

ATTACHMENTS UNDER SEPARATE  
COVER

ORDINARY COUNCIL MEETING  
9 JULY 2019



**PORT STEPHENS**  
C O U N C I L



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**APPLICATION DETAILS**

<b>Application Number</b>	16-2019-24-1
<b>Development Description</b>	Telecommunications Facility - Mobile Phone Base Station comprising 25m monopole and associated infrastructure.
<b>Applicant</b>	COMMPPLAN PTY LIMITED
<b>Date of Lodgement</b>	23/01/2019
<b>Value of Works</b>	\$180,000.00
<b>Property Address</b>	41 Fishermans Bay Road FISHERMANS BAY
<b>Lot and DP</b>	LOT: 1 DP: 1094320
<b>Current Use</b>	Water reservoir and digital television tower
<b>Zoning</b>	SP1 SPECIAL ACTIVITIES
<b>Site Constraints</b>	Bushfire prone land – category 1 Acid sulfate soils class 5 Stormwater drainage requirement area (1% AEP infiltration)

**Development Proposal**

The application proposes a telecommunications facility comprising of a 25m monopole with a headframe (total height 28.5m), 18 panel antennas (6 per sector), 33 remote radio units, six outdoor equipment cabinets, 3m reinforced block wall and steel framed colourbond roof surrounding the equipment cabinets, access ladders and ancillary equipment (**Figure 1**). The overall lease area measures 38.78m<sup>2</sup> in size. The proposal aims to deliver important Optus and Vodafone mobile telecommunication services to the Fisherman’s Bay and Boat Harbour areas.

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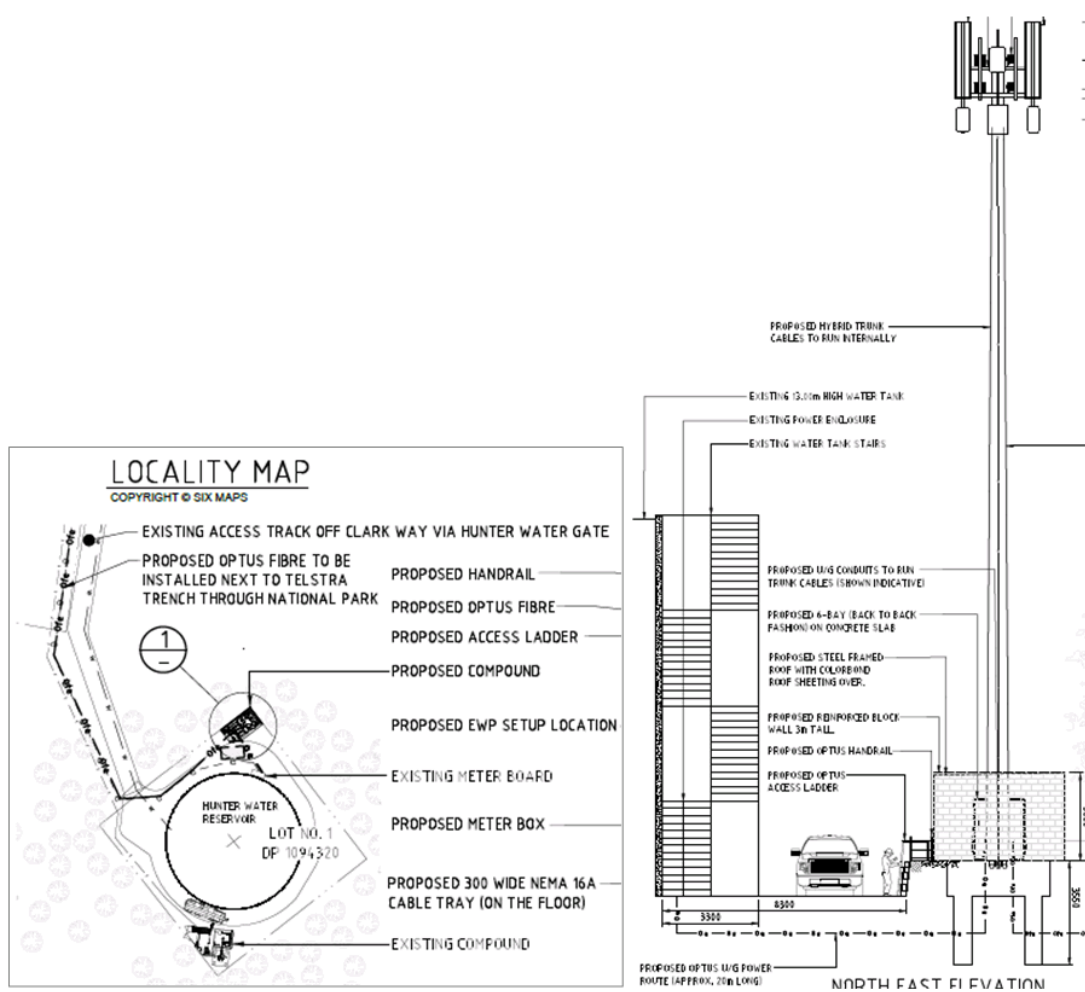


