

**Panorama Towers
91-95 John Whiteway Drive
Strata Plan 35094
GOSFORD NSW 2250
28th August 2019**

**Chief Executive Officer
Central Coast Council
49 Mann Street
PO Box 21 GOSFORD
2250**

Dear Sir

**Development Application No: 54602/2018
Land Zoned: R1 GENERAL RESIDENTIAL
Property: LOT 1: DP: 45551, LOT: 100 DP: 1075037
No 87 John Whiteway Drive GOSFORD, 89
John Whiteway Drive GOSFORD
Applicant: ADG Architects**

Thank you for your letter dated 5 August 2019 advising of the proposed amendments to the above-mentioned property.

Our previous two objection letters dated 15 February 2019 and 18 July 2018 on behalf of ourselves and Nola Smith, are still relevant as the primary concerns in relation to non-compliance with LEP and DCP controls which include DCP 57 Special Area Controls for the John Whiteway Drive Precinct have not been properly addressed.

These documents are available under the documents listed against this application on council's website and are identified as follows from that list:

 Redacted Submission (Steyn) DA54602 L1 DP4551 H87 John Whiteway Drive GOSFORD Part 1	18/02/2019
 Attachment Submission DA54602/2018 L100 DP1075037 JOHN WHITEWAY DR GOSFORD Reference No. 5b4dd53f1bd1e	18/07/2018

Background

Development Application (DA) No. 19601/2003 was granted by the former Gosford City Council on 13 February 2004 for a residential flat building comprising 178 units.

The current DA No. 54602/2018 was originally submitted to Central Coast Council on 13 June 2018, an amendment to which is now submitted and to which we further object based on our previous objections as follows.

It appears that the following need to be reiterated for clarity of all involved in development applications and their evaluation.

Local Environmental Plan

The Local Environmental Plan (LEP) is the primary legal planning document for guiding land use and planning decisions made by Council/JRPP as it describes what can be undertaken on land through zoning and development controls. As neighbours this is the only avenue open to us that we might protect our property and investments from developments such as this one, which poses a threat to us.

Development Control Plan

The Development Control Plans (DCP) provides detailed planning and design guidelines to support the planning controls in the LEP. The DCP identifies and provides additional development controls and standards for addressing and managing issues at a local level and provides information to meet Council requirements for sustainable, quality development.

10.3 Special Area - John Whiteway Drive (JWD) Precinct

Over and above the DCP this section further highlights and identifies this precinct as requiring additional consideration when being evaluated against proposed development applications. The following are excerpts of the DCP that are of specific concern for this development application.

Note: *Italicised text represent those taken from LEP/DCP.*

Objectives

A. Of specific concern is objective A; which states the following:

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

We object to the removal of any part of the ridge-line as per the objective A; it talks of protecting the western edge of the ridge-line from visual encroachment, it does not provide for the physical encroachment or removal as per this current development application.

Buildable Area

Portions of the Buildable Area of specific concern are as follows:

*The **buildable area** of each lot is illustrated and coincides with the Restriction as to User on the title of the relevant lots under the Conveyancing Act, 1919.*

*Development within and variations to the designated **buildable area** must be supported by a comprehensive geotechnical survey conducted by a qualified geotechnical engineer which assesses the **stability risk** posed to both the **ridge**, proposed development and **existing development**. This information is to be submitted with the development application. In particular the geotechnical report should specifically assess:*

- *any unacceptable **stability risk to the ridge-line posed by the development**,*
- *any **risk to existing** and approved potential **development**, and*
- *appropriate measures to **minimise this risk** to both the **ridge-line** and the proposed development, including recommendations for **acceptable setbacks**.*

With reference to the above buildable area excerpts we further object to the current development application for the following reasons.

