provides for apartments with views orientated towards the north, south and west providing residents with views over Brisbane Water and towards Blackall Mountain. However, it is noted that a significant number of units have living rooms and the principal POS (including the two penthouse units 401 and 402) oriented to the south. This results in poor solar access.</p> <p>The proposed design includes 9 single fronted units which are not able to be naturally cross ventilated. The proposal therefore provides for 60.9% of units which are naturally cross ventilated which just meets the minimum requirement of 60%.</p> <p>In terms of solar access only 65.2% of apartments (15/23) receive 2 hours of direct sunlight mid-winter which does not meet the minimum ADG criteria of 70%.</p>

<b>Design Quality Principal</b>	<b>Assessment</b>
	<p>The individual units comply with the minimum required sizes with adequate private and communal open space and storage space provided. However, a number of units including long corridors (Units 101, 102, 103, 201, 202, 203, 301, 302 &amp; 303) which is considered to be a poor design and amenity outcome. Further Units 103, 203 &amp; 303 include a bedroom (bedroom 1) which is setback some distance from the light source and Unit 106 on Level 1 has poor amenity with the unit similarly being setback a significant distance from the light source and overhung by the level above.</p> <p>The issues outlined above illustrate that the proposal would not result in a high level of amenity for residents.</p>
<i>Principle 7: Safety</i>	<p>It is considered that the proposal provides reasonable safety and security measures both within the development and in the public domain. It provides opportunities for passive surveillance of the public and communal areas from balconies, private open spaces and communal spaces.</p> <p>The proposal provides for separate entry to the residential levels located along the western elevation to provide security to residents.</p> <p>The proposed building will ensure lighting will be used at key entry points to assist in identifying the transition between public and private land.</p>
<i>Principle 8: Housing and diversity and social interaction</i>	<p>The proposed unit mix is as follows:</p> <ul style="list-style-type: none"> <li>• 6 x 1 bedroom (26%)</li> <li>• 13 x 2 bedroom (56.6%)</li> <li>• 4 x 3 bedroom (17.4%)</li> </ul> <p>This diverse unit mix will provide sufficient housing choice for different demographics, living needs and household budgets.</p>
<i>Principle 9: Aesthetics</i>	<p>The proposal features a generally acceptable balance of materials, colours and textures. The building will comprise of heritage colours, ensuring it is consistent with the surrounding aesthetics of the street and surrounding buildings.</p> <p>However as outlined above, as a result of the proposed non-compliances it is considered that the proposal will dominate the street and surrounding development and would be inconsistent with the surrounding context.</p>

Further, an assessment against the design criteria in Part 3 and 4 of the ADG has been conducted and is provided below:

<b>Design Criteria</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
3D-1 Communal Open Space	<ul style="list-style-type: none"> <li>• Minimum communal open space area 25% of the site</li> <li>• Minimum dimension of 3m</li> <li>• 50% direct sunlight to principal usable part for min 2 hrs between 9am and 3pm mid-winter</li> </ul>	<p>260m<sup>2</sup> (25.4%) of communal open space is provided.</p> <p>Communal Open Space is on rooftop and will receive adequate sunlight.</p>	Yes
3E-1 Deep Soil Zone	<ul style="list-style-type: none"> <li>• Deep soil zones are to meet the following minimum requirements.</li> <li>• Minimum dimension of 3m for site area of 650m<sup>2</sup> – 1,500m<sup>2</sup></li> <li>• 7% of site area (71.5m<sup>2</sup>)</li> </ul>	No deep soil area proposed as part of development.	No



Design Criteria	Required	Proposed	Compliance
3F-1 Visual Privacy	Separation from boundaries and buildings: <ul style="list-style-type: none"> <li>up to 12m / 4 storeys – 6m to habitable 3m to non-habitable</li> <li>up to 25m / 5-8 storeys – 9m to habitable, 4.5m to non-habitable</li> </ul>	<ul style="list-style-type: none"> <li>North - up to 12m / 4 storeys – 3m habitable</li> <li>North – 5th floor (L.4) – 4.2m</li> <li>East - up to 12m / 4 storeys – 0m non - habitable</li> <li>East - up to 12m / 4 storeys – 0m non - habitable</li> <li>East - 5th floor (L.4) – 2.7m non-habitable</li> <li>East - 5th floor (L.4) – 4.0m -habitable (screened)</li> </ul>	No No No No No No
4A-1 Solar and Daylight Access	<ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</li> </ul>	65.2% of the apartments receive the required minimum of 2 hours of direct sunlight to both living rooms and private open space.  5 apartments (Units 101, 102, 201, 202 and 401 (via skylight only)) out of 23 (22%) receive no direct sunlight between 9am and 3pm at mid-winter.	No  No
4B-3 Natural Ventilation	<ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</li> <li>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</li> </ul>	14 apartments out of 23 (60.9%) of units are naturally cross ventilated. Depth of cross over or cross through apartment does not exceed 18m	Yes
4C-1 Ceiling Heights	Minimum finished floor level to finished ceiling level heights are: <ul style="list-style-type: none"> <li>2.7m – habitable rooms</li> <li>2.4m – non-habitable</li> </ul>	Minimum floor to ceiling heights are: <ul style="list-style-type: none"> <li>3.1m for habitable and non-habitable rooms:</li> <li>3.6m for ground floor</li> <li>3.1m for first floor</li> </ul>	Yes
4D-1 Apartment Size	Minimum dwelling sizes are: <ul style="list-style-type: none"> <li>Studio: 35sqm</li> <li>1 bedroom: 50sqm</li> <li>2 bedroom: 70sqm</li> <li>3 bedroom: 90sqm</li> <li>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of</li> </ul>	Minimum dwelling sizes proposed are: 1 bedroom: 51m <sup>2</sup> 2 bedroom: 75m <sup>2</sup> 3 bedroom: 94m <sup>2</sup> All habitable rooms have windows to an external wall.	Yes

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Design Criteria	Required	Proposed	Compliance
	the room. Daylight and air may not be borrowed from other rooms		
4D-2 Room depths	<ul style="list-style-type: none"> <li>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</li> <li>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</li> </ul>	No habitable room depth is greater than 6.75m.	Yes
4D – 3 Apartment Layouts	<ul style="list-style-type: none"> <li>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</li> <li>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</li> <li>Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>3.6m for studio and 1 bedroom apartments</li> <li>4m for 2 and 3 bedroom apartments</li> </ul> </li> <li>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</li> </ul>	Minimum bedroom areas meet these requirements. All bedrooms meet the minimum wardrobe space.	Yes
4E-1 Private open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> <li>1 bedroom: 8sqm, min 2m depth</li> <li>2 bedroom: 10sqm, min 2m depth</li> <li>3 bedroom: 12sqm, min 2.4m depth</li> </ul>	<p>Minimum private open space provided is:</p> <p>1 bedroom: 9m<sup>2</sup> 2 bedroom: 11m<sup>2</sup> 3 bedroom: 17m<sup>2</sup></p>	Yes
4F-1 Common Circulation	<ul style="list-style-type: none"> <li>The maximum number of apartments off a circulation core on a single level is eight</li> </ul>	Maximum number of units off a circulation core is 7.	Yes
4G-1 Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> <li>1 bedroom: 6m<sup>3</sup></li> <li>2 bedroom: 8m<sup>3</sup></li> <li>3 bedroom: 10m<sup>3</sup></li> </ul> <p>At least 50% of the required storage is to be located within the apartment.</p>	All units comply with the minimum storage requirements.	Yes
4H Acoustic Privacy	Noise transfer is limited through the siting of the buildings and building layout	Development has generally been sited to avoid noise transfer.	Yes

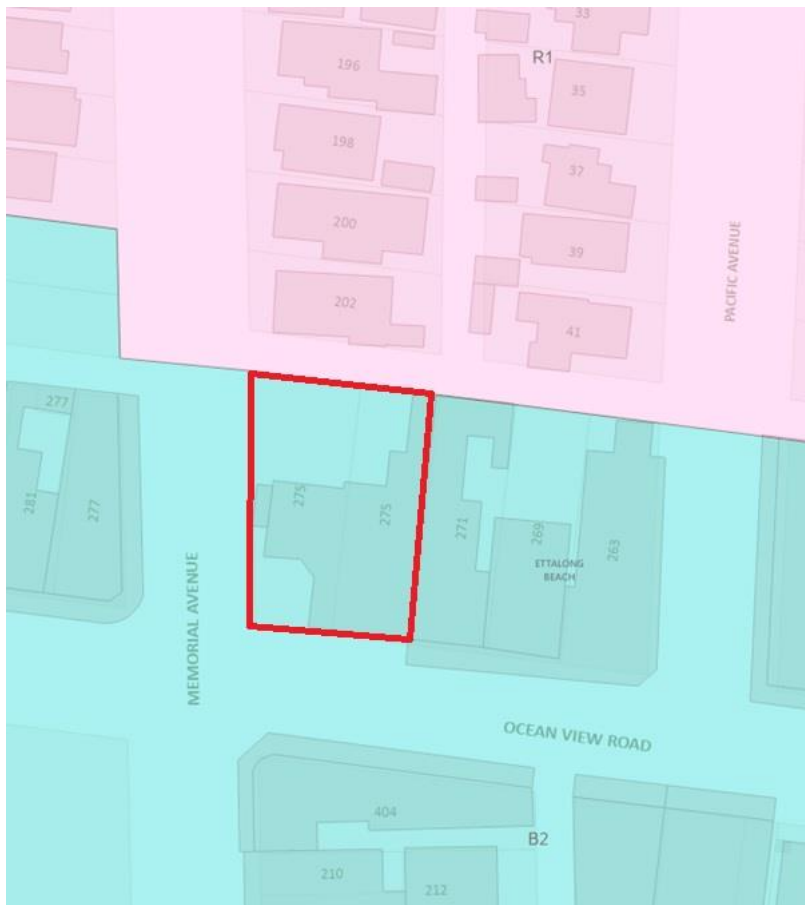
Design Criteria	Required	Proposed	Compliance
4J Noise and Pollution	The impact of external noise transfer and pollution are minimised through the siting and layout of the building.	As above, the design seeks to minimise this.	Yes
4K Apartment Mix	A range of apartment types are provided to cater for different household types, and distributed throughout the building	A mixture of 1, 2 and 3 bedroom units are proposed as follows: <ul style="list-style-type: none"> <li>• 6 x 1 bedroom (39.1%)</li> <li>• 13 x 2 bedroom (43.5%)</li> <li>• 4 x 3 bedroom (17.4%)</li> </ul>	Yes
4L Ground Floor Apartments	Maximise street frontage activation and amenity. Design of ground floor apartments delivers amenity and safety	No apartments are located on the ground floor.	N/A
4M Facades	Provide visual interest whilst respecting the character of the area	The facades and external appearance of the building is generally considered acceptable	Yes
4N Roof Design	Roof features are incorporated in the roof design, respond to the street and provide sustainability features	Roof design is acceptable and responds to the height and character of development.	Yes
4O Landscape Design	Landscape design is viable, sustainable, contributes to the streetscape and amenity	Landscape and planting schemes include an appropriate mix of species.	Yes
4V Water	Water Management and Conservation is achieved.	A BASIX certificate has been submitted with the application.	Yes
4W Waste	Waste storage facilities are provided to minimise impacts on the streetscape, building entry an amenity of residents.	Waste storage is located within the waste storage areas (commercial, residential and bulky waste) at the rear of the ground floor fronting the laneway.	Yes

#### **6.1.4. Gosford Local Environmental Plan 2014 (GLEP 2014)**

The *Central Coast Local Environmental Plan 2022* (CCLEP 2022) came into effect 1 August 2022. This application is subject to saving provisions under clause 1.8A of CCLEP 2022 and as such must be determined as if this plan had not commenced. The *Gosford Local Environmental Plan 2014* (GLEP 2014) remains the applicable local environmental plan applying to the site.

### **Land Zoning**

The site is zoned B2 – Local Centre under GLEP 2014, as illustrated in Figure 18 below.



*Wyoming are recognised as providing a broad range of services and facilities to serve the population of the locality.*

- *To ensure that villages are recognised as providing local level services and facilities and are developed at a scale that reflects their population catchment and as a focus for public transport routes.*
- *To ensure that the different roles of villages are recognised with some villages being key tourist destinations with boutique activities in addition to serving the needs of local residents, while other villages are purpose-built centres to serve the needs of the local population.*
- *To encourage the residential population of villages and town centres to contribute to the vitality of those locations*

The development is defined as a *Shop Top Housing* and *commercial premises* as per the GLEP2014 as follows:

***Shop top housing*** means one or more dwellings located above ground floor retail premises or business premises.

***commercial premises*** means any of the following—

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises.*

Shop top housing and commercial premises are permissible with consent in the B2 Local Centre zone. It is considered that the proposal does not:

- sufficiently provide for a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area
- maximise the opportunities for employment in accessible locations providing for a small amount of commercial / retail development on the ground floor well set back from the main Ocean View Road frontage
- provide for development that is compatible with the desired future character of the zone, and
- adequately ensure that village centre of Ettalong Beach provides a broad range of services and facilities to serve the population of the locality.

