

**From:** [Richard Grellman](#)  
**To:** [City of Gold-Coast-MAIL](#)  
**Subject:** Chief Executive Officer  
**Date:** Friday, 5 April 2024 6:25:40 AM  
**Attachments:** [Chief Executive Officer.pdf](#)

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Richard Grellman  
+61412136671  
All mail to: PO Box 342 Roseville 2069

1 April 2024

Chief Executive Officer  
City of Gold Coast  
Via email: [mail@goldcoast.qld.gov.au](mailto:mail@goldcoast.qld.gov.au)

Dear sir,

**OBJECTION to MCU/2023/15**  
**Material Change of Use Impact Assessment Multiple Dwelling**  
**239-241 Boundary St Coolangatta**

I write in respect to the development application which seeks a development permit for a Material Change of use for a Multiple Dwelling development at 239-241 Boundary St Coolangatta.

The Impact Assessable application has arisen as the building height exceeds the acceptable outcome of (38m) on the applicable Building Height Overlay Map (BHOM). This exceedance gives rise to non-compliance with City Plan because the overlay map is embedded in Overall outcomes 6.2.3.2(2)(d)(i) and Performance outcome PO3 of the High Density Residential Zone Code (**HDRZC**).

The building height uplift provision, namely s.3.3.2.1(9) of the Strategic framework (**Specific outcome 9**), provides flexibility to depart from the quantitative building height standard when all of the eight cumulative 'outcomes' are satisfied.

The applicant contends the proposed development is consistent with the scale and intensity of existing development in proximity to the subject site and achieves the specific outcomes in s.3.3.2.1(9). Accordingly, the proposal is considered to complement local character.

We contend the proposal is not consistent with the character and the applicant's plans clearly demonstrate this. We also identify other areas of noncompliance which when considered collectively demonstrate the proposal is an overdevelopment of the site, cannot be considered compliant with the specific outcomes of s.3.3.2.1(9) and warrants refusal.

Under the 2016 City Plan, the Strategic Framework, part 3.3.1 Strategic Outcomes, part (3) states housing is to be provided in a form, height and scale consistent with the function, amenity and desired character of local areas and centres. This is to promote a sense of community cohesion and wellbeing. Further, the housing is to be attractive and well designed.

Under part 3.3.2.1 Specific outcomes, (9) **may** allow for a maximum 50% increase in building height allowed under the Building height overlay map, **subject to all outcomes in this part being satisfied**.

While this might be allowed under some circumstances, this remains subject to impact assessment and is not as of right.

In particular at (b) there is to be a well-managed interface with, relationship to, and impact on nearby development, including the reasonable amenity expectations of nearby residents. Further, at (f) important elements of character and scenic amenity are to be protected.

Within the locality a range of building heights occur but these generally observe a 6m front setback, with generous opportunities for landscaping, noting corner allotments do present with reduced setbacks to secondary road frontages. These setbacks and landscaping contribute to the character and residential amenity.

The subject land is located in the Residential High Density Zone(HDRZ). Consequently, development is to meet the purpose of the Residential High Density Zone Code. The purpose of the code is to provide for higher density multiple dwellings supported by community uses and small-scale services and facilities that cater for local residents.

This is to be achieved through compliance with a number of overall outcomes, the most relevant being:

- (2)(a)(vii), land uses are not to detract from the residential amenity of the area;
- (2)(b), housing is provided at a form, scale and intensity that is appropriate for the locality, which:
  - (v) maintains a building form having desirable height pattern, including the likelihood of undesirable local development patterns and in a cumulative effects sense;
  - (vi) is to retain important elements of neighbourhood character and amenity;
  - (vii) ensures that the adjoining residential amenity is unreasonably impacted;
- (2)(d), built form
  - (i) is not to exceed the building height on the Building height overlay map;
  - (ii) is to be setback from side and rear boundaries to protect the amenity of adjoining uses;
  - (iii) is to be setback from road frontages to promote an urban setting and have a street interface; and
  - (iv) is to have varying site cover to reduce building dominance and provide areas for landscaping.

City Plan seeks that the form, height and scale of development be consistent with the function, amenity and desired character of the locality. The proposed development is within a residential precinct and is not to impact upon nearby development, in accordance with the reasonable amenity expectations of residents.