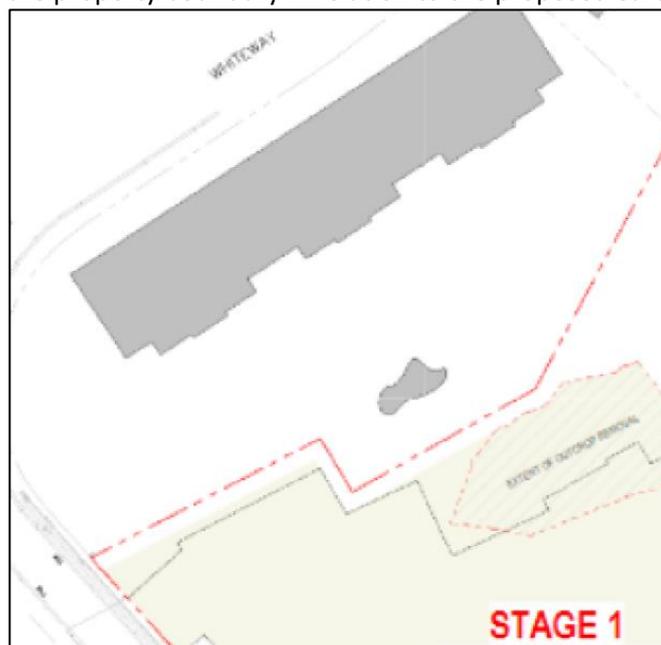
1. This latest amendment to the development application makes no attempt to respect the restriction as to user which applies to the area marked as 'X' on the DP1075037. This restriction is in favour of Gosford City Council, now Central Coast Council.
 - This fact provides the Council with an enormous responsibility to ensure that this proposed development not be permitted within the area marked 'X'.
 - We formally object to Council considering any changes to this restriction in favour of this or any development application. This restriction as to user impacts LEP and DCP height controls including the non-buildable area of the Special area of John Whiteway Drive Precinct. Any

consideration of intention to change this must be broadcast and open for public and legal opposition.

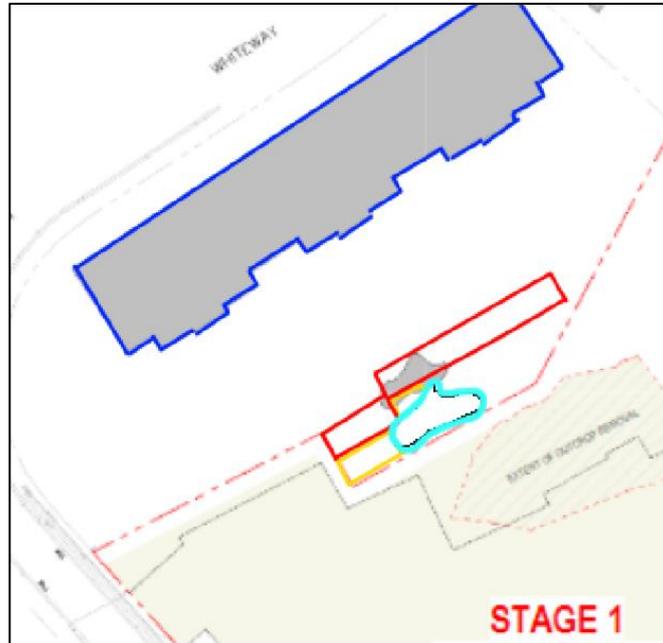
2. This part of the DCP describes the **'buildable area'**, the extent of which coincides with the restriction as to user mentioned above. It clearly identifies the restrictions within the buildable area and the requirements of any development application where variations to the controls may be proposed. It must be reiterated that it refers to **'variations to the designated buildable area'**. Figure 14 of this section of the DCP clearly shows the **'buildable area'** and the remainder of the property which is also clearly shown as a cross-hatched **'non-buildable area'**. The DCP for the Special Area of the JWD Precinct provides only for proposed applications for variations within the designated **'buildable area'**. The absence of any provisions for the **'non-buildable area'** reinforces the fact that the **'non-buildable area'** coincides with the restriction as to user as marked as 'X' on the DP1075037 which is not designated and as such is not open for variation.
3. The remainder of this part of the DCP refers to measures to **minimise stability risk to the ridge-line and existing developments**. We object to this DA which not only threatens the ridge-line stability but goes beyond the limitations of the controls by wanting to remove it - the excuse being the instability of the ridge-line that will result from the proposed development. The proposed DA should be declined and then amended to respect the controls of the DCP and therefore result in no issues relating to the ridge-line stability.