The proposal is inconsistent with the character and scale of development intended for the Ettalong Beach local centre as demonstrated by non-compliance with the height and FSR development controls. Further the proposal is not consistent with key ADG controls in relation to setbacks and the internal design of the proposed apartments. Concern is also raised the definition of shop top housing development the proposal provides minimal retail development which is setback from the main street frontages and accordingly which will result in minimum street activation as is intended for the local centre.

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The proposal is not considered to be consistent with the objectives of the zone and the Panel cannot be satisfied that the application meets the requirements of the zone.

**Part 4 - Principal Development Standards**

The proposal has been assessed in respect of the applicable development standards of GLEP 2014.

Development Standard	Required	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
<b>Clause 4.3 Height of Buildings</b>	17m	20.31m	No. Refer to Section 8.21 below	19.4% (3.31m)	No
<b>Clause 4.4 Floor Space Ratio</b>	2:1	2.3:1	No. Refer to Section 8.22	15%	No

**Clause 4.3 Height of Building**

The objectives of the maximum height of building clause are as follows—

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

Clause 4.3(2) of GLEP 2014 specifies the building height for the site shall not exceed that indicated on the applicable map. The maximum height as shown in Figure 19 below is P1 where is 17m.

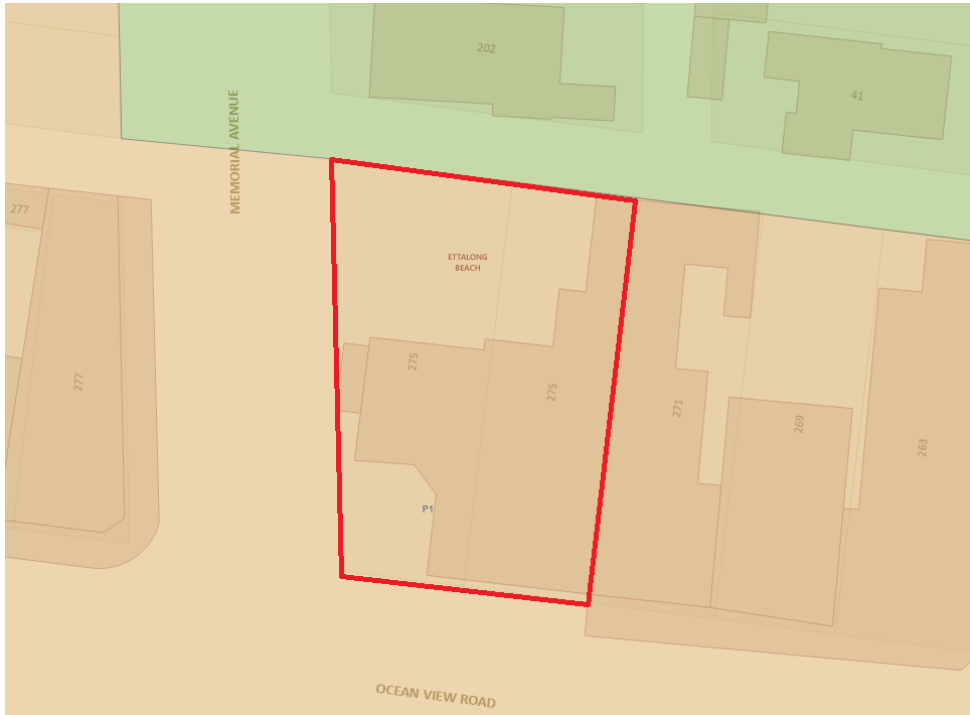


Figure 19: Height of buildings map (Source: GLEP 2014)

The proposal seeks a maximum height of 20.31m which exceeds the development standard by 19.4%. The proposed height exceedance is not consistent over the whole site and the proposed exceedance is contained to intermittent portions of the site. A Clause 4.6 application was submitted with the DA to contravene the development standard. Consideration of the Clause 4.6 request is included below at Section 8.2.3.

#### Clause 4.4 Floor Space Ratio

The objectives of the maximum Floor Space Ratio clause are as follows:

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

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- (vii) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,
- (viii) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.

Clause 4.4(2) of GLEP 2014 specifies the floor space ratio (FSR) for the site shall not exceed that indicated on the applicable map. The maximum FSR as shown in Figure 20 where T1 is 2:1.

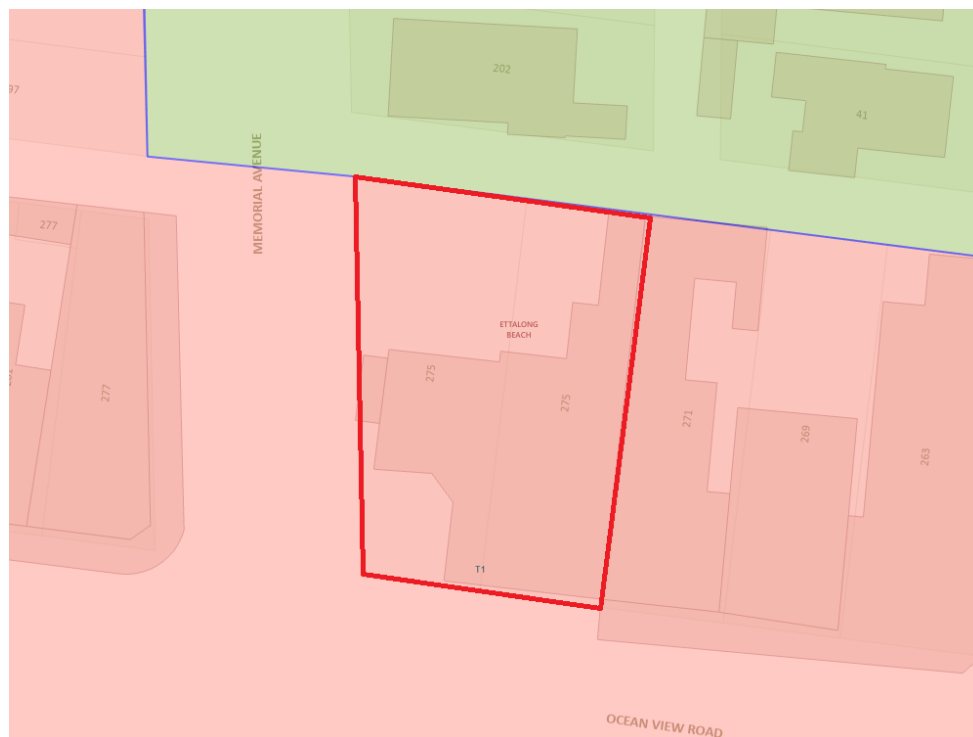


Figure 20: Maximum FSR Map (Source: GLEP 2014)

The application states that the Proposal seeks an FSR of 2.2:1 (2,242m<sup>2</sup> GFA), which exceeds the development standard by 10%. However review of the plans by staff demonstrates a GFA of 2,352.1m<sup>2</sup> which equates to an FSR of 2.3:1 or exceedance of 15%. The discrepancy in calculation appears to have arisen from the Applicant's failure to include parts of corridors, recycling rooms and an enclosed space on roof with unspecified use in the GFA calculation. A Clause 4.6 variation request was submitted with the DA to contravene the development standard. Consideration of the Clause 4.6 request is included below.

#### Clause 4.6 Exceptions to development standards

The intention of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to particular development, and in doing so, to achieve better outcomes for and from the development by allowing flexibility in particular circumstances.

The Applicant has made a written request under Clause 4.6(3) to vary both the Height of Building Standard of Clause 4.3 of the GLEP 2014 and Clause 4.4 Floor Space Ratio Standard of Clause 4.4 of GFEP 2014 as set out below.



<b>Clause</b>	Clause 4.3 Height of Buildings
<b>Standard</b>	17m
<b>Proposed</b>	20.31m which equates to a breach of 3.31m (19.5%)
<b>Instrument</b>	GLEP 2014

<b>Clause</b>	Clause 4.4 Floor Space Ratio
<b>Standard</b>	2.2:1
<b>Proposed</b>	2.3:1 which equates to a breach of 306.24m <sup>2</sup> GFA (15%)
<b>Instrument</b>	GLEP 2014

The merit of these requests is considered below. In considering the requests regard has been had to the objectives of the clause to be varied (as outlined below) in addition to the objectives of the B2 Local Centre zone in which the site is location as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for residential uses, but only as part of a mixed use development.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To promote ecologically, socially and economically sustainable development.*
- *To ensure that the town centres of Erina and Woy Woy are recognised as providing a higher level, and greater diversity, of services and facilities to serve a wide population catchment from numerous localities and as key public transport nodes, secondary to Gosford City Centre.*
- *To ensure that village centres such as Avoca, East Gosford, Ettalong Beach, Kincumber, Lisarow, Niagara Park, Terrigal, Umina Beach, West Gosford and Wyoming are recognised as providing a broad range of services and facilities to serve the population of the locality.*
- *To ensure that villages are recognised as providing local level services and facilities and are developed at a scale that reflects their population catchment and as a focus for public transport routes.*
- *To ensure that the different roles of villages are recognised with some villages being key tourist destinations with boutique activities in addition to serving the needs of local residents, while other villages are purpose-built centres to serve the needs of the local population.*
- *To encourage the residential population of villages and town centres to contribute to the vitality of those locations.*

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The relevant principles set out in various judgements applying to variations to development standards including:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

These decisions have been considered in the below assessments. Further it is noted that assumed concurrence is provided to local planning panels as per NSW Department of Planning Circular 'Variations to development standards' Ref: PS 18-003 dated 21/02/2018. There is no limit to the level of non-compliance for which concurrence can be assumed. The matter does not raise any matters or State of Regional significance.

#### Height of Buildings Variation Request

The proposed development has a maximum height of 20.31 as outlined above. The proposal results in a 3.31m non-compliance with the maximum height of building development standard (17m). The departure encompasses the stairs to the roof level and enclosed area (+2.28m), lift core (+3.31m) and part of the roof level parapet wall (+660mm to 755mm) (Figure 21).

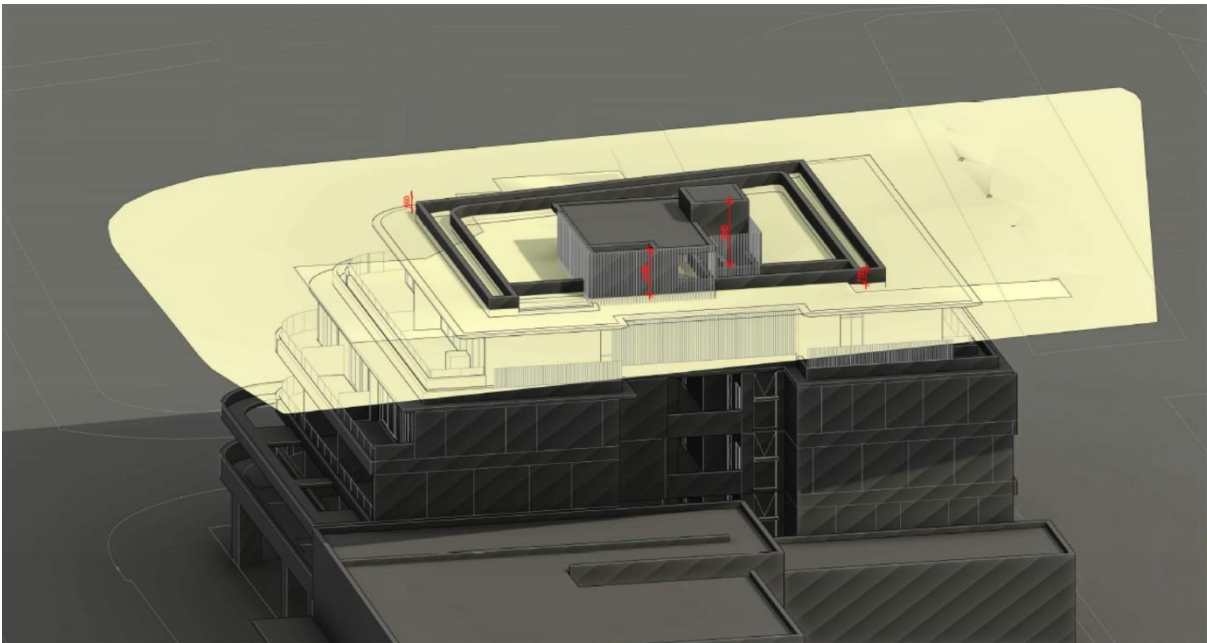


Figure 21 – LEP Building height diagram (CD Architects, 20.3.2023)

**Clause 4.6(3)** provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

An established way to demonstrate that compliance with the standard is unreasonable and unnecessary is to use one or more of the five justifications identified in *Wehbe v Pittwater Council [2007]*. The Applicant has provided a Clause 4.6 written request that outlines the applicant's reasons why strict compliance with the height of buildings development standard is unnecessary and unreasonable are summarised as follows:

*...strict compliance with the Building Height development standard is unreasonable in this case as the proposed variation simply seeks to:-*

- (i) offset the existing poor built form to the east and south of the site through higher design standards and architectural design;*
- (ii) maximise the site outcomes and financial viability of the site; and*
- (iii) improve the residential standard of the precinct without any significant impact on the adjoining properties or the streetscape*

*It also proposes a high-quality residential interface with both the Ocean View Road and Memorial frontages in line with the Gosford Development Control Plan 2013 (Clause 4.2 – Peninsula Centres). It will ensure a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied. The proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community.*

*The variation will not adversely affect the amenity of the immediate locality or compromise the objectives of Clause 4.4 of the Gosford Local Environmental Plan 2014 (GLEP 2014) or Section 5(a)(i)(ii) of the EP&A Act.*

*In relation to this clause, it is considered that the objection to the Building Height standard is well founded and that based on the details provided above, strict adherence to the development standard would appear to be unreasonable and unnecessary in the circumstances of this development application. Therefore, Council's favourable consideration of the application under the provisions of Clause 4.6(3)(a) is sought.*

**Clause 4.6(4)** identifies matters of satisfaction for the consent authority to grant development consent. These matters are:

- (i) That the written request has adequately addressed the above requirements of the written request contained at 4.6(3). Refer to discussion above.*
- (ii) That the proposed development is in the public interest because it is consistent with the objectives of the particular standard.*

Further **Clause 4.6(3)** requires that there are sufficient environmental planning grounds to justify contravening the development standard.