While increased building height above that identified in the BHOM is allowed, subject to meeting all nominated outcomes under the strategic framework, this is not the case. The additional height above that specified in the BHOM contribute to significant amenity and privacy impacts. Further, the building form is not consistent with the desirable height pattern and will have a negative impact because it does not protect the local character, scenic and residential amenity of the area.

The intent of the Residential High Density Zone is to provide for higher density multiple dwellings supported small scale services. The proposed development exceeds the density

envisaged and does not provide for small scale services that would cater for local residents. Further, the form, scale, bulk and intensity of development is not appropriate at this location.

The proposed development does not maintain front, rear and side boundary setbacks, has excessive site cover and provides little landscaping at ground level. The proposed podium and land uses at the ground level will also detract from the residential character and amenity of the area.

Consequently, the proposed development is likely to have a significant impact upon the adjoining property to the east / south and the streetscape generally. From any broad review of the proposal against the scheme provisions, the proposed development does not meet the intent of development included in the Residential High Density Zone at this location.

The applicant selectively relies on the higher order strategic provisions of the planning scheme that apply city wide or at a sub-regional level to support the overdevelopment and high intensity redevelopment of a specific site blind of the balance of the planning scheme provisions.

We draw Councils attention to *Dajen Investments Pty Ltd v Anor & CoGC (Appeal No.918 of 2022)* noting the strong similarities between the facts and circumstances surrounding this multiple dwelling and that of the appeal. There is strong correlation in the reliance of the uplift provisions to support the proposal without due regard to the reasonable expectations on amenity and appropriateness of the built form. This again would clearly illustrate the development as proposed is not appropriate and should be refused.

### **The Proposal**

The proposed building as presented in the amended plans contained in the Information Request Response illustrate the building contextually;

- Is located in the Rainbow Bay community at Coolangatta
- Adjoins buildings upto 4 storeys in height when viewed from the street
- Is located within an area of mixed building heights with typically taller buildings located to the north (Marine Pde)
- Is located in an area characterised by 'low rise building height' and medium rise building heights, 2- 8 storeys as defined under the City Plan.

**We note the submitted plans seek to characterise building heights to an alternate criteria.**

- Has defined greenspaces and plantings

The building and site specifically:

- Has a site area of 810m<sup>2</sup>
- Has a building height of 59.1m and 16 storeys - the scheme's Building Height Overlay Map identifies a maximum building height of 38m
- Has 3 levels of basement
- Has 100% site coverage for the basement levels
- No deep planting area

- \* Ground floor contains a resident open space area, lobby, services cabinets(multiple) waste store, bike store and stairwell to level 1

Ward St frontage contains a vehicle crossover, services cabinets and narrow planter

Boundary St contains the lobby entry, service cabinets, bin access, small landscape planter boxes

Acoustic fencing and hardstand to the majority of adjoining lots

Services cabinets zero setback to adjoining lots

57% site cover – plans seek to avoid providing a total site cover

Setbacks

North 2.93	
East 3.08	
South (Boundary St)	
West(Ward St)	

- \* Level 1 contains communal open space and 2 residential units(we note differing setbacks indicated between various sheets)

Setbacks (m)

North 2.93	Complies
East 3.0	Complies
South Boundary St) 2.73	
West(Ward St)	

49% site cover

- \* Level 2 - 6 contains 3 residential units

49% site cover

Setbacks – we note differing drawings show differing setbacks(Setback analysis different from Elevations)

North 2.93	Does not comply above level 3
East 3.0	Does not comply above level 3
South Boundary St) 2.73	

West(Ward St) 3.12	
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- Level 7-14 contains 2 residential units

48% site cover

Setbacks – we note differing drawings show differing setbacks(Setback analysis different from Elevations)

North 3.5	
East 3.5	
South Boundary St) 3.2	
West(Ward St) 3.38	

- Level 15 contains the penthouse unit

48% site cover

Setbacks – we note differing drawings show differing setbacks(Setback analysis different from Elevations)

North 3.5	
East 3.5	
South Boundary St) 3.2	
West(Ward St)	

- Level 16 provides private open space for the penthouse

18% site cover

We would also like to correct the misrepresentation made in the planning report that The Bay Apartments has both short term/holiday accommodation as well as permanent residents. The continual reference to the building as a 'Hotel' seeks to diminish and distinguish between permanent v short term residents. Inferring the later are less concerned with or have less regard to amenity impacts from the proposal.