Additionally, any excavation works on or near the ridge-line and vertical cliff face facing Panorama Towers will represent a threat to the existing swimming pool, the below-ground parking area and personal storage spaces, all of which are at the base of the cliff face below the swimming pool.

To highlight the risk to our existing development: In the images below, the first image is an extract from the latest notification plans drawing number DA101 – Issue D and shows a portion of the proposed stage 1 earthworks drawing. This image shows the footprint of Panorama Towers building, our swimming pool and the property boundary in relation to the proposed earthworks.



The second image shows the building footprint marked in dark blue, the *actual* position of our swimming pool marked in light blue, the location of below-ground personal property storage marked in yellow and the location of some of the below-ground parking marked in red. In this image it is clear to see the true position of our swimming pool at the base of the vertical cliff face and on the property boundary. Apart from the position of our swimming pool being incorrectly shown on all of the applicant's drawings, it also highlights the potential risk to the structure of our swimming pool, storage areas and vehicle parking.



The third image with aerial photograph clearly shows the swimming pool coincides with the light blue marking and it can be seen that the above-ground vehicle parking structure would also be at risk. It highlights again a consistent error in the applicant's drawings of the position of the building which is shown to be further away than it actually is.



It is claimed that the existing approved height from the previously approved DA is 78.05m, which is already more than 5m above the LEP height controls. If this is correct then the development should have been designed within this limit.

We object to the idea that another variation in height be considered negligible as any additional height would be in addition to the existing 5m in excess of the LEP and DCP controls.

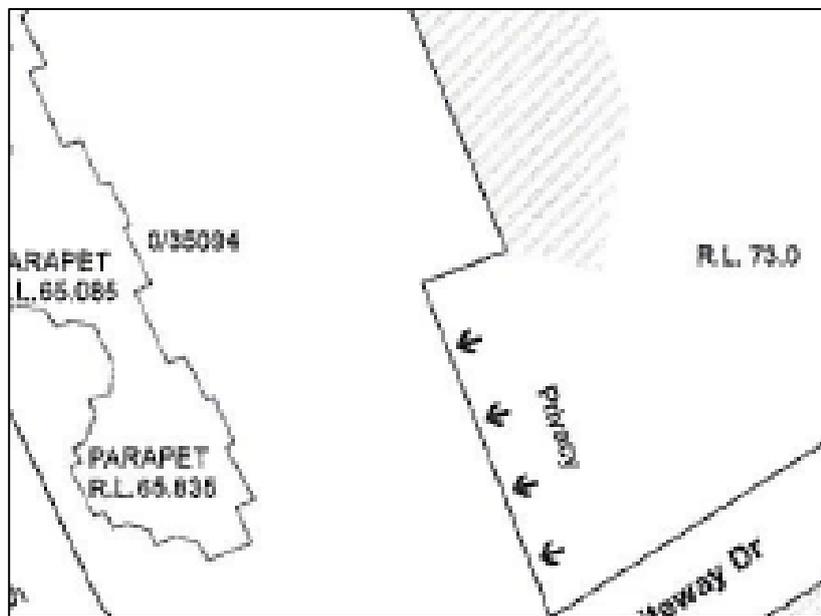
According to the DCP definitions for the purposes of this section of the chapter, the following apply:

- *Existing Ground Level – Means the ground level at the time an application is made to Council.*

In relation to the LEP and DCP height controls and this definition, we also object to the fact that the proposed development, where it encroaches into the existing Maximum Building Height (m) of 0m (Zero meters) above existing ground level, also coincides with the non-buildable area.

Privacy

It is also clearly marked on Figure areas where privacy for neighbours should be ensured as can be seen from the extract of Figure 14 below.