In considering whether there are sufficient environmental planning grounds, the consent authority is required to be satisfied that the applicant's written request has demonstrated environmental planning grounds that are sufficient "to justify contravening the development standard". In this regard, the matters identified must relate to the aspect or element of the development that contravenes the development standard, not of the development as a whole, and why that contravention is justified on environmental planning grounds. This has clearly been established through the caselaw of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] and *Four2Five Pty Ltd v Ashfield Council* [2015].

The objectives of Clause 4.3 Height of Building are:

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

Compliance with these objectives has been considered in the below assessment.

It is considered that the application's written rationale does not adequately demonstrate compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and/or that there are sufficient environmental planning grounds to justify contravening the development standard. The request claims that the variation is justified as the development offsets the existing poor built form through higher design standards and architectural design, maximises the site outcomes and financial viability of the site and improves the residential standard of the precinct. None of these reasons illustrate why the Height of Building development standard cannot / should not be adhered to in the particular circumstances or the case nor why it is unreasonable or unnecessary. As outlined elsewhere in this report the proposal does not demonstrate higher design standards than would otherwise be required. Rather the application breaches, or barely meets, a number of key ADG requirements which are to be applied to all residential apartment development.

In respect of environmental planning grounds the application notes that the site is located in a prominent location and that the height exceedance is partly the result of the need for the building to meet the minimum floor level requirement of RL5.01m AHD which is some 600mm above natural ground level. It is argued that this has resulted in a higher height exceedance

than would otherwise have been the case should the building finished floor level reflect the existing floor level of RL4.5m AHD (slightly more than the existing footpath level of RL4.35m AHD). Further they indicate that the site is located on the prominent entry corner of Ocean View Road and Memorial which has traditionally been considered the "centre" of the Ettalong Beach village emanating to the previous use of the building as the Ettalong Beach Post Office. They noted that the entry is currently dominated by an eclectic mix of older style single and two storey commercial buildings on both the northern and southern side of Ocean View Road and the at grade Mantra Resort/Ettalong Beach War Memorial Club car park on the adjacent corner and that the existing building stock represents an underutilisation of available commercial land with many of the building reaching the end of their useful economic life.

The above arguments (and the remainder of the clause 4.6 variation request) do not justify the height non-compliance. The site's location in the local centre and main street of the Ettalong Village is clearly acknowledged through the applicable planning controls which allow for a more intensive form of development than on surrounding land. A building of 17m in height would clearly be a significant element in the Ettalong Village streetscape and whilst it is acknowledged that a floor level of RL5.01 is required due to flood constraints, this floor level does not result in a building that exceeds the maximum height limit by 3.3m at its highest point. Further it is noted that the proposal provides for floor-to-floor heights which are generous (Ground – 3.6m, Levels 1 – 3 - 3.1m and Level 4 – 3.2m) and which could readily be reduced to improve compliance.

It is argued that the height non-compliance is minor and would not be visible from the street however no information has been provided to demonstrate this. The site is highly visible being located on a significant corner at the entrance to the village and considered likely that the area of non-compliance will be visible from surrounding streets and will add to the overall bulk and scale of the buildings.

Having regard to the above it is considered that the Applicant's clause 4.6 variation does not, as is required, clearly demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case nor that there are sufficient environmental planning grounds to justify contravening the standard. Further the proposal is not considered to be in the public interest as it is not consistent with the objectives of the development standard or the B2 Local Centre zone.

Accordingly, it is considered that the Clause 4.6 variation request to vary clause 4.3 Height of Building of GLEP 2014 is unfounded, does not meet the required clause 4.6 tests and cannot therefore be supported.

### **Floor Space Ratio Variation Request**

In addition to seeking to vary the height of building control the application also seeks to vary the floor space ratio control under clause 4.4 of GLEP 2014. The proposed development has a floor space ratio of 2.3:1 (as measured noting that the application states a proposed FSR of

2.2:1) which exceeds the maximum of 2:1 permissible. The proposal results in a 306.24m<sup>2</sup> GFA exceedance (15%).

**Clause 4.6(3)** provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The established way to demonstrate that compliance with the standard is unreasonable and unnecessary is to use one or more of the five justifications identified in *Wehbe v Pittwater Council* [2007]. The Applicant has provided a Clause 4.6 written request that outlines the applicant's reasons why strict compliance with the floor space ratio development standard is unnecessary and unreasonable are summarised as follows:

*The proposed variation simply seeks to:-*

- (i) offset the existing poor built form through higher design standards and architectural design;*
- (ii) maximise the site outcomes and financial viability of the site; and*
- (iii) improve the residential standard of the precinct without any significant impact on the adjoining properties or the streetscape*

*It also proposes a high-quality residential/commercial interface with the Ocean View Road frontage in line with the Gosford Development Control Plan 2013 (Clause 4.2 – Peninsula Centres). It will ensure a more viable development and higher standard of residential yield (as shop top housing) compared to that which would otherwise be provided should strict adherence to the LEP standard be applied.*

*The proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community. The variation will not adversely affect the amenity of the immediate locality or compromise the objectives of Clause 4.4 of the Gosford Local Environmental Plan 2014 (GLEP 2014) or Section 5(a)(i)(ii) of the EP&A Act....it is the applicants view that strict compliance with the Floor Space Ratio development standard is considered to be unreasonable in this particular case.*

*In relation to this clause, it is considered that the objection to the Floor Space Ratio standard is well founded and that based on the details provided above, strict adherence to the development standard would appear to be unreasonable and unnecessary in the circumstances of this development application. Therefore,*

*Council's favourable consideration of the application under the provisions of Clause 4.6(3)(a) is sought.*

**Clause 4.6(4)** identifies matters of satisfaction for the consent authority in order to grant development consent. These matters are:

- (i) That the written request has adequately addressed the above requirements of the written request contained at 4.6(3). Refer to discussion above.*
- (ii) That the proposed development is in the public interest because it is consistent with the objectives of the particular standard.*

Further **Clause 4.6(3)** requires that there are sufficient environmental planning grounds to justify contravening the development standard.

In considering whether there are sufficient environmental planning grounds, the consent authority is required to be satisfied that the applicant's written request has demonstrated environmental planning grounds that are sufficient "to justify contravening the development standard". In this regard, the matters identified must relate to the aspect or element of the development that contravenes the development standard, not of the development as a whole, and why that contravention is justified on environmental planning grounds. This has clearly been established through the caselaw of *Initial Action Pty Ltd v Woollahra Municipal Council [2018]* and *Four2Five Pty Ltd v Ashfield Council [2015]*.

The objectives of Clause 4.4 Floor Space Ratio are:

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,*
- (g) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,*
- (h) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.*

Compliance with these objectives have been considered in the below assessment.

The application's written rationale does not adequately demonstrate compliance with the floor space ratio development standard is unreasonable / unnecessary in the circumstances of the case, and/or that there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that the reasons put forward to substantiate that adherence to the development standard is unreasonable or unnecessary are insufficient or irrelevant. The application documentation provides justification in that the design seeks to offset the existing poor built form through higher design standards and architectural design, maximise the site outcomes and financial viability of the site, and improve the residential standard of the precinct without any significant impact on the adjoining properties or the streetscape. Further they argue that the development proposes a high-quality residential/commercial interface with the Ocean View Road frontage in line with the Gosford Development Control Plan 2013 (Clause 4.2 – Peninsula Centres) and will ensure a more viable development and higher standard of residential yield (as shop top housing) compared to that which would otherwise be provided should strict adherence to the LEP standard be applied. They also indicate that the proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community.

The justification set out by the application does not demonstrate that application of the 2:1 maximum floor space ratio is unreasonable or unnecessary in the circumstances of the case. The proposed development demonstrates significant non-compliance with controls contained within the ADG and the GDCP 2013 (as detailed elsewhere in this report) most notably including setback /separation distance controls, build envelope controls and solar access provision. The proposed reduced side setbacks and inclusion of significant internalised landscape areas (Level 4) results in a built form which presents significant bulk to the streets (primarily Memorial Ave), creates privacy issues (north and east) and creates a layout where a number of units have poor amenity with long corridors (Units 101, 102, 103, 201, 202, 203, 301, 302, 303) and rooms which are largely internalised set a significant distances from a light source (103, 203, 303). These non-compliances are considered to be indicative of the development being an overdevelopment of the site where a reduction in GFA to comply with the 2:1 maximum FSR would allow for increased setbacks / separation, reduced bulk and a more logical layout to units that allows for improved internal amenity.

The application argued that there are sufficient environmental planning grounds to justify contravening the development standard as the site is located on the prominent entry corner of Ocean View Road and Memorial which has traditionally been considered the "centre" of the Ettalong Beach village emanating to the previous use of the building as the Ettalong Beach Post Office. They note that the entry is currently dominated by an eclectic mix of older style single and two-storey commercial buildings on both the northern and southern side of Ocean View Road and the at grade Mantra Resort/Ettalong Beach War Memorial Club car park on the adjacent corner and that a range of higher development forms exist. Further they argue that the proposed mixed-use development has been designed over five (5) levels with articulated facades so as to reduce the apparent bulk and scale and that the building design provides retail



street activation on both the Ocean View Road and Memorial Road frontages. They claim that the design response to the existing streetscape conditions and viability of the high-quality design and modest shop top housing apartment yield (i.e.: 23 residential apartments) has necessitated the minor increase in FSR beyond the current maximum of 2:1 and 2.2:1 representing a variation of 10% (Note: Council's measurements indicate 2.3:1 FSR and 15% variation). It concludes that stating that allowing the variation to the floor space ratio results in a more efficient and orderly use of the land and will produce a better outcome than would otherwise be the case if strict adherence to the standard were observed and that therefore the objection to the Floor Space Ratio standard is well founded.

It is acknowledged that a range of built forms exist within the village centre including older style 1 – 2 storey and more recent higher density development. However, it is considered that the proposal does not represent a high level of architect design that warrants variation of the established development standards (height and FSR). As outlined above the FSR exceedance is manifest in a building that does not comply with significant ADG and DCP controls that apply. These non-compliances result in a building that presents significant bulk to the street (primarily Memorial Avenue but also on the prominent corner), boundary interface issues (privacy aural and visual) and compromised amenity for the units themselves. Further design interventions including the covered planter on Level 4 unnecessarily add to the bulk of the building and appear to have the potential for illegal future conversion to additional GFA.

Having regard to the above, it is considered that the application's clause 4.6 variation does not, as is required, clearly demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case nor that there are sufficient environmental planning grounds to justify contravening the standard. Further, the proposal is not considered to be in the public interest as it is not consistent with the objectives of the development standard or the B2 Local Centre zone. Accordingly, it is considered that the Clause 4.6 variation request to vary clause 4.4 Floor Space Ratio of GLEP 2014 is unfounded, does not meet the required clause 4.6 tests and cannot therefore be supported.

### **Conclusion**

It is considered that the proposed variations to the height of building (Clause 4.3) and FSR (Clause 4.4) development standards have not been justified and that strict application of the standards is not unreasonable or unnecessary in the circumstances of the case. Further sufficient environmental planning grounds to justify contravening the standard have not been demonstrated and it is concluded the proposal is not in the public interest and the proposed variations should not be supported.

The Panel cannot be satisfied that the provisions of clause 4.6 Exceptions to Development Standards of *Gosford Local Environmental Plan 2014* have been satisfied.

### **Clause 7.1 Acid Sulfate Soils**

The subject land is identified as being affected by Acid Sulfate Soils Map in Clause 7.1 and the matters contained in the GLEP 2014 have been addressed. The site contains Class 4 Acid Sulfate Soils. Under clause 7.1 on Class 4 land an acid sulfate soils management plan is generally required where works are more than 2 metres below the natural ground surface and / or for works that are likely to result in the watertable being lowered more than 2 metres below the natural ground surface. A Geotechnical Study has been submitted with the proposal which indicates that the site has a low probability of the occurrence of ASS soils from depths greater than 3m below ground level (L4 classification). To the east of the site, there is a low probability of occurrence of ASS soils from the depths between 1m – 3m below ground level (L2). However it recommends that further sampling be undertaken to understand the acid sulphate soil potential at the site.