Figure 1: Site Plan and Elevation

**Site Description**

The subject site is known as 41 Fishermans Bay Road, Fishermans Bay (LOT: 1 DP: 1094320) and is owned by Hunter Water Corporation (Figure 3). An existing 30m Freeview Digital Television Tower and water reservoir are located on the subject site. Access to the site is via a formalised access track from Clark Street through the Tomaree National Park.

The closest residential dwelling to the proposed monopole is approximately 70m, accessible from Clark Street. Development identified within a 400m radius of the subject site includes residential dwellings and an early learning centre, however the predominant adjoining land use is the Tomaree National Park.



**Figure 3:** Locality plan of proposed development

#### **Site History**

A Freeview Digital Television Tower is located on the subject site which was approved by the Ordinary Council in October 2012 under DA 16-2012-507-1. A Telstra telecommunications tower was approved under officer delegation in December 2014 under DA 16-2014-633-1. This proposal included the removal and re-construction of the Freeview Tower to facilitate co-location. At the time of writing this report, Telstra had not yet constructed the new replacement monopole. The Statement of Environmental Effects (SoEE) submitted with the subject application notes that an option was presented to upgrade the existing Telstra structure on-site and co-locate the proposed Optus structure with this structure. This is not the applicants preferred option due to the associated timeframes, reduced coverage and uncertainty of development.

#### **Site Inspection**

A site inspection was carried out on 18 April 2019. The subject site can be seen in the images below:

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**Image 1:** Entry to subject site via existing access easement.



**Image 2:** Existing access to subject site and closest dwelling house to the right.





**Image 3:** Existing condition of Clark Street looking towards Gan Gan Road.



**Image 4:** Existing condition of Clark Street looking towards Gan Gan Road.



**Image 5:** Water reservoir and existing Freeview tower on subject site.



**Image 6:** Proposed compound area to the left, above the retaining wall.



**Image 7:** Proposed compound area and adjoining Tomaree National Park.



**Image 8:** Proposed setup location



**Image 9:** Existing Freeview tower viewed from Gan Gan Rd

**ASSESSMENT SUMMARY**

<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application does not require additional approvals listed under s.4.46 of the EP&A Act
<b>Concurrence</b>	The application does not require the concurrence of another body

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**Internal Referrals**

The proposed development was required to be referred to internal specialist staff for comment. The comments of the listed staff have been used to carry out the assessment against the S4.15 Matters for Consideration below.

**Development Contributions Officer**

The application was assessed under the Port Stephens Fixed Development Contributions Plan, and a condition has been recommended on the notice of determination to be reported to Council for the payment of fixed levies as it falls within the requirements of Clause 25J of the Environmental Planning and Assessment Regulation 2000.

**External Referrals**

The proposed development was referred to the following external agencies for comment.