The setbacks for the development do not comply with the relevant acceptable outcomes in City Plan. The departure from the acceptable outcomes means approval is sought for an alternative solution demonstrating compliance with Performance outcome PO1 of the High Density Residential Zone Code

Elevations illustrate the solid nature of the built form and inability to provide effective landscape areas to side boundaries and frontage. This removes the ability for landscaping to soften the built form and assist in minimising its bulk and assist in providing privacy for adjoining dwellings.

The elevations illustrate the overbearing dominance of the building on both streetscape and adjoining residential properties. This is particularly so for the residential development to the east as little to no effective screening or landscaping is provided. The minor garden beds shown in the elevation, whilst incapable of sustaining any meaningful landscaping have no practical access for maintenance.

We note a high degree of glazing across all levels of the building which increases overlooking and impacts on amenity. This introduction of screens may alleviate this however this would further reduce the setbacks/perceived setbacks and exaggerate the bulk and scape for the built form.

#### **High Density Residential Zone(HDRZ)**

The purpose of the HDRZC is as follows:

"The purpose of the High density residential zone code is to provide for is to provide for higher density multiple dwellings supported by community uses and small-scale services and facilities that cater for local residents.."

This is to be achieved through a number of overall outcomes.

Overall outcome (2)(a)(viii) is directed to built form in the zone. The provision states:

**" do not detract from the residential amenity of the area".**

The proposal clearly by way of reduced setbacks, increase in height and absence of deep planting / effective landscaping results in a built form which is overbearing, bulky and detracts from the amenity of the streetscape for the general public. The proposal importantly detracts from the adjoining residential amenity.

Overall outcome (2)(b) provides further built form guidance in provision stating;

**Housing is provided at a form, scale and intensity that is appropriate for the zone and each particular locality it is in where the following outcomes are satisfied:**

"Design and amenity provision (2)(b)(vii) identifies whether adjoining residential amenity is unreasonably impacted" as a outcome to satisfy.

The proposed built form does unreasonably impact on adjoining residential amenity through reduced setbacks which are not compliant in the zone and for that component of the building which seeks the 50% uplift are also non-compliant. The lack of deep planting and meaningful landscaped areas further accentuates the built form, its bulk and scale which towers over the adjoining residential area to the east having an unreasonable impact to amenity.

The deign further impacts on residential amenity unreasonably by the orientation of bedrooms and glazing to the east looking into units and private open space areas. Whilst feature screens may be added this would contribute to reduced setbacks and the imposing-built form. The tower and that component which seeks to achieve a 50% uplift for height has an unacceptable impact on the amenity of neighbouring properties.

We also draw Councils attention to (2)(b)(ix) relating to natural hazard noting that the proposal includes a 3 level basement. Whilst not mapped on any coastal hazard or landslide hazard no geotechnical assessment of the site has been undertaken. We specifically raise this issue due to the sinkhole(s) which developed on the Espirit development immediately to the west on Boundary St.

This matter is raised as a concern and should be investigated now to ensure suitability of the site and its proposed basement and or impact which may arise outside the applications boundaries on neighbouring properties.

### **Strategic Framework**

Dealing now specifically with part 3.3.2.1 and the proponents argument that an increase in building height is acceptable, the Building Height Overlay Map(BHOM) shows the building height pattern and desired future appearance for local areas within urban neighbourhoods This standard in the scheme is a quantitative one, expressing building heights in storeys and/or metres. For the site the BHOM is 38m.