Combination of Controls

It is with regard to the coincidence of the controls designated as the non-buildable area that we object to this DA in that it chooses to disregard these controls, specifically:

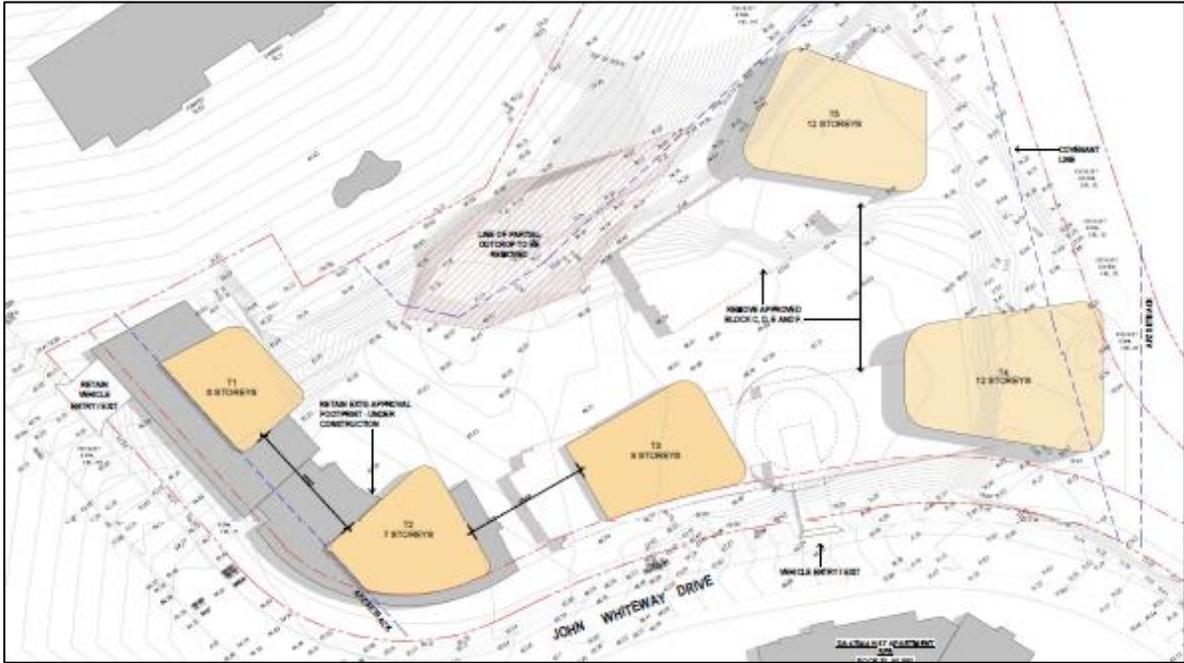
- LEP 2014 – the controls therein are clear as to what is permissible.
- DCP – these controls and specifically the DCP 57 which designates the Special Area of John Whiteway Drive Precinct.
- SEPP 2018 – retains the controls of the LEP and DCP and Special Areas.
- Restrictions as to user of the Instrument 88B over this land in favour of Council.

State Significant Development (SSD)

This developer has also submitted an SSD application for this property to be developed as per issue 209 of the Coast Community Newspaper dated 13 June 2019.

Having reviewed the documentation for this application it cannot be said that it is for the same development, although the proposed destruction of the ridge-line appears similar.

The following image is extracted from the SSD application, Appendix B, drawing number SE001 Revision A:



The following image is extracted from the DA to Council, Notification Plans, Drawing DA001 – Issue D.



Apart from the proposed destruction of the ridge-line, these two proposals are significantly different in respect of:

- Heights of Buildings
- Buildable and non-buildable areas
- Built Form

This clearly shows that the developer does not have the best interests of the LEP/DCP controls, neighbouring property or any other impacts in mind, and seems only to be intent on getting an approval from wherever it can be acquired. If the applicant was serious about their plans to develop this land, they would be consistent in their applications. This raises questions as to the actual motives of the developer and we strongly object to the significant differences in applications.