This report has been reviewed by Council's Environmental Health Officer who support the recommendations of this report.

The Panel can be satisfied that the provisions of clause 7.1 Acid Sulfate Soils of *Gosford Local Environmental Plan 2014* have been considered and satisfied.

### **Clause 7.2 Flood Planning**

The land has been classified as being within Precinct 1: Probably Maximum Flood under Council maps and is therefore subject to the imposition of a minimum floor level as identified in Figure 22 below.

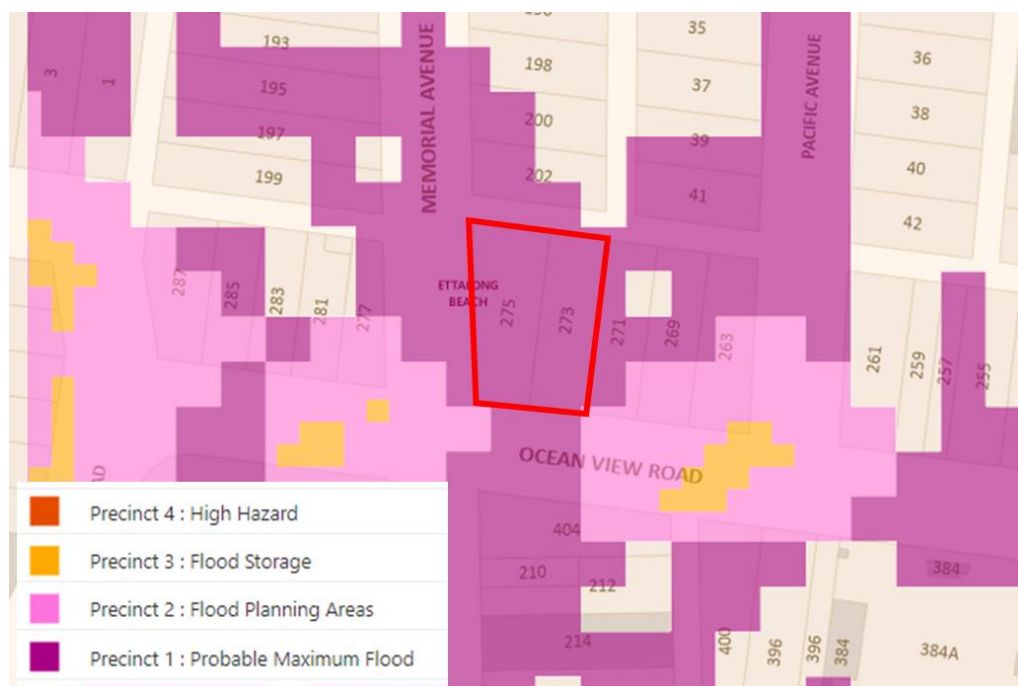


Figure 22: Flood Map (Source: Central Coast Council Online Mapping)

### 3.1 **DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)**

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Consent must not be granted to land identified by this clause unless the consent authority is satisfied that the development:

- *is compatible with the flood hazard of the land, and*
- *is not likely to significantly adversely affect flood behaviour resulting in worsened flood hazard to other development or properties, and*
- *incorporates appropriate measures to manage risk to life from flood and*
- *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses, and*
- *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The site is identified as being affected by Woy Woy Peninsula Flood Study and has a nominate minimum floor level of **RL5.01m AHD**. The proposed Floor Levels of the retail tenancies and lobby of the residential apartments have been set at RL5.01m AHD, in accordance with the requirements for Minimum Habitable Floor Levels by Council.

The Panel can be satisfied that the provisions of clause Clause 7.2 Flood Planning of *Gosford Local Environmental Plan 2014* have been considered and satisfied.

#### **6.1.5. Draft Central Coast Local Environmental Plan 2022**

The CCLEP 2022 was notified on 24 June 2022 and came into effect 1 August 2022. At the time of lodgement, the CCLEP 2022 had not been gazetted and was a draft instrument. The CCLEP 2022 provisions applicable to the site remain generally consistent with the provisions of the GLEP 2014.

This application is subject to the saving provision in clause 1.8A consideration of the zoning, development standards and special provisions of CCLEP 2022 and Central Coast Development Control Plan 2022 (CCDCP 2022) are discussed for the purpose of consistency.

In summary, under the CCLEP 2022:

- The site is zoned E1 Local Centre, *Commercial Premises* and *Shop Top Housing* are permissible with consent, which remains consistent with the GLEP 2014 and above assessment.
- Clause 4.3 establishes a base maximum height of building of 11.5m. However, Clause 4.3A(7) provides an exception within the Ettalong Beach village centre, providing that a maximum height of 17m applies if:
  - the site area is at least 1,000m<sup>2</sup>, and
  - the building has a street frontage as identified on the Height of Buildings map of at least 20m

### 3.1 DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)

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- The proposal has a site area of 1,020.8m<sup>2</sup> and a frontage of 23.77m (on Ocean View Road which is the applicable street frontage) and therefore the maximum applicable height is 17m, consistent with the GLEP 2014
- Under Clause 4.4 the maximum FSR is 1:1. However, Clause 4.4B(6) provides an exception within the Ettalong Beach village centre, facilitating a maximum FSR of 2:1 if:
  - the site area is at least 1,000m<sup>2</sup>, and
  - the building has a street frontage as identified on the Height of Buildings map of at least 20m
- The proposal has a site area of 1,020.8m<sup>2</sup> and a frontage of 23.77m and therefore the maximum applicable FSR is 2:1, consistent with the GLEP 2014.

The assessment of the GLEP 2014 provided at Section 0 above, is similarly applicable to under CCLEP 2022.

#### 6.1.6. Gosford Development Control Plan 2013 (GDCP 2013)

The GDCP 2013 provides objectives, design criteria and design guidance on how development proposals can achieve good design and planning practice.

### Chapter 2: Scenic Quality and Character

The subject allotment is located in the suburb of Ettalong Beach and is classified as being located within Place 9: Mainstreet Centre within the Character Statement map. The desired character for development within this precinct is as follows:

*"This should remain a mixed-use centre that provides a range of services and accommodation for local residents as well as visitors, where scenic potential of a prominent backdrop to Brisbane Water and the Hawkesbury is enhanced by new developments that encourage high levels of street activity and also achieve improved standards of amenity plus urban-and civic design quality."*

*Protect and enhance existing levels of "main-street" activity with building forms that maintain the pedestrian-friendly scale of existing one and two storey shop-front developments, and also the current level of midday sunlight along all footpaths. Promote high levels of on-street activity by maximising the number of retailers or businesses and the continuity of shop-windows along all street or future laneway frontages. Avoid indoor arcades that would draw people away from the street. Incorporate awnings, colonnades or balconies in all buildings to provide sheltered pedestrian settings that encourage pavement dining. Contribute to high levels of visible activity along all streets by surrounding upper storeys with balconies that accommodate restaurant dining or residents' outdoor recreation.*

*Ensure that new developments (including alterations to existing buildings) do not dominate the informal scenic qualities of foreshore settings or disrupt the main-street development pattern in this established coastal shopping village. Along all public streets, shop-front facades should have a zero setback and a maximum height of two storeys, with taller storeys set back behind terraces to maintain a pedestrian-friendly scale as well as midday sunlight along all footpaths. Vary the overall height of buildings within permissible height limit and ensure that siting and form preserve levels of privacy, sunlight and visual amenity that are enjoyed by existing dwellings and their private open spaces.*

*Reflect the form of development that is typical of traditional coastal centres where a wide variety of retailers are accommodated by separate buildings upon narrow-fronted allotments. Along any street or waterfront, avoid the appearance of a continuous wall of development or uniform building heights. Vary the shape and height of all visible facades. Top-most storeys should be setback behind wide roof terraces, and roofs plus parapet heights should step from one building to the next. Street corners should be emphasised by taller forms. In general, neighbouring buildings should be separated by landscaped courtyards and alleyways that provide view corridors, access to apartment lobbies, and daylight plus an outlook for above-ground dwellings. Within the foreshore precinct, future development should create separate building forms, and incorporate a pedestrian plaza from Ocean View Road to The Esplanade, generally along the alignment of Pacific Avenue, to provide additional sunlit retail frontages, access plus views.*

*Disguise the scale and bulk of new buildings. All visible facades should employ extensive windows that are shaded by lightly-framed balconies, verandahs or exterior sunshades, plus painted finishes and some board or sheet cladding rather than expanses of plain masonry. Roofs should be gently-pitched to minimise the height of ridges, flanked by wide eaves that shade terraces and also disguise the scale of exterior walls. Side and rear facades should match the design quality of the street frontage.*

*Conceal off-street parking behind shops or apartments, and provide unobtrusive vehicle entrances from laneways or secondary streets to minimise the disruption of shopfronts and associated pedestrian activity. Contribute to co-ordinated street improvements that include dedicated pedestrian crossings, footpath paving, landscaping and lighting to provide safe and secure settings for informal social interaction. Building colour schemes and commercial signs should be co-ordinated and limited in size and number to promote the identity of this coastal centre, rather than emphasising corporate sponsorship.*

**Assessment comment:**

The proposed development is not considered to be consistent with the above desired future character statement in that it does not maintain the pedestrian-friendly scale of existing one

and two storey shop-front developments and will result in adverse shadow impacts on the footpath long Memorial Ave particularly due to the reduced upper level setbacks on this frontage. The DCP provides for 2 storey development on the street frontages with levels above setback behind terraces. While amended plans have complied with this requirement on Ocean View Road similar compliance is not proposed on Memorial Ave. It is also considered that the proposal will not promote high levels of on-street activity by maximising the number of retailers or businesses and the continuity of shop-windows along all street or future laneway frontages. The proposal provides for minimal retail development on the ground level with the proposed restaurant and very small retail shops setback from the street frontage thus limiting the development's ability to achieve continuity of shop windows and street front activity. While it is noted that a finished floor level of RL5.01 is required due to flood constraints the proposed ground floor treatment is considered inconsistent with the Local Centre location.

In addition the proposal does not disguise scale and bulk as required with the proposal employing limited setbacks and building separation and in particular presenting significant bulk to the Memorial Avenue frontage. The bulk presentation of the building is considered to be the direct result of reduced setbacks and a proposed floor space ratio that exceeds the maximum permissible in the locale.

## **Chapter 2.2 Scenic Quality**

The subject site is within the Peninsula Geographic Unit in the Woy Woy/Umina Landscape Unit. The Woy Woy/Umina Landscape Unit is an extensively urbanised area of essentially flatland on sand sheets and sand dunes at the southern entrance to Brisbane Water. Strict road grid pattern with many older style dwellings, beach huts, beachcomber style shacks plus extensive more recent infill redevelopment. Pleasant beach and bay side outlook from locations at the fringes with some enclosure provided from surrounding vegetated escarpment. The development objectives for the geographic unit include:

- 1. Recognise importance of Brisbane Water Escarpment with its visual integrity and naturalness being valuable assets which need to be protected from development involving rezonings which increase densities and/or increase the range of uses permissible.*
- 2. Retain and enforce existing provisions contained within instruments and policies relating to the low density nature of development in Woy Woy Bays and the parts of the Woy Woy/Umina waterfront areas which are not already zoned for medium density development.*
- 3. On a visual quality basis, higher density development can be supported in more central areas of the Woy Woy/Umina landscape unit subject to other physical constraints being adequately addressed.*
- 4. Prevent extension of residential areas by way of rezoning within Woy Woy Bays landscape unit that are viewed from waterways, railway line and main roads.*
- 5. Retain in Woy Woy Bays landscape unit informal street alignment and paths plus vegetated nature reserves which help to create the scenic character of the area.*

6. *Encourage new buildings in Woy Woy Bays landscape unit to blend into existing fabric and environment.*

The site is located along the Main Street of Ettalong Beach and is also prominent in relation to the main street. The proposal is generally consistent with this section of the DCP however it is considered as outlined above that the scale and proposed envelope is inconsistent with the existing fabric and environment and not consistent with the desired future character generally having regard to the proposed height and FSR exceedance and setback non compliances.