We note sections 3.3.2.1(9) of the Strategic framework does provide flexibility to depart from the Building Height Overlay provisions, but particular circumstances only. Specifically:

- "(9) *Increases in building height up to a maximum of 50% above the **Building height overlay map** may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied:*
- (a) *a reinforced local identity and sense of place;*
  - (b) *a well managed interface with, relationship to and impact on nearby development, including the reasonable amenity expectations of nearby residents;*
  - (c) *a varied, ordered and interesting local skyline;*
  - (d) *an excellent standard of appearance of the built form and street edge;*
  - (e) *housing choice and affordability;*
  - (f) *protection for important elements of local character or scenic amenity, including views from popular public outlooks to the city's significant natural features;*
  - (g) *deliberate and distinct built form contrast in locations where building heights change abruptly on the **Building height overlay map**; and*
  - (h) *the safe, secure and efficient functioning of the Gold Coast Airport or other aeronautical facilities."*

Specific outcome 9 provides an opportunity for applicant to demonstrate that the height of the proposed development finds support in City Plan. If support for the proposed height is established, the nature and extent of non-compliance with City Plan is materially diminished in favour of approval.

Again, the provision exempting noncompliance is clear it '**may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied (a- h)**.

**A number of appeals have upheld this provision and approvals overturned where non-compliance with one of the outcomes has not been achieved.**

In response to the specific criteria the applicant provided in the application the following response which was supplemented by additional comments and amended plans in the information request. We have provided comments in respect to the comments and general provisions. This thus informs any assessment against Specific outcome 9.

The relevant provisions are discussed below,

***(9)(b) a reinforced local identity and sense of place***

This requires the local identity to be 'reinforced' and would require more than any absence of impact.

The proposal fails to reinforce identity and sense of place through the increase in height above that outlined in the Building Height Overlay Map. The proposed building does not through design reinforce a sense of place, the design is presents as a large, overbearing and bulky built form. The scale of which is not compatible with the sense of place.

The locality contains a variety of building heights and other taller high rise buildings are typically older and well spaced being set in generous landscaped areas. The BHOM seeks to clearly establish a differing building height and character from that of the adjoining 'Coolangatta' town centre which has a BHOM height of 84m.

We note the maximum building heights of the core of the Coolangatta Town Centre step down, with an intervening BHOM area of 54m separating the HDRZ land of Rainbow Bay. The increase in height sought through he proposal do not reinforce this **deliberate change in buildings heights** outlined in the BHOM which is designed to convey and reflect the lower intensity lower height 'high density and high rise' community of Rainbow Bay.

The extra height of the building(over the height shown in the BHOM), whilst enabling a high rise and higher density does result in character impacts which do not reinforce local identity.

The proposal does not contribute to the immediate character and sense of place. The proposed separation / setbacks proposed by the development to adjoining buildings and streetscape is also inconsistent with the character of the locality. The extra height of the building(over the height shown in the BHOM), whilst enabling a high rise and higher density does result in character and amenity impacts and thus does not reinforce local identity and sense of place.

***(9)(c) a well-managed interface with, relationship to and impact on nearby development, including the reasonable amenity expectations of nearby residents***

As noted the proposal contains no deep planting to adjoining residential properties and the streetscape this is not consistent with the local character and reasonable amenity expectations of nearby residents.

This is particularly the case to the eastern residential property where there is no deep plantings and small less than 500mm deep planter boxes. These are unable to support features trees/palms and or even large shrubs. These do no soften the built for and do not provide any screening.

The streetscape plantings are also limited in area, width and depth. The majority of planting areas are less than 500mm high, and not sufficient to contain feature trees/palms or large shrubs.

The lack of landscaping and the lack of horizontal landscaped areas and suitably sized planters(i.e. Depth) do not diminish the scale and bulk of the built form and its dominance to the street and neighbouring properties. The extra height of the building(over the height shown in the BHOM) and its bulk is amplified by the lack of landscaped treatments.

#### Overshadowing Impacts and flawed assessment

The extra height of the building(over the height shown in the BHOM) also results in unacceptable overshadowing.

We note the proposal has based the drawings on the Code Assessable building height on the current tower. This as described has non-compliant setbacks to all levels and 'masks' the extent of the Code Assessable Shadow impacts.

This diminishes assessment of the proposed shadow impacts. The shadow impacts are thus greater than indicated in the drawings. The proposal clearly illustrates using the incorrect method of displaying shadows that private open space areas and roof top private open space areas of surrounding buildings and that of the adjoining building to the east are significantly impacted by shadow.