With reference to the recent documentation submitted by the applicant in relation to the development. The excerpts from these documents will be shown in *italics*.

Revised Stage 1 - Earthworks Construction & Traffic Management Plan- May 2019(30052019)

- *Proposed Development*
 - *The proposed development will involve the construction of a residential unit development comprising five residential flat buildings including a total of **299** units and having a combined basement car parking area over two levels, a swimming pool and communal landscaped open space areas.*

The number of units noted in this text is incorrect and a clear indication that there is a lack of real commitment by the developer in this application by not managing its documentation revisions. We object to a DA whose documentation is inconsistent and misleading.

- *Dilapidation Survey*
 - *A dilapidation survey of the existing infrastructure in the immediate area will need to be carried out prior to any works being undertaken on site. This dilapidation survey is also usually required as part of the **Council consent conditions**. The survey will include all Council assets in the adjoining streets & particularly the proposed haulage route along John Whiteway Drive. **The existing condition of all neighbouring property features likely to be impacted by the excavation including buildings, pavements, fences & pools are to be described & labelled with a photographic record.***

We object to this section which does not provide for liaison with neighbours to determine which assets are likely to be impacted and therefore surveyed. The survey must view the neighbouring property's assets as per those of Council assets with the same details captured. The features of the neighbouring property to be surveyed must also be agreed upon with the property owners and not just those assets that are considered "likely to be impacted" from the perspective of the developer only. This must be an inclusive and agreed process.

- *Excavation Methodology*
 - *Excavation of the site is **required to construct basement parking for the development**. With reference to the Geotech Report by J K Geotechnics excavated material will be mainly clean sandstone in the form of sawn blocks and taken to Howards Recycling Facility at Mannering Park for recycling. **A more extensive excavation methodology and description of existing site conditions is outlined in the Geotech Report, however, initial work on site will begin by removing the western and north-western end of the site to remove the existing headland outcrop left behind in previous quarry activity on the site. JK Geotechnics have identified that the best option for the long-term stabilisation of the site is to remove as much of this raised headland as practical, leaving a benched face rising to the north-west of the site.***

We object to this section which discusses basement parking and the removal of the headland as if the LEP and DCP controls do not exist. Specifically, DCP 57 with Special Area of JWD Precinct which intends on the ridge-line being protected and retained. There is still a detailed geotechnical review required of the Western cliff face toward Panorama Towers and Mariner's View.

- *Work Methodology*
 - *All heavy tracked machinery to be used in excavation works will be floated to site. The clear vacant site allows for manoeuvrability for all excavators & haulage trucks with no restriction to overhead height. **If during excavation with the hydraulic impact hammers, vibrations are found to be excessive or there is concern, then alternative lower vibration emitting equipment, such as rock saws, rock grinders or smaller hammers may need to be***

used. The use of a rotary grinder or rock sawing in conjunction with excavator ripping presents an alternative low vibration excavation technique. Reviewing tool and plant selection in an attempt to select plant for the tasks at hand with better acoustic performance will be undertaken as part of the overall site noise mitigation & monitoring policy.

- *Duration*
 - *Operating more haulage trucks will of course reduce the time frame but weather conditions and actual quantities of spoil in both sawn log & rubble form that can be excavated in a given work period and interrupted haulage route times will determine the duration & timing of the full excavation period which at this point would be anticipated at a total of **60 weeks**.*

- *Site Environmental*
 - *Management of Noise*
 - ***Noise** from the excavation activities on the site shall not exceed the limits set out in the NSW Environment Protection Authority (EPA), SafeWork NSW and NSW Transport (RMS) construction noise & vibration guidelines.*

- *Vibration*
 - *During excavation works appropriate measure shall be taken to limit the vibration levels along the site boundaries. During the works recommendation and conditions identified in the acoustic and vibration assessment will be complied with. When any hammering is required vibration monitoring will be implemented. Given the relative distance of the proposed development from neighbouring properties there is not expected that the vibrations generated by rock breaking and pneumatic equipment to be of undue concern. However, at the commencement of the use of any rock breaking equipment quantitative vibration monitoring will be carried at the boundaries adjoining existing residential developments to the site to check that vibrations are within acceptable limits.*