## **Chapter 4.2 Peninsula Centres**

Part 4.2 sets out requirements for development in identified Peninsula Centres, including the "Ettalong Beach Village Centre", and parts of the DCP controls have no effect due to clause 6A(2) of SEPP 65 - *Design Quality of Residential Apartment Development*

### **4.2.3 Vision**

*'Ettalong Beach Village Centre should continue as a mixed use centre that provides a range of retail/commercial activities and residential accommodation for local residents as well as visitors. Its provision of specialised niche retailing and recreational activities that serve a wider population should be encouraged, and particular to build on the strengths offered by major tourist resort development. The resultant dynamic active atmosphere should be enhanced and maintained to provide sustainable commercial and retail revitalisation within the Centre. All new buildings are to be satisfactorily integrated into the existing urban fabric with its predominately "Australiana heritage" style theme to provide cohesion and continuity to the streetscape. Picnic Parade will provide the "entrance avenue" to the village and public domain improvements will define the entrances to the village boundary to give a sense of "arrival" at the village. Existing niche activities, such as restaurants, cafes, specialist butchers and the like are to be encouraged. Developments are to be designed to integrate the foreshore area to the village centre and residential development within the town centre should be able to enjoy view lines to the waterway, including Lion Island, and not be obscured by inappropriate bulky buildings. Opportunities that may be afforded by water based transport are to be maximised and integrated into the public domain of the overall centre*

#### **Comment:**

It is considered that the subject site is suited for a shoptop housing development generally as proposed however that the bulk and scale of the proposal is excessive as outlined throughout this report and would result an inappropriate bulky building inconsistent with the vision for the Centre. Further the treatment of the ground floor level would result in a minimal contribution to the local centre in respect of retail and streetscape activity with the development placing a significant emphasis on residential development above. Accordingly it is consistent to be inconsistent with the vision for the Ettalong Beach Village centre.

Development Standard	Proposed	Compliance
<b>4.2.5.1 Street Frontage Objectives</b> <ul style="list-style-type: none"> <li>Encourage consolidation of existing properties that have narrow street frontages in order to facilitate efficient use of land.</li> <li>Incorporate best-practice urban design by ensuring that street frontages are wide enough to conceal carparking and delivery areas behind street level shopfronts.</li> <li>Where street frontages are 20m or more wide, Gosford LEP 2014 provides for additional building height in accordance with clause 4.3 of Gosford LEP 2014.</li> </ul> <b>Controls</b> <ul style="list-style-type: none"> <li>The minimum frontage for additional height has been fixed to accommodate active street frontages plus building services:</li> <li>Nearly continuous bands of shopfronts along all streets, Shopfronts along at least half of any laneway frontage,</li> </ul>	<p>The proposal includes the consolidation of 2 lots to allow sufficient width and area to facilitate orderly use and provides vehicle access via a driveway to car parking that is located off the rear lane.</p> <p>The design has taken into consideration of services and ease of access the street level into the building.</p> <p>The street frontage is greater than 20m and the site greater than 1,000m<sup>2</sup> in area therefore a maximum height of 17m and FSR of 2:1 is allowed</p> <p>Site meets min street frontage</p> <p>Continuous shopfront not provided. No shopfront to laneway.</p>	<p>Yes</p> <p>Yes – however non-compliance with maximum height and FSR limit</p> <p><b>No</b></p>
<b>4.2.5.2 Building Height</b> <p>Buildings to comply with maximum LEP height limit</p> <p>17m – HOB – LEP mapping</p> <p>8.75m (2 storey) – Street wall height</p> <p>Max height in storeys – 5</p> <p>Max wall height – 15.5m</p>	<p>Maximum height of 20.31m proposed</p> <p>Maximum height of 20.31m proposed</p> <p>Street wall height – 7.18m (Ocean View) Street wall height – 13.38m (Memorial)</p> <p>5 storeys</p> <p>13.98m</p>	<p><b>No</b></p> <p><b>No</b></p> <p>Yes</p> <p><b>No</b></p> <p>Yes</p> <p>Yes</p>
<b>4.2.5.2 Building Setbacks and Envelopes</b> <p>Nil setback to Ocean View Road and Memorial Ave compulsory</p> <p>Existing min-winter sun to footpath between 10am and 2pm to be maintained</p>	<p>Nil setback proposed</p> <p>Proposal will result in additional shade to footpath of both streets. Note: shadow not significantly greater than DCP envelope</p>	<p>Yes</p> <p>No</p>



**DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)**

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### 3.1

### DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)

Development Standard	Proposed	Compliance
Single aspect apartments are to have a maximum internal plan depth of 10m from glass line to internal face of wall	A significant number of units do not comply with maximum dimension including Units 101, 102, 103, 104, 201, 202, 203, 205, ,301, 302, 303, 304.	No
<b>4.2.6 Building Articulation</b>		
(a) All building facades shall be modulated and articulated	Complies with exception of eastern frontage which is acceptable	Yes
(b)The silhouette of each building should contribute to the overall diversity of form within each centre	Silhouette not acceptable given non-compliant setbacks, height and bulk	No
(c)Street level facades should be divided into a series of vertical panels that vary in width from 2 to 6metres, in order to reflect the design diversity of traditional village centres comprising of rows of individually designed narrow fronted shop	Design not considered reflective of traditional village centres	No
(d)The width of any part of a single building above 2 storeys shall not exceed 30m on any on any elevation facing the street.	Complies – maximum frontage approx.. 30m on Memorial Avenue	Yes
(e) Building facades must be designed to respond to solar access by using solar protection elements such as eaves, louvers and awnings	Design includes balconies and roof overhangs	Yes
(f) Balconies shall not run the full length of any façade but should be designed in short lengths so as not create the appearance of monolithic building forms	Balconies do not appear monolithic	Yes
(g) Balconies and windows to habitable rooms should be situated to encourage opportunities for passive surveillance to public areas	Balconies and windows front streets and laneway to provide passive surveillance	Yes
(h) All building elements including shading devices, awnings/colonnades, signage, drainage pipes and communication devices must be coordinated with the overall façade design	Complies	Yes
(i) Plant and equipment should be concealed within the fabric of each	Complies	Yes

<b>Development Standard</b>	<b>Proposed</b>	<b>Compliance</b>
building in order to promote high standards of urban design and amenity		
<b>4.2.6.2 Top Floor Design and Roof Forms</b>		
(a) On larger sites the top storey must be distributed to disguise the scale and bulk of multi storey buildings and in order to retain view corridors that are wide enough to allow filtered views to the water from other properties within the centre	Top storey bulk distributed however setback to Memorial Avenue not considered sufficient and internalised planter contributes to bulk	<b>No</b>
(b) The upper storey of buildings should be articulated with differentiated roof forms, predominantly low pitched roofs surrounded by wide eaves, rather than flat roofs set behind parapets that accentuate the scale and bulk of multistorey buildings	Flat roof form proposed	<b>No</b>
(c) Design of roofs must respond to solar access, for example by using eaves and skillion roofs	Communal open space provided above non-trafficable roof	Yes
(d) Service elements must be integrated into the overall design of the roof so as not to be visible from the street	Core not integrated however not visible from street	<b>No</b>
(e) Roofing colours within the Ettalong Village Centre must be in accordance with the Heritage Colour Scheme.	Insufficient information	<b>Unknown</b>
(f) The number, design and location of television and radio antennas should be limited to one common mast per Building	Insufficient information	<b>Unknown</b>
(g) Satellite dishes should not be installed on rooftops, and should be restricted to small units located on private balconies or terraces to conceal their appearance from street level vantage points.	Insufficient information	<b>Unknown</b>

<b>Development Standard</b>	<b>Proposed</b>	<b>Compliance</b>
<p><b>4.2.6.3 Corner Building Articulation</b></p> <p>(a)Emphasise street corners by giving visual prominence to parts of the building façade, such as a change in building articulation, material or colour, roof expression or height.</p> <p>(b)At street corners the height for street walls may be exceeded to create a corner element. The corner element is not to exceed the maximum building height and may extend a maximum distance of 5 metres along the building frontage of both streets when measured from the corner.</p> <p>(c)Corner buildings are to address both street frontages.</p>	<p>No corner element proposed – acceptable given shadow impacts</p> <p>As above</p> <p>Building addresses both street frontage however setbacks considered insufficient on Memorial Avenue as outlined elsewhere</p>	<p>N/A</p> <p>N/A</p> <p>Yes</p>
<p><b>4.2.6.4 Active Street &amp; Active Laneway Frontages</b></p> <p>(a)Active street &amp; active laneway frontages are defined as one of a combination of the following at street level</p> <ul style="list-style-type: none"> <li>• Entrance to retail;</li> <li>• Shopfront;</li> <li>• Glassed entries to commercial and residential lobbies occupying less than 50% of the street frontage to a maximum of 12m frontage.</li> <li>• Café or restaurant if accompanied by an entry from the street;</li> <li>• Active office uses, such as reception, if visible from the street; and</li> <li>• Public building if accompanied by entry.</li> </ul> <p>(b)Active street &amp; active laneway frontages are required at ground level for all areas indicated on Figures 4.2.20 4.2.22.</p> <p>(c)Ground floor articulation for shopfronts along active street</p>	<p>Ocean View Road and Memorial Avenue both identified as active streets. Ground floor to the proposal is raised above the street level and provides for 3 x 10m2 retail shops frontage Memorial Ave and a restaurant setback behind covered seating area on Ocean View Road. Presentation to street not considered active and does not comply with the controls.</p> <p>As above</p> <p>As above – does not comply. Shopfronts setback approx.. 9m on</p>	<p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p>

Development Standard	Proposed	Compliance
frontages must not be more than 1.2m deep.	Ocean View Road frontage and 5.1m on Memorial Avenue frontage	
(d) Buildings must not have continuous length of blank walls at street level.	Complies	Yes
(e) Provide clear glazing to all street frontage windows	Not applicable – no street frontage windows	N/A
(f) The sill height of street frontage windows must not be more than 1.2m above street level	Not applicable – no street frontage windows	N/A
(g) Main street frontages should not accommodate fire exits, service cupboards, vehicle or service entrances, control valves and meters for piped services which would intrude upon the continuity of shopfronts or design of facades facing any street	Complies	Yes
(h) New pedestrian spaces or links should only be created where they would enhance existing levels of retail and pedestrian activity	Not applicable	N/A
(i) Onsite carparking and service areas should not be visible from any street frontage, and should be located in basements or behind occupied floorspace such as shops.	Complies	Yes
(k) Aboveground facades also should contribute to the levels of visible activity	Complies	Yes
(l) Publicly accessible areas that erode the level of on street activity are not compatible with “mainstreet” design principles and are not permitted for example: <ul style="list-style-type: none"> <li>Indoor arcades or narrow dark alleyways that do not promote a high amenity setting for outdoor pedestrian activity, or where shopfronts are concealed from the street restricting their commercial potential;</li> <li>Wide courtyards and piazzas, particularly at street corner</li> </ul>	The proposal will interrupt the continuity of the existing shopfronts along Ocean View Parade which is inconsistent with this provisions	<b>No</b>

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Commercial/residential development (contd)**

Development Standard	Proposed	Compliance
<p>locations, that interrupt the continuity of existing shopfronts along any street and disperse pedestrian activity away from existing footpaths.</p> <p>(m) For properties that are defined as floodprone, pedestrian access to shopfronts should be provided via arcades that are open to the street frontage</p> <p>(i) Facing streets, access may be either via open "arcades" that are set into the street façade and elevated above the flood level, or direct from street level to each shop and building entrance via individual stairs and ramps;</p> <p>(ii) Facing laneways, alleyways or courtyards, access may be via terraces that are open to the sky, either elevated above the flood level, or at street level with individual access to each shop and building entrance;</p> <p>(iii) All transitions from streets or laneways up to elevated indoor floors should incorporate barrier free access that is suitable for people with impaired mobility, according to requirements of the Federal Disability Discrimination Act plus the relevant Australian Standard;</p> <p>(iv) Where elevated terraces or arcades are used, their finished level should be consistent with any existing structures upon neighbouring properties, and the location of stairs or ramps should provide direct access to all shop or business tenancies;</p> <p>(v) Vehicle entrances and ramps should be integrated with the level and alignment of forecourts, terraces or arcades to maximise pedestrian safety;</p> <p>(vi) Service and vehicle entrances should be integrated with the design quality and the</p>	<p>The subject property is affected by the PMF and has a minimum ground floor level of RL5.01. The proposal provides for a floor level of RL5.01 which is consistent with this however is approximately 640mm above street level. Stairs access is provided and DDA ramped access from Memorial Avenue in the north west. An elevated terrace is proposed which breaks up the continuity of the street front as outlined above.</p>	<p>Yes</p>

Development Standard	Proposed	Compliance
commercial presentation of street level facades.		
(n) Vehicle entrances should not disrupt the general continuity of shopfronts or the commercial significance of corner locations, and should be at least 20 metres from a street corner or another entrance	Complies – vehicle access from laneway	Yes
(o) Vehicle entrances should address road and pedestrian safety, particularly along footpaths and near crossings.	As above	Yes
(p) The width of openings should be minimised, with driveways preferably limited to one way passages not wider than 3.5 metres, supported where necessary by directional warning lights that are visible from cars approaching along the street, plus queuing space to enable vehicles to pass safely.	Complies	Yes
<b>4.2.6.5 Building Entries</b>		
(a) Upper levels of buildings shall address the street either: <ul style="list-style-type: none"> <li>With main entrances to lift lobbies directly accessible and visible from streets or active laneways, or</li> <li>Where site configuration is conducive to a side entry, with a path to the building entry that is readily visible from the street</li> </ul>	Entrance to residential visible from Memorial Avenue although recessed.	Yes – from Memorial Ave
(b) Building entries should be articulated with awnings, porticos, recesses, blade walls or projecting bays for clear identification	Insufficient Information.	<b>Unknown</b>
(c) In mixed use buildings, entries to residential apartments are to be separated from commercial entries to provide security and identifiable address for different users.	Separate access provided	Yes
(d) Entries to upper level uses shall not dominate ground floor shopfronts. These entries shall not	Complies	Yes