**An accurate shadow assessment of the code building footprint and code height is to be evaluated against the proposal and non-compliant height. The assessment is against the scheme provision not the non-compliant form and additional height.**

#### Privacy Impacts

The combination of the proposal reduced setbacks and lack of screening either by landscaping or physical screens results in the building having privacy impacts. The proposal is unable in its current form to address these privacy concerns with out substantive changes.

A balance between the design and privacy expectations has not been achieved or demonstrated.

The extra height of the building(over the height shown in the BHOM) results in the building being overbearing particularly to the building to the east where there is a substantive height discrepancy.

Privacy impacts would be addressed by landscaping at lower levels which is not provided and screens with more substantive setbacks to higher levels and particularly those that extent of the building above that shown in on the BHOM.

#### Interface Impacts

The interface of the proposal as indicated already is poor. At ground to the north car parks and acoustic fencing is provided with limited landscaping. The eastern boundary interface consists of acoustic fencing, services bike parking areas and effectively no landscaping. No deep planting is provided and no sufficiently wide or deep landscape planters are provided to accommodate 'deep 'planting or enable more substantive and taller landscaped elements.

The streetscape is dominated by vehicle crossovers and views of carparking areas on Ward St. Services cabinets and pedestrian entry dominate the Boundary St interface. No deep planting is provided to either frontage and no substantive wide or deep landscaped areas are provided.

A series of narrow and shallow planters are provided that seek to soften the built form edge and interface. These due to the shape size and depth do not 'soften' the lower levels of the built form and do not assist in softening higher floors nor that above the height outlined in the BHOM.

This interface is overwhelmed, through reduced setbacks to all frontages, by the physical form and scale of the built form including that additional height above that permitted under the BHOM. The reduced setbacks and lack of landscaped elements do not soften the building edge or its overbearing form.

The interface to the adjoining neighbouring buildings is not 'well managed' as it does not address the differing scale between the adjoining buildings and would result in a sense of overbearing. The absence of landscaping and significant setbacks particularly for those levels of the building exceeding the height nominated in the BHOM result in the proposal having amenity impact and thus does not have a 'well managed interface nor relationship to the neighbouring properties.'

***(9)(d) a varied, ordered and interesting local skyline***

The proposal does introduce a new 'high rise' into the existing high density zoned area of Rainbow Bay. The proposed building is modern building that may also add interest. As noted a lower building height is sought in the Rainbow Bay locality from that in Coolangatta.

The proposed building does seek height above that identified in the BHOM. The increase in height does not contribute to this ordered local skyline. The proposed building height and bulky form of the building is more reflective of that desired in the centre zone/Coolangatta.

Council has sought a deliberate decrease in building height from the centre zone. The proposed increased height of the building combined with the bulky form would diminish the desired decrease in scale and intensity sought through overall reduced heights in Rainbow Bay from that in Coolangatta.

***(9)(e) an excellent standard of appearance of the built form and street edge***

This proposal requires an excellent' standard as per the criteria.

This requires the design to be qualitative and quantitatively above that normally required. The proposal fails on these grounds and as illustrated is overbearing with interface impacts. The built form lacks clear differentiation between the ground floor and tower above. Contributing to the bulk and scale of the proposal.

This lack of tower differentiation and particularly for that part of the tower above that permitted under the BHOM is reflected in through the reduced setbacks across all floors and minimal variation between floors. This also results in the non-compliance with the High Rise Accommodation Design Code(HRADDC) specifically;

**9.3.9.2 Purpose requirements**

- (a) Development is designed to create attractive, high-quality visually appealing buildings and protect the privacy and amenity of neighbouring residential premises
- (b) Slender towers relate to existing high-rises and enhance views of the city skyline
- (c) Tower development mitigates negative visual and physical impacts through appropriate setbacks and design

The proposed design through increased height and site cover result in a overwhelming built form that does not relate to adjoining buildings, protect amenity, is not slender or provide varied in setbacks in the tower.

#### Street Edge

As outlined the street edge is dominated by the vehicle crossover/carparking areas, services cabinets, pedestrian and bin access paths and minor linear landscaped planters. The later not providing 'deep planting' and not sufficiently sized or of depth to enable the provision of a medium for feature trees or small trees. This lack of landscaping results in the built form dominating the streetscape and result in a sense of overbearing.

An excellent street edge is thus not provided and this criterion is not met.