**Hunter Water Corporation (HWC)**

The application was referred to HWC for comment on the bushfire management strategies active over the subject site, which is owned by HWC. In response it was noted that a water reservoir is located on the subject site, and was designed to incorporate a ring road around the structure to provide the reservoir with separation from direct contact with bushland within the Tomaree National Park. HWC stated that their current bushfire management strategy is to manage low intensity events with the ring road acting as an APZ in major events. Beyond the immediate asset footprint, responsibilities for land management activities in the National Park that are not directly related to water supply, reside with the NPWS.

**Rural Fire Service (RFS)**

Upon receipt of the amended bushfire assessment, referral to the RFS was undertaken in accordance with clause 4.14 of the EP&A Act. In response advice has been received regarding design and construction requirements.

**MATTERS FOR CONSIDERATION – SECTION 4.15****Relevant legislation****Environmental Planning and Assessment Act 1979****Clause 4.14 – Consultation and development consent – certain bush fire prone land**

Clause 4.14 states that development consent cannot be granted for the carrying out of development on bush fire prone land unless:

- a) the consent authority is satisfied that the development conforms to the specifications and requirements of Planning for Bush Fire Protection 2006 (PBP) prepared by the NSW Rural Fire Service that are relevant to the development, or
- b) the consent authority has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

**Planning for Bushfire Protection 2006 (PBP)**

PBP applies to all DA's on land classified as "bush fire prone land" (BPL), identified on a council's BPL map. The proposed development is considered a Class10b structure under the Building Code

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of Australia (BCA). These buildings are classified as 'other development' under PBP and should be non-combustible.

The subject site is identified as bushfire prone land – vegetation category 1. The existing Hunter Water Corporation water reservoir has been constructed with Asset Protection Zones (APZ) surrounding the water tank, however no APZ extends beyond this.

Assessment of the proposal against the objectives of the PBP that are considered relevant to the application has occurred as follows:

- a. *provide appropriate separation between a hazard and buildings which, in combination with other measures, prevent direct flame contact and material ignition;*

Response: The design has been amended and incorporates mitigation measures which are recommended in the bushfire report and complies with PBP and 'Telecommunication Towers in Bush Fire Prone Areas' (February 2012). Design features and materials of the components have been used to mitigate risk. These include:

- a concrete slab over whole compound or alternatively under cubicles with crushed rock from cubicle edges to compound fence;
- all incoming power and data cables from underground conduits/ducts;
- metal mesh screening with a 2.0mm aperture size over all ventilation openings;
- Provide light weight pitched metal roof over whole of cubicle area;
- Provide / construct a non-combustible wall around the retaining wall perimeter to a height of 2.5m above finished ground level;
- Remove the NEMA cable tray and run underground metal ducts or conduits between cabinets and the monopole;
- Provide non-combustible monopole (reinforced concrete or galvanised steel);
- Ensure cables located within the monopole void are secured clear of the monopole wall by a minimum 25mm – 50mm; and
- Ensure all monopole cable entry exit points are sealed with a fire resistant sealant.

The bushfire report acknowledged the monopole above a height of 2.5m will remain subject to possible direct flame impact and elevated radiant heat exceeding 40Kw/m<sup>2</sup>. However given the limited tall mature tree growth in the immediate vicinity of the monopole and the expected limited burn out time of tree crowns (possibly minutes) the impact of direct flame onto the monopole would not sufficiently damage the non-combustible monopole to a point which allows structural failure.

- b. *ensure that safe operational access and egress for emergency service personnel and residents is available;*

Response: The site is easily accessible by the existing sealed access road that would enable fire fighting vehicles and personnel to enter the site.

- c. *provide for ongoing management and maintenance of bush fire protection measures, including fuel loads in the asset protection zone (APZ); and*

Response: The proposed Optus telecommunications facility cannot accommodate a conventional bushfire Asset Protection Zone due to the limited space between the reservoir tank and the boundary nor can arrangements be made to incorporate an external APZ in the adjoining Tomaree National Park. The proposed works will be within BAL FZ and have used design features (such as a fire rated wall) and material components to mitigate the risk. A maintenance regime will be required to ensure the materials and components are cleaned annually and the compound leaf litter removed prior to the bushfire danger period. In addition to this, it is assumed the National Parks and Wildlife Service will carry out bushfire hazard reductions from time to time thus reducing the possible hazard to the reservoir area.