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Development Standard	Proposed	Compliance
<p>occupy more than 20% of any main street frontage.</p> <p>(e) Lockable mail boxes must be provided close to the street, integrated with building areas or front fences at 90 degrees to the street and to Australia Post standards.</p> <p>(f) Fire egress should not be to the primary frontage. If this is unavoidable due to single frontage sites the fire egress must be integrated as part of the lobby entrance or shopfront design.</p>	<p>Mailboxes provided adjacent to entry lobby</p> <p>Fire egress to laneway</p>	<p>Yes</p> <p>Yes</p>
<p><b>4.2.6.6 Awnings</b></p> <p>(a) Awnings are required along all "active " street frontages</p>	<p>No awning proposed – Ocean View Road and Memorial Avenue identified as active street frontages</p>	<p><b>No</b></p>
<p><b>4.2.6.7 Materials and Finishes</b></p> <p>(a) Large expanses of any single material to the building facades must be avoided.</p> <p>(b) External walls should be constructed of high quality and durable materials and finishes with "self-cleaning" attributes, such as face brickwork, rendered brickwork, stone, concrete and glass.</p> <p>(c) Finishes with high maintenance costs, those susceptible to degradation or corrosion from a coastal environment or finishes that result in unacceptable amenity impacts, such as reflective glass, mirror or curtain wall glazing are not permitted.</p> <p>(d) Maximise glazing for retail uses, but break glazing into sections to avoid large expanses of glass.</p> <p>(e) In Ettalong the colours of new buildings and renovated structures are to be comprised of heritage colours. This will ensure the heritage</p>	<p>A variety of building materials are proposed</p> <p>Brick, render, glass etc proposed</p> <p>Complies</p> <p>No large expanse of glass proposed</p> <p>Acceptable colours</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>



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### 3.1

### DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)

Development Standard	Proposed	Compliance
<p>stair landings, and opposite the entry to each apartment to facilitate removal of furniture and the two way passage of residents.</p> <p>(e) Common hallways should not be less than 1.5m wide and at least 1.8m at lift lobbies.</p> <p>(f) Buildings are to be designed to avoid blind or dark alcoves near lifts and stairwells, at the entrances, within indoor car parks and along corridors and walkways.</p> <p>(g) Any developments with commercial use above ground floor must provide for separate access points via lift or stairs to the commercial and residential areas.</p>	<p>Corridors 1.6m wide adjacent to lift</p> <p>Complies</p> <p>Not applicable</p>	<p>Yes</p> <p>N/A</p>
<p><b>4.2.7.3 Solar Access</b></p> <p>(a) At least 70% of apartments shall receive a minimum of 3 hours direct sunlight upon at least 50% of the surface to living room windows or adjacent balconies between the hours 9am and 3pm on June 21.</p> <p>(b) At least 50% of the principal open space area shall receive at least three hours direct sunlight between 9am and 3pm on June 21.</p> <p>(c) For existing neighbours at least 3 hours of sunlight to the living rooms and the principal area of private open space shall be retained between 9am and 3pm on June 21. Where existing sunlight is less than this, siting and form of the proposed development should ensure that the existing amount of sunlight is not reduced.</p> <p>(d) No more than 10% of single aspect apartments are to have a southerly aspect. Developments which seek to vary this standard must demonstrate how site constraints and orientation prohibit the achievement of these controls.</p>	<p>Does not comply – refer ADG assessment</p> <p>Does not comply – refer ADG assessment</p> <p>Complies – neighbour to north will retain solar access as existing</p> <p>6/23 units (26%) have southerly aspect</p>	<p><b>No</b></p> <p><b>No</b></p> <p>Yes</p> <p><b>No</b></p>

<b>Development Standard</b>	<b>Proposed</b>	<b>Compliance</b>
<p><b>4.2.7.4 Ventilation</b></p> <p>(a) At least 60% of proposed dwellings must have natural cross ventilation.</p> <p>(b) At least 25% of all kitchens are to be naturally ventilated. All kitchens in a residential building shall not be located more than 8m from an external wall.</p> <p>(c) All habitable rooms are to have operable windows or doors to the outside which open to at least 45% of the window or door area.</p> <p>(d) Use the building layout and section to increase the potential for natural ventilation.</p>	<p>14/23 units (61%) receive natural cross ventilation</p> <p>5/23 units (22%) able to naturally ventilate kitchen. 100% kitchens within 8m of external wall.</p> <p>All habitable rooms have window or door. Opening not clear.</p>	<p>Yes</p> <p><b>No</b></p> <p><b>Unknown</b></p>
<p><b>4.2.7.5 Visual Privacy</b></p> <p>(a) All development must comply with the Building Separation Controls in this chapter to ensure adequate visual privacy for building occupants.</p> <p>(b) Neighbouring buildings and/or dwellings should have an appropriate orientation and an adequate separation in order to prevent unreasonable direct views into any dwelling.</p> <p>(c) Buildings must be designed to provide privacy without compromising access to light and air. This can be achieved through design features:</p> <ul style="list-style-type: none"> <li>• Offsetting windows of apartments in new development and windows in adjacent development;</li> <li>• Recessing balconies and/or vertical fins between adjacent balconies;</li> <li>• Using solid or semitransparent balconies;</li> <li>• Using louvers or screen panels to windows and/or balconies;</li> </ul>	<p>Proposal does not comply (refer above)</p> <p>As above</p> <p>As above</p>	<p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p>

Development Standard	Proposed	Compliance
<ul style="list-style-type: none"> <li>• Providing vegetation as a screen between spaces;</li> <li>• Incorporating planter boxes into walls or balustrades to increase visual separation between areas;</li> <li>• Utilising pergolas or shading devices to limit overlooking of lower apartments or common and private open space.</li> </ul> <p>(d) Transparent balustrades are to be avoided.</p>	Clear glass balustrades proposed to balconies above render	<b>No</b>
<p><b>4.2.7.6 Acoustic Privacy</b></p> <p>(a) All developments must comply with the Building Separation controls in this chapter to ensure adequate acoustic privacy for building occupants.</p> <p>(b) All developments are to meet or exceed the sound insulation provisions and standards of the BCA.</p> <p>(c) Buildings shall be designed to minimise the impact of traffic or railway noise with careful planning, design construction and materials in accordance with the relevant Australian Standard.</p> <p>(d) Dwellings should be designed to minimise noise transition by, but not limited to:</p> <ul style="list-style-type: none"> <li>(i) Grouping uses according to the noise level generated;</li> <li>(ii) Using storage or circulation zones within an apartment to buffer noise from adjacent apartments, mechanical equipment or corridors and lobby areas, minimising the amount of shared walls with other apartments;</li> <li>(iii) Using service areas/corridors to buffer noise sensitive areas such as bedrooms from noise generators including traffic, railway line, service and loading vehicle entries;</li> </ul>	<p>Proposal does not comply (refer above)</p> <p>Can comply – condition if recommended for approval</p> <p>Not applicable</p> <p>Design generally complies</p>	<p><b>No</b></p> <p>Yes</p> <p>N/A</p> <p>Yes</p>

Development Standard	Proposed	Compliance
<p>(iv) Incorporating appropriate noise shielding or attenuation techniques into the design and construction of the building.</p> <p>(e) Mechanical plant should be located away from habitable rooms unless acoustically insulated according to the applicable standards.</p> <p>(f) Premises operating after hours (such as cafes, restaurants, entertainment facilities and the like) are to be designed to minimise the impacts of noise, associated with late night operation on nearby residents.</p>	<p>Complies</p> <p>Complies – restaurant subject to separate approval</p>	<p>Yes</p> <p>Yes</p>
<p><b>4.2.7.7 Private Open Space</b></p> <p>(c) For all units not at ground/podium level private open space should be provided as terraces or balconies with a minimum area of:</p> <ul style="list-style-type: none"> <li>8m<sup>2</sup> for each one bedroom unit (as a single space);</li> <li>12m<sup>2</sup> for each two bedroom unit (as one or more spaces);</li> <li>16m<sup>2</sup> for each unit with three or more bedrooms (as one or more spaces);</li> <li>including one area measuring at least 2.5m x 2.5m which can comfortably accommodate an outdoor table setting or seating.</li> </ul> <p>(d) The primary open space should be directly accessible from the main living area.</p> <p>(e) Balcony or terrace design shall incorporate building elements such as pergolas, sun screens, shutters, operable walls and the like to</p>	<p>Five x 1 bdrm units with 9-16m<sup>2</sup> POS</p> <p>12 x 2 bdrm units with 12-21m<sup>2</sup> POS – Unit 107 does not comply with 11m<sup>2</sup></p> <p>Four x 3 bdrm plus units with 17-110m<sup>2</sup> POS</p> <p>9/23 units comply with requirement: Units 104, 204, 205, 206, 304, 305, 306, 401 &amp; 402.</p> <p>Complies</p> <p>Not applicable</p>	<p>Yes</p> <p>Partial – 1 unit does not comply</p> <p>Yes</p> <p>Partial - 9/23 units comply</p> <p>Yes</p> <p>N/A</p>

Development Standard	Proposed	Compliance
respond to the street context, building orientation and residential amenity		
<b>4.2.7.8 Common Open Space</b>		
(a) Provide common open space for developments with more than 10 dwellings.	Common open space provided on roof	Yes
(b) Common open space may be provided in one or more parcels, provided that spaces designed specifically for recreation cover at least 50m <sup>2</sup> and have a minimum dimension of 5m.	Common open space provide in one area of 260m <sup>2</sup>	Yes
(c) Communal areas that are landscaped with shrubs and trees should have a minimum width of 1m.	Planters have width of approx. 1m	Yes
(d) Common open space areas may be provided on a podium or roof in mixed use buildings.	Rooftop common open space provided	Yes
(e) Common open space may be located so as to provide a landscaped buffer between town centre development and surrounding residential development.	Not applicable	N/A
(f) Facilitate the use of communal open space for the desired range of activities by: <ul style="list-style-type: none"> <li>• Designing size and dimensions to allow for the proposed uses.</li> <li>• Minimising overshadowing;</li> <li>• Carefully locating ventilation duct outlets from basement carparks;</li> <li>• Design dwellings to overlook and provide informal surveillance of communal open spaces;</li> <li>• Consider possible amenity impacts to surrounding residents e.g. acoustic and privacy impacts and</li> </ul>	Rooftop common open space considered to be well designed and usable	Yes

<b>Development Standard</b>	<b>Proposed</b>	<b>Compliance</b>
<ul style="list-style-type: none"> <li>design and locate any common open space accordingly.</li> </ul> <p>(g)Where developments are unable to achieve the recommended communal open space, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space.</p>	Not applicable	N/A
<p><b>4.2.7.9 Storage</b></p> <p>In addition to kitchen and bathroom cupboards and bedroom wardrobes storage space shall be provided for each residential apartment at the following minimum volumes:</p> <ul style="list-style-type: none"> <li>6m<sup>3</sup> for a studio;</li> <li>8m<sup>3</sup> for one bedroom units;</li> <li>10m<sup>3</sup> for two bedroom units; and</li> <li>12m<sup>3</sup> for units with three or more bedrooms,</li> </ul> <p>with at least 50% of the storage space for each dwelling provided within the unit.</p>	All units are provided with in excess of the storage requirement	Yes
<p><b>4.2.7.10 External Clothes Drying Facilities</b></p> <p>(a) Each dwelling should be provided with outdoor space for clothes drying.</p> <p>(b)External clothes drying areas must be permanently screened from public and communal space areas.</p>	No external clothes drying areas provided	<b>No</b>
<p><b>4.2.7.11 Safety and security</b></p> <p>Developments to be designed in accordance with safer by design principles</p>	Complies	Yes
<p><b>4.2.8 Housing Choice</b></p> <p>(a) No more than one third of the dwellings in any development should be the same type.</p>	6 x 1 bdrm (26.1%), 13 x 2brdm (56.5%) and 4 x 3+ bdrm (17.4%) proposed	<p><b>No</b></p> <p><b>No</b></p>