- (h) deliberate and distinct built form contrast in locations where building heights change abruptly on the Building height overlay map;

As noted there are deliberate height changes sought to differentiate Coolangatta from the higher density area of Rainbow Bay, with a clear intent to taper building heights from the core. The proposed uplift would see the building having a height form and bulk more consistent with that which would be found in Coolangatta and diminishes the contrast desired by the scheme.

As recognised the locality is a higher density area and a range of building heights exist. The built form of the building needs to reflect the locality and have a height and form to differentiate it from that which may be achieved in adjoining centre zone. The extra height of the building (over the height shown in the BHOM) diminishes the strategic changes in building height sought to differentiate the urban neighbourhood' from the centres".

This evaluation and assessment clearly illustrates the proposal fails to meet numerous provisions and use of the uplift should not be allowed. Where the provisions of the uplift are unable to be used the noncompliance with the HDRZC prevails. The non-compliance with City Plan is significant and there are no exceptional "grounds" or other "relevant matters" relied on, to support approval.

As detailed the proposal does not comply with Specific outcome 9. The non-compliance with Specific outcome 9 manifests in: (1) adverse amenity and character impacts; and (2) non-compliance with the HDRZC and Multiple accommodation code. The application should be refused. The extra height of the building(over the height shown in the BHOM).

#### Summary

This application seeks an Impact Assessable Multiple Dwelling development. The development as outlined is non-compliant with the Building Height Overlay Map and other provisions of the High Density Residential Zone Code.

The applicant seeks to rely on other approvals for buildings which have exceeded of the Building Height Overlay and design as justification for use of s3.3.2.1(9).

As identified Rainbow Bay has a differing character to that sought under the Scheme from that sought in Coolangatta. This is expressed through zoning and, building height. The proposal seeks a high rise development which diminishes the deliberate differentiation sought and results in a more bulkier building which may be delivered in the centre zone / Coolangatta.

The proposal results in a large and bulky design outcome which is above that outlined in the BHOM. This design outcome and taller building has significant impacts to the adjoining residential properties amenity. These impacts to privacy and amenity are not able to be achieved through an alternate design or conditions.

The relationship of the built form with its immediate neighbours is one of disproportion; it is overbearing.

The proposal will not reinforce local identity and sense of place as required by Specific outcome 9(b). Rather, an approval would give rise to an adverse character and amenity impact. This would diminish the deliberate building height changes sought through the BHOM and taper in height.

We note the applicant seeks to utilise other approvals or 'emerging trends' as a reason when considering assessment of s.3.3.2.1(9) and approvals. We note again the s.3.3.2.1(9) is to be used only in 'limited circumstances and no overriding merit or public benefit has been put forward for use in this circumstance.

The design and levels of the building above that outlined in the BHOM does not reinforce a sense of place or local identity. The built form is bulky and visually overbearing for the neighbouring and nearby. The built form will also adversely impact on the streetscape character of the immediate locality.

The proposal through its reduced setbacks, lack of landscaping and lack of variation in the tower form does not result in a well-managed interface or relationship with nearby and adjacent development. Significant amenity impacts would be occasioned by the proposal and from those levels of the building above that outlined in the BHOM. These impacts are not reasonable nor expected.

The proposed increase in height above that stated on the BHOM does make a material difference to the perceived scale and bulk of the building. The scale and bulk of the building have a significant impact on neighbouring properties and resident's amenity and privacy.

The application as also outlined has not addressed the geotechnical risks associated with development of the site, through the proposed 3 levels of 100% site coverage basement. As noted 'sink holes' developed on the nearby Esprit development immediately to the west on Boundary St. This 'risk' is required to be assessed as a hazard to development and has not. The large variation in basement depths between that proposed and adjoining developments and services in the street necessitates further investigation.

The submission clearly illustrates the proposal is non-compliant in various areas of the scheme. These areas of noncompliance result in a built form and building height inconsistent with outcomes sought by the City Plan impacting on amenity, privacy and character.

The proposed development should be refused.

Yours sincerely

Name RICHARD GRELLMAN

Address UNIT 19 243-251 BOUNDARY ST  
COOLANGATTA

AND

SUSAN MILLAR

UNIT 1 243-251 BOUNDARY ST  
COOLANGATTA