- *Dust Mitigation*
 - *Dust control measures will be implemented as required, and will be in accordance with NSW Environment Protection Authority (EPA) and SafeWork NSW guidelines.*

In respect of the 5 sections above; Work Methodology, Duration, Site Environmental - Management of Noise, Vibration and Dust Mitigation we find all to be objectionable for the following reason:

- In no way does this documentation show any real concern for neighbours and the affect that such an enormous proposed destruction will have on them. Their main focus is purely making sure that legal boxes are ticked.
- Not only would this proposed excavation destroy the ridge-line, but if approved, will be tearing down all the work and effort of previous experts whose focus was in protecting the site and ridge-line in the considered development of the Special Area of the JWD Precinct DCP. Which is reinforced by the remaining controls of the DCP and underlying LEP.
- Neighbouring residents will be directly exposed to dust, the noise and vibrations from Hydraulic impact hammers and other noisy disturbances due to excavation activities for a period of **60 weeks**. This is more than a year of substantial impacts on neighbours for the excavation stage alone.

SEPP 65 REPORT_Addendum_28.05.19(30052019)

Overall responses to Council seem to be repetitive and self-justifying whether they have addressed the issues or not.

Developers responses to:

- *Built Form and Scale:*
 - *This minor non-compliance should be mitigated due to the existing distance from the adjoining neighbours and the use of operable screening which contributes to visual privacy for the adjoining neighbours.*
 - Objection: Operable screening which only contributes to privacy, and which could be moved by occupants in the proposed development are therefore no form of privacy at all.
 - *The FSR is 0.43 below the maximum. The maximum FSR could allow for 9,589 m² more GFA, or 105 units (or so).*
 - Objection: This is taking for granted that the 0 Zero height limits and the non-buildable areas do not exist whereas they do indeed exist and therefore reduce the actual buildable area and the resulting ratios.
- *Density:*
 - As Above.
 - Objection: This has not been dealt with and is just being ignored.
- *Landscape:*
 - *Where a reduced setback is proposed movable screens and hedge planting has been used to provide better outlook for adjoining neighbours.*
 - Same objection relating to movable screens – since being movable there is no guarantee that they will provide privacy nor remain in position. The plantings shown in the applicants' drawings do not show any substantial provision and plantings to provide for the privacy of neighbours.

SEPP 65 DESIGN CODE

- The second part of this document has the developer stating a “Y” for Yes Compliance where their proposal statements do not fully comply and/or relate to referenced documentation which also do not fully satisfy compliance but still give themselves a “Y”. The fact that they have on occasion acknowledged non-compliance “N”, does not translate to them brushing over other areas of non-compliance where they have indicated a “Y”.

Public Art Implementation Strategy ADG Architects_21.05.19 (30052019)

- A great PR exercise, but should have no bearing on the approval of their application and the disregard of LEP/DCP controls.

Revised Traffic and Parking Impact Assessment Report (30052019)

- *The traffic counts were undertaken between the hours of 7am – 9am and 4pm – 6pm on Thursday 15th November 2018 at the following intersections:*
 - We further object as in previous objections we have stated that the largest volume of traffic is from before these times, but analysis is still based on these times – has this been properly investigated, if so where is it documented? – This appears to just be a box ticking exercise.
 - We object as this report has not reviewed the congestion on John Whiteway Drive and has only focussed on the road sections and intersections further away from the site and not in the immediate vicinity.
 - It appears that the modelling used, does not seem to have taken into consideration all proposed traffic volumes from existing and approved DA's, and not just those which exists

in this application? We object to the narrow focus of this traffic study and consider it an incomplete study.