<b>Development Standard</b>	<b>Proposed</b>	<b>Compliance</b>
<p>(b) In developments with more than ten dwellings: at least 10% must be "accessible" designed to accommodate residents with impaired mobility according to AS 1428</p> <p>(c) In developments with more than three dwellings: one third should be adaptable and must satisfy Class C specifications in AS4299</p>	<p>Nil accessible units proposed</p> <p>3 x pre-adaptable units proposed. 8 required.</p>	<b>No</b>
<p><b>4.2.11 Vehicle Access &amp; Car Parking</b></p> <p>(a) Parking should be provided at the rates set out by the carparking chapter of this DCP.</p> <p>(b) On site parking should provide at least one space per dwelling, plus one space per retail or business tenancy.</p> <p>(c) Parking areas, driveways and ramps must be designed according to the applicable Australian Standard AS 2890.1:</p> <p>(d) Conceal off street parking behind shops or apartments.</p> <p>(e) Provide unobtrusive vehicle entrances from laneways or secondary streets to minimise the disruption of shopfronts and pedestrian activity.</p> <p>(f) Basement car parking shall not project above finished ground level along primary or active laneway frontages.</p> <p>(g) On primary or active laneway frontages multi storey car parks must contain retail, commercial or other active uses.</p> <p>(h) Grilles or other appropriate screening devices are required to the upper floors of multistorey car park fronting the street, active</p>	<p>Section 7.1 of DCP requires car parking at a rate of 1 space per unit for shoptop housing. Commercial parking required at rate of 1 space / 30m<sup>2</sup> for retail (30m<sup>2</sup>) and 1 space / 16 m<sup>2</sup> for restaurant use including indoor and outdoor space (183m<sup>2</sup>). Requirement:</p> <p>23 spaces - residential plus 1 space – retail 11 spaces – restaurant Total – 36 spaces</p> <p>36 spaces provided</p> <p>Council's engineer has advised that the proposal is acceptable in respect of traffic and parking requirements other than parking numbers as assessed above.</p>	<b>Yes</b>



<b>Development Standard</b>	<b>Proposed</b>	<b>Compliance</b>
<p>laneway or adjoining residential to minimise visual and amenity impacts.</p> <p><b>Deliveries</b></p> <p>Developments that contain dwellings should provide for short term parking of furniture removalists vehicles</p> <p>Developments that accommodate non-residential floorspace should provide delivery areas in proportion to the scale and intensity of retail and business uses:</p> <ul style="list-style-type: none"> <li>• Where the area of each defined retail or business tenancy does not exceed 100m<sup>2</sup>: Deliveries may be made "across the kerb" from designated loading zones,</li> <li>• For sites facing the any proposed pedestrian mall deliveries may be permitted via the pedestrian mall within restricted hours that are defined by Council,</li> <li>• Where the area of any retail or business tenancy exceeds 100m<sup>2</sup> one dedicated delivery space should be provided onsite, located and designed according to the Carparking section of this DCP.</li> </ul>		
<p><b>4.2.12.1 Energy Efficiency</b></p> <p>(a) New dwellings should be planned, designed and constructed according to provisions of State Environmental Planning Policy Building Sustainability Index (BASIX):</p>	<p>A valid BASIX certificate was submitted with the application</p>	<p>Yes</p>
<p><b>4.2.12.2 Floodprone Properties and Stormwater Management</b></p> <p>(a) On properties that are defined as flood prone, development must be planned and constructed according</p>	<p>Council engineer has advised that the proposal is acceptable in respect of flooding subject to conditions</p>	<p>Yes</p>

**DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)**

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Development Standard	Proposed	Compliance
<p>public safety and comfort at ground level,</p> <ul style="list-style-type: none"> <li>• Ensure usability of open terraces and balconies.</li> </ul> <p>(c)A Wind Effects Report is to be submitted with the DA for all buildings greater than 14m in height.</p>	Not submitted	

Other relevant provisions of GDCP 2013 have been considered in specialist referrals and either compliance or detailed throughout this report.

#### **6.1.7. Central Coast Development Control Plan 2022**

Consistent with CCLEP 2022 (as outlined above) the Central Coast Development Controls Plan 2022 did not come into effect until after lodgment of the subject DA. A DCP is not a Draft EPI for the purposes of 4.15(1)(a)(2) of the EP&A Act and therefore Draft CCDCP 2022 is not a relevant consideration for the subject application.

### **6.2. Likely Impacts on the Development**

In accordance with section 4.15(1)(b) in determining a development application the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, key potential impacts related to the proposal have been considered in response to relevant EPI controls outlined above and are discussed in further detailed below.

#### **6.2.1. Height, bulk and scale**

As outlined throughout this report the proposal seeks to vary the maximum height of building and floor space ratio planning controls and accordingly includes clause 4.6 variation requests. As detailed above it is considered that these requests are unfounded and that the application of the standards is not unreasonable or unnecessary in the circumstances of the case. Further adequate environmental planning grounds have not been identified which warrant varying the standards.

The outcome of the proposed height and FSR exceedances is a building which is of significant bulk and scale and which does not adequately respond to the site opportunities and contracting and which does not provide an appropriate relationship to neighbouring development or the public domain.

The extent of the proposed height exceedance can be seen in Figure 24 above. While the elements which exceed the height limit are centrally located within the building the

### 3.1 DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)

exceedance is significant and will add to the perceived height and bulk of the building. This is particularly significant given the site location at the entry to the Ettalong Beach local centre. In respect of the Memorial Avenue frontage the proposal does not comply with the GDCP 2013 building envelope controls which call for a two-storey street wall height with buildings setback on a 45 degree angle above as illustrated in Figure xx below. The building presents a four-storey street wall to frontage which will result in a significantly bulkier building than is provided for under the controls. Being located on a prominent corner this will be highly visible and will dominate the frontage.

Further the non-compliance results in additional shadowing of the public domain between the protected period of 10am and 2pm in midwinter (GDCP 2013 section 4.2.5.2 Building Setbacks and Envelopes). This matter is discussed in further detail below.

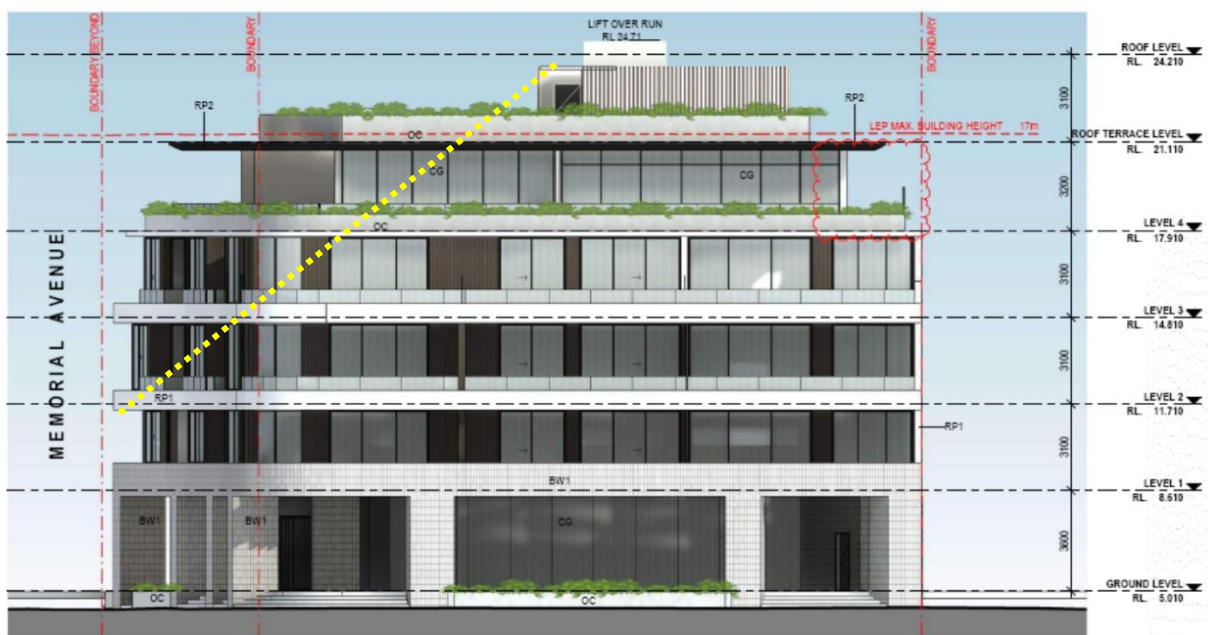


Figure 23: Non-compliance with DCP building envelope control on Memorial Avenue

The proposal also includes an area on Level 4 which has been identified as a planter but which is wholly covered and effectively internal within the building (refer Figure xx below). It is considered that this area unnecessarily adds to the bulk of the building and is at risk of being converted to additional floor space.



Figure 24: Planter on Level 4

### 6.2.2. Side setbacks and building separation

The proposal does not comply with either the ADG or GDCP 2013 separation / setback requirements. Compliance against the ASDG is set out below:

ADG requirement	Proposed	Compliance
Separation from boundaries and buildings: <ul style="list-style-type: none"> <li>up to 12m / 4 storeys – 6m to habitable 3m to non-habitable</li> <li>up to 25m / 5-8 storeys – 9m to habitable, 4.5m to non-habitable</li> </ul>	<ul style="list-style-type: none"> <li>North - up to 12m / 4 storeys – 3m habitable</li> <li>North – 5th floor (L4) – 4.2m habitable</li> <li>East - up to 12m / 4 storeys – 0m non-habitable</li> <li>East - up to 12m / 4 storeys – 0m non-habitable</li> <li>East - 5th floor (L4) – 2.7m non-habitable</li> <li>East - 5th floor (L4) – 4.0m -habitable (screened)</li> </ul>	No

To the north the site adjoins a laneway with units and balconies oriented in this direction and setback 3m from the boundary to 4 storeys and 4.2m on the 5th storey (Level 4). The Applicant has argued that with the laneway width the development will be a minimum of 9.990m from the adjacent single storey dwelling house to the north. This argument is generally considered reasonable in the circumstances. The single-storey dwelling across the laneway (202 Memorial Avenue) is to the north and no overshadowing impact will result. Further an appropriate level of privacy will be afforded to the dwelling as the dwelling has an existing defensive façade on the alignment as shown below with private open space oriented to the north.



*Figure 25: Laneway interface with 202 Memorial Avenue*

To the east a nil setback is proposed for Levels ground to 3 with the exception of a void / courtyard indent (9m x 3m) for light and air on Levels 1 – 3. This has windows from the shared lobby area providing light and a window facing east to a hall area in Units 107, 207 and 307 and facing north to a bedroom in Units 101, 201, 203. This is considered acceptable. On Level 4 however Unit 401 is located 2.7m from the boundary with habitable space and balconies where a setback of 9m is required. Privacy screens are proposed however this arrangement is not considered acceptable and has the potential to adversely impact the development of the adjacent site to the east.





Figure 26: East boundary interface on Level 4

### 6.2.3. Unit design and amenity

As outlined above the proposal does not comply with a number of requirements of the ADG most notably the minimum requirement for 70% of the living areas and POS of units to achieve 2 hours of direct sunlight between the hours of 9am and 3pm in midwinter. As illustrated on the sun view plans 15 of the proposed 23 units receive the required sunlight thus only achieving 65.2%. This is the result of a significant number of units facing south and being single fronted. Unit 106 which the applicant has indicated will achieve solar compliance evidently will not comply being setback a significant distance from the light source and overhung by the level above. Unit 401 on the top level also has poor solar access with the only direct access being provided through a skylight from the roof level above. The living room to this unit and the adjacent Unit 401 is oriented to the south (with no alternate living area provided to the north) which provides poor solar access.

The proposed units comply with the minimum required sizes with adequate private and communal open space and storage space provided. However a number of units include long corridors (Units 101, 102, 103, 201, 202, 203, 301, 302 & 303) which is considered to be a poor design response and will result in a poor amenity outcome. Further Units 103, 203 & 303 include a bedroom (bedroom 1) which is setback some distance from the light source and will therefore have poor amenity.

The above unit design and amenity issues appear to be the direct result of the proposed FSR non-compliance demonstrating that the proposal represents an overdevelopment of the site. Notably the Applicant has sought to justify the height and FSR non-compliance on the basis that the proposal represents a superior design. This does not appear to be borne out given the internal amenity issues that arise from the proposed design.

#### **6.2.4. *Retail floor space and street activation***

The proposal is for shoptop housing with apartment above retail floor space at ground level. In this regard the proposal provides for a restaurant of 100m<sup>2</sup> internal area and 83m<sup>2</sup> alfresco area at ground level and 3 x 10m<sup>2</sup> retail shops setback behind an entry ramp and planter adjacent to the Memorial Avenue frontage. The ground floor is elevated approximately 600mm above street level to address the flood constraint with stair access and equitable access provided via a ramp from the laneway to the north. The restaurant frontage is setback a minimum of 9m from the street.

While it is noted that an RL of 5.01 is required to address the flooding constraint the proposed ground floor level is considered to be minimal commercial floor space and is not consistent with the objectives of strengthening the retail street of Ettalong Beach local centre by providing nearly continuous shopfronts along the streets (GDGP 2013 4.2.5.1 Street Frontage). Further the viability of the proposed 3 x 10m<sup>2</sup> retail shops setback from Memorial Avenue adjacent to the access ramp is queried. It is considered that they are unlikely to activate the street, have sub-optimal exposure and poor access.

Having regard to the above it is considered that the proposed ground floor design is not consistent with the objectives and controls for the Ettalong Beach local control and will not result in activation of the street frontages of Memorial Avenue and to a lesser extent Ocean Beach Road. Further the proposal will not adequately contribute to the strengthening of the viability of the centre as required.