- 4.2 Access
 - We object to the southern entrance being opposite to the existing entrance of another very large development, The Sanctuary, Rumbalara. It's unrealistic to assume that this will not create problems for the occupants of both complexes.
 - It's also dangerous for other road users who, when already approaching on a blind rise, then face a section where vehicles could potentially come from both sides of the road. We object to the lack of comment on this. Just ticking boxes.
 - Has any consideration been given to what would happen in the event of a bush fire in the area? How many hundreds of vehicles would be trying to flee the area all at once?

Vegetation Management Plan (July 2019) (26072019)

- Why is there part of this plan across the road on SP 72557?

Landscape Masterplan (August 2019) (01082019)

- We object to this document and diagrams as they do not show any indication of tree planting for privacy between the proposed block C and the existing Panorama towers buildings. This privacy being identified in figure 14 of the DCP of the JWD Precinct Special Area.

Notification Plans, External Finishes, Shadow Diagrams, Solar Access, Elevations and Sections, Waste Plan, Cross Ventilation, Height Plan (August 2019) (01082019)

- Drawing DA04 – Issue D
 - Shows supposed previously approved DA19601/2003 –the validity of the claimed “Approved DA Building Footprint Outline” is questioned as being legitimate as the final drawings that were approved appear to have transitioned from de La Vega to Australand over a period of only 30 days. How is it possible that new drawings can be approved in such a short period without public/neighbours being given the opportunity to comment?
 - Additionally, at this same point in time de La Vega had verified to the neighbouring properties and Council that the building labelled as block A which was on top of the cliff facing Panorama Towers was removed from the plans. It then re-appeared again on the Australand approved plans a month later.
- Drawing DA801 – Issue D & DA802 – Issue D
 - The chosen altitude and angles of these images contribute to diminishing the apparent extent of the exceeding the said approved DA and the LEP limits.
- Drawings DA300 – Issue D, DA301 – Issue D, DA400 – Issue D & DA401 – Issue D
 - Only show the said approved DA height but does not show the LEP limits for a true reveal of the extent that it would be exceeded. Additionally, the areas of the LEP that are 0m (Zero) elevation would show this quite radically as anything above current ground level would be above the LEP/DCP.
- Drawing DA902 – Issue D
 - This is what should be seen as the red flag as to how overwhelming the proposed development would be to neighbouring properties and the landscape as a whole.

Summary of Changes (August 2019) (01082019)

The list of changes attempts to highlight how much the developer has reduced certain parts of their application. No number of updated consultant reports change the fact that the controls are being ignored.

These reductions have no real weight however as they are still in excess of the controls to which the developer should have adhered to in the first place.

Developers when purchasing properties are fully aware of the LEP/DCP controls and decide to buy accordingly. If they buy with the expectation that they can bypass such controls it is not a good sign and indicates that the controls in place to evaluate such DA's do not, and have not, in the past enforced such controls. Unfortunately, this is also the view of the dissatisfied public, who as a result are almost of the opinion that it is not worth challenging to DA's due to the track record of them being approved regardless.

This in-turn makes the public less inclined to object since their objections in the past have been ignored and the developers appear to have carte-blanche.

Cover Letter Amendments – Part1 (01082019)

- *Lastly, a reduced canopy allows an improved outlook for residents to viewing vistas towards Gosford CBD and Brisbane Water for residents of the John Whiteway Precinct as well as bushwalkers visiting Rambalara Reserve.*
 - We object to the reduced canopy in that will only show more of the bulk of the proposed development from afar and will certainly not improve amenity for existing residents of JWD Precinct.

Further concerns that are objectionable:

- The Merindah development which has been built by the same developer and approved by the JRPP, does not give one confidence in the process. It's sufficed to say that this enormous building is a blight on the Gosford landscape and skyline.
- The current state of the building industry in Australia is an indication of poor controls compliance and the problems that arise as a result. The concern is that of newly approved developments and the devastating structural impacts some have had on neighbouring buildings. This can be seen in recent public debacles of the Opal Tower and the Mascot building.

Owners of unit 49/91-95 John Whiteway Drive
BT & HC Steyn.