#### **6.2.5. *Overshadowing of the Public Domain***

The proposal will result in overshadowing of the public domain in the period protected by the DCP (10am to 2pm in mid-winter) as illustrated on the architectural plans. The plans illustrate that the proposal will result in additional shadow over and above a DCP compliant envelope. In conjunction with the height, bulk and scale issues outlined above this is considered unacceptable in the circumstances.



**6.2.6. *Economic and Social***

The proposed development would contribute, subject to the comments above, to the supply of commercial floor space in the Ettalong Beach locality and to housing needs although for other reasons as outlined above it is not recommended for approval.

The development would provide residential dwellings with appropriate accessibility to facilities, services and recreation opportunities. These aspects are considered to be a positive social impact.

**6.2.7. *Ecologically Sustainable Principles:***

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion controls and provides improved landscaping and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations.

**6.3. Suitability of the site**

In accordance with section 4.15(1)(c) in determining a development application the suitability of the site for the proposed development is to be considered. Having regard to then above assessment it is considered that the site is not suitable for the proposed development given the amount of non-compliances and design and amenity issues.

**6.4. Public Submissions**

In accordance with section 4.15(1)(d) in determining a development application any submissions made in accordance with the Act or regulations are to be considered.

The application was formally notified in accordance with the provisions of Chapter 7.3.2 Notification of Development Proposals of the GDCP 2013. The application was placed on public exhibition from 18 February 2022 to 7 March 2022 and following submission of amended plans again from 14 October 2022 to 9 November 2022. A total of 48 submissions objecting to the proposal were received in response to the first public exhibition and a total of 26 submissions objecting to and one (1) submission in support of the proposal were received in relation to the second public exhibition.

A total of 75 submissions were therefore received although a number of parties made submissions in response to both exhibitions. Key issues raised in the submissions, in order of frequency are detailed below:

## 3.1

**DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH -  
Commercial/residential development (contd)**

<b>Issue</b>	<b>No. of objectors raising issue – 1<sup>st</sup> Exhibition</b>	<b>No. of objectors raising issue – 2<sup>nd</sup> Exhibition</b>	<b>Comment</b>
Height exceedance	37 (77%)	13 (48%)	Height exceedance is not supported in this instance as detailed throughout this report.
Out of character	35 (73%)	11 (41%)	It is considered that the height and scale of the proposed development results in it being inappropriate in its context and out of character.
Traffic and parking impacts	27 (56%)	11 (41%)	As advised by Council's traffic engineer is it considered that the traffic and parking impacts of the proposal are acceptable.
FSR exceedance	26 (54%)	9 (33%)	FSR exceedance is not supported in this instance as detailed throughout this report as the proposed exceedance has not been justified and is considered to add to the bulk and scale of the building resulting it is being inappropriate in its context.
Excessive bulk and scale	25 (52%)	12 (44%)	It is considered that the height and scale of the proposed development results in it being inappropriate in its context and out of character.
Setback non-compliance	25 (52%)	9 (33%)	The proposed setbacks do not comply with the ADG of GDCP 2013 and are considered inappropriate in the circumstance as detailed throughout this report.
Overshadowing of the public domain	23 (48%)	8 (30%)	The proposed overshadowing of the public domain does not comply with Council's requirements and is the result in non-compliance with relevant controls.
Privacy impacts	17 (35%)	7 (26%)	The proposed setback non-compliance has the potential to result in privacy impacts and is not supported.
Amenity impacts of rooftop area	16 (33%)	5 (19%)	It is considered that the rooftop area would not result in adverse amenity impacts.
Not in the public interest	9 (19%)	2 (7%)	The subject assessment has concluded that the proposal is not in the public interest.
Cumulative impact	7 (15%)	5 (19%)	Cumulative impact is not considered to be an issue with the proposed development rather the proposed non compliances result in the development being inappropriate in the circumstances. A development which complies with relevant controls could readily be accommodated on the proposed development site.
Overdevelopment of the site	6 (13%)	3 (11%)	As above it is considered that the proposal is an overdevelopment of the site and is therefore not supported.
Lack of green space	5 (10%)	2 (7%)	Lack of green space is not considered to be an issue with the proposal given its local centre location and zoning.

<b>Issue</b>	<b>No. of objectors raising issue – 1<sup>st</sup> Exhibition</b>	<b>No. of objectors raising issue – 2<sup>nd</sup> Exhibition</b>	<b>Comment</b>
Impact on views to Blackwall Mountain and Broken Bay	5 (10%)	2 (7%)	It is considered that the proposed development would not have a significant impact on views subject to compliance with relevant height and FSR controls.
Urban heat island effect	4 (8%)		The urban heat island effect is not considered a relevant consideration given the subject local centre zoning and location.
Shoptop housing over retail inappropriate	1 (2%)		A development which complies with relevant controls could readily be accommodated on the proposed development site.
Impact on water table		1 (4%)	Council's engineer has advised that the proposal is acceptable subject to conditions.
Sustainability		1 (4%)	A BASIX certificate has been submitted with the application however notwithstanding it is considered that the proposed development does not adequately address sustainability in the layout and orientation of proposed units.
Loss of small business / day to day retail		1 (4%)	It is considered that the proposed ground floor does not optimise retail and active uses as is required in the local centre.
Total	48 (100%)	27 (100%)	

Matters raised in public submissions have been considered in this assessment as detailed throughout this report.

### **6.5. The Public Interest**

The public interest is also a matter to be considered in determining a development application in accordance with section 4.15(1)(e) of the Act. Having regard to the above assessment it is considered that the proposal is not in the public interest.

### **6.6. Other Relevant Considerations**

#### **6.6.1. Planning Agreements**

The proposed development is not subject to a planning agreement / draft planning agreement.

#### **6.6.2. Development Contribution Plan**

Contributions may be applicable to development which is subject to *Central Coast Council Regional Section 7.12 Development Contributions Plan 2019*. Development contributions are only levied where the proposal meets the cost of works thresholds and not subject to any exemption under this plan.

### 3.1 DA/146/2022 - 275 Ocean View Parade, ETTALONG BEACH - Commercial/residential development (contd)

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The proposed cost of works is \$11,430,781.00. Under the Plan a 1% section 7.12 Contributions levy would be applied should the application be recommended for approval.

#### 6.6.3. Political Donations

During assessment of the application there were no political donations were declared by the applicant, applicant's consultant, owner, objectors and/or residents.

## 7. Referrals

The following internal consultation was undertaken:

Internal Referral Body	Comments
Architect	Supported subject to compliance with height and FSR
Engineer	Not supported – Insufficient information
Traffic and Transport	Not supported – Insufficient information
Waste Management	Not supported – Insufficient information
Environmental Health	Supported subject to conditions of consent
Tree Assessment	Supported subject to conditions of consent
Water and Sewer	Supported subject to conditions of consent

## 8. Conclusion

The subject application has been assessed under the heads of consideration of section 4.15 of the *Environmental Planning and Assessment Act 1979* and in accordance with all relevant instruments and policies.

The potential opportunities and constraints of the site have been assessed and in summary it is considered that the site is not suitable for the proposed development and that it is not in the public interest.

The proposal does not comply with the maximum height of building and floor space ratio controls applying to the site under GLEP 2014 and clause 4.6 variation requests submitted with the application are not supported. The proposal has not demonstrated satisfactory compliance with the Apartment Design Guidelines (ADG) or Council's DCP controls and has not reasonably addressed amenity and other impacts.

Accordingly, the application is recommended for **refusal** pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* for the following reasons:

1. The proposed development is inconsistent with Section 28 the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*,

pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it does not comply with the following requirements of the Apartment Design Guide:

- a) Deep soil
- b) Visual Privacy
- c) Solar and Daylight Access

And the Panel cannot be satisfied that the provisions of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* have been satisfied.

2. The proposed development is inconsistent with the following clauses of the *Gosford Local Environmental Plan 2014*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:

- a) Clause 4.3 - The proposal is inconsistent with Clause 4.4 of LEP as the proposal will result in breach of the maximum Floor Space Ratio.
- b) Clause 4.6 - Exceptions to Development Standards, where the written justification has not provided sufficient grounds for the proposed significant breach to the Floor Space Ratio development standard

And the Panel cannot be satisfied that the provisions of these clauses of *Gosford Local Environmental Plan 2014* have been satisfied.

3. The proposed development is inconsistent with the Gosford Development Control Plan 2013 pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* including (at least in part) the following sections:

- a) Chapter 2.1 – Scenic Quality and Character
- b) Chapter 4.2 – Peninsula Centres:
  - Vision
  - 4.2.5.1 Street frontage controls
  - 4.2.5.2 Building height
  - 4.2.5.3 Building setbacks and envelopes
  - 4.2.5.4 Building separation
  - 4.2.5.5 Building Depth
  - 4.2.6 Building Articulation
  - 4.2.6.2 Top Floor Design and Roof Forms
  - 4.2.6.4 Active Street & Active Laneway frontages
  - 4.2.6.6 Awnings
  - 4.2.7.2 Internal Common Circulation
  - 4.2.7.2 Solar Access
  - 4.2.7.4 Ventilation
  - 4.2.7.5 Visual Privacy
  - 4.2.7.6 Acoustic Privacy
  - 4.2.7.7 Private Open Space
  - 4.2.7.10 External Clothes Drying Facilities
  - 4.2.8 Housing Choice
  - 4.2.12.4 Waste and Recycling

- 4.2.12.5 Wind Mitigation
4. The proposal is considered to be an unsuitable design which does not address the site constraints. The application has failed to adequately demonstrate that the site is suitable for the development pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
  5. The adverse impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
  6. The Applicant has not submitted a designer's statement that complies with clause 29 of the EP&A Regulations.
  7. Having regard to submissions received, the non-compliances with the planning controls and amenity impacts, the proposal is not in the public interest, pursuant to Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*.
  8. The Panel cannot be satisfied that the proposed development is satisfactory having regard for the matters for consideration provided in section 4.15 of the *Environmental Planning and Assessment Act 1979*.

## **Attachments**

*Nil.*

**Item No:** 4.1

**Title:** Land and Environment Court Proceedings Class 1 -  
Case 2023/00242805 - Appeal of Deemed Refusal -  
Central Coast Council ats Darcy Smith –  
DA/1107/2004/D Toowoan Bay Rd Long Jetty

**Central Coast**  
Local Planning Panel

**Department:** Corporate Services

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12 October 2023 Local Planning Panel Meeting

Reference: F2019/00883 - D15866814

Author: Michel Duval, Personal Assistant to Unit Manager Governance Risk and Legal

Manager: Edward Hock, Unit Manager Governance, Risk and Legal

Executive: Andrew Roach, Director Environment and Planning (Acting)

## **Recommendation**

- 1 That the Local Planning Panel note the receipt of a Class 1 appeal in the Land and Environment Court to the deemed refusal of Development Application DA/1107/2004/D.**
- 2 In accordance with Section 2.20(8) of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegate to appropriate Council officers the ability to give legal instruction to Council's external legal counsel at any upcoming proceedings relating to the appeal, including any conciliation conference in accordance with Section 34 of the Land and Environment Court Act 1979.**

## **Background**

Section 8.15 (4) of the Environmental Planning and Assessment Act 1979 states:

*If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.*

Note that, since the lodgement of the appeal, the application was considered at the Local Planning Panel meeting of 14 September 2023 and was determined by refusal.

**4.1 Land and Environment Court Proceedings Class 1 - Case 2023/00242805  
- Appeal of Deemed Refusal - Central Coast Council ats Darcy Smith –  
DA/1107/2004/D Toowoona Bay Rd Long Jetty (contd)**

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**Attachments**

<b>1</b>	Letter to LPP Chair - Case 2023/00242805 -	Provided Under Separate Cover	D15866623
<b>2</b>	Statement of Facts and Contentions - Case 2023/00242805 -	Provided Under Separate Cover	D15884249
<b>3</b>	Consent Orders - Case 2023/00242805 -	Provided Under Separate Cover	D15866632



**Item No:** 4.2  
**Title:** Disclosures by Panel Members Annual Returns  
2022/2023  
**Department:** Corporate Services

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**Central Coast**  
Local Planning Panel

12 October 2023 Local Planning Panel Meeting

Reference: F2020/02502 - D15869349  
Author: Lisa Martin, Civic Support Officer Civic Support  
Manager: Rachel Gibson, Team Leader Civic Support  
Executive: Andrew Roach Director Environment and Planning (Acting)

### **Purpose of Report**

The purpose of this report is to recommend that the Panel note the tabling of the Disclosures by Panel members Returns for 2022/2023.

### **Background**

Under section 4.17 of the Code of Conduct for Local Planning Panels, a Panel Member must complete and log a 'Disclosure of Pecuniary Interests and Other Matters' form with the Panel Chair. Returns are required to be tabled at a meeting of the Panel.

### **Financial Considerations**

This matter has no direct financial implications for Council.

### **Conclusion**

The completed Disclosures by Panel Members Returns for 2022/2023 are tabled.

### **Recommended**

That the Central Coast Local Planning Panel note the tabling of the Disclosures by Panel Members for 2022/2023.

### **Goal G: Good governance and great partnerships**

R-I2: Ensure all new developments are well planned with good access to public transport, green space and community facilities and support active transport.

### **Attachments**

*Nil.*