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- d. *ensure that utility services are adequate to meet the needs of firefighters (and others assisting in bush firefighting).*

Response: Reticulated water is available for firefighting purposes.

It is considered that assessment of the application against the provisions of the PBP has been satisfactory addressed within this section.

The development application has been referred to the RFS in accordance with clause 4.14 of the EP&A Act. In response advice has been received regarding design and construction requirements in line with the submitted bushfire report.

**s4.15(1)(a)(i) – The provisions of any EPI****State Environmental Planning Policies****State Environmental Planning Policy (SEPP) No. 55 Remediation of Land**

State Environmental Planning Policy No.55 – Remediation of Land ('SEPP No.55') provides a State-wide planning approach to the remediation of contaminated land. The provisions of SEPP No.55 provide that a consent authority must not consent to the carrying out of development on land unless it has given consideration to whether the land subject to the development is contaminated. Where the land is contaminated a consent authority must determine if the land is suitable in its contaminated state for the development, or alternatively determine that the land would be suitable once remediated. The subject site has a history of use relating to infrastructure and there is no evidence that contaminating activities have historically occurred on site. As such, the land is unlikely to be subject to contamination and does not warrant further investigation. The subject site is suitable for the proposed development and the objectives of SEPP No.55 have been satisfied.

**State Environmental Planning Policy (SEPP) (Infrastructure) 2007**

The exempt and complying development provisions of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) are not relevant to this proposal as the subject property is not within the allowable zones for which complying development may be carried out, i.e. Zone IN1, IN2, IN3, RU1, RU2, RU3 or RU4 or an equivalent land use zone. The subject site is zoned SP1 Special Activities. Clause 115 of the ISEPP notes that development for the purposes of telecommunications facilities may be carried out by any person with consent on any land.

Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this clause and published in the Gazette. The Department of Planning and Environment prepared a NSW Telecommunications Facilities Guideline including Broadband (July 2010) (the Guideline) for the purpose of Clause 115 of the ISEPP to:

- a. Provide a guide to the State wide planning provisions and development controls for telecommunications facilities in NSW; and
- b. Provide guidance to assist the facilitation of the roll-out of broadband in NSW.

Principles for the design, siting, construction and operation of telecommunications facilities that apply to proposed telecommunications facilities in NSW have been developed and are contained in this Guideline. The detailed principles are contained under the following broad headings and an assessment of each is as follows:

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1. **Principle 1:** *A telecommunications facility is to be designed and sited to minimise visual impact*

- The requirements listed under (a) to (c) relate to facilities that are proposed to be located on an existing building or structure. As the proposed development is freestanding and is to be located independently from an existing building or structure, an assessment against these requirements is not required.
- The ancillary facilities associated with the proposed development will be housed in small outdoor equipment cabinets constructed of grey and white colour, wholly within the subject site. The area is clear of vegetation, however is surrounded by vegetation within the Tomaree National Park adjacent to the subject site to provide screening from public view. Requirement (d) has been satisfied in this regard.
- The proposed development has been located and designed to respond to its surrounding landscape context, which is discussed in further detail in the below sections of this report. Requirement (e) has been satisfied in this regard.
- The subject site is not heritage listed and not located within a heritage conservation area. An assessment against requirement (f) and (g) is therefore not required.
- No significant removal or lopping of vegetation is required to facilitate the proposed development. Requirement (h) is satisfied in this regard.
- As the proposed development is for a new facility, the decommissioning and removal of an existing facility is not required, as specified by requirement (i).
- Due to the nature of telecommunications infrastructure, the facility must be elevated to obtain the best coverage possible. The siting and design of the proposed development has been designed to reduce the intrusive visual impacts within the immediate and greater locality (as further discussed in the below sections of this report) and satisfies requirement (j).

2. **Principle 2:** *Telecommunications facilities should be co-located wherever practical.*

- No telecommunications lines are proposed, therefore an assessment against requirement (a) is not required.
- A Telstra telecommunications tower was approved under officer delegation in December 2014 under DA 16-2014-633-1. The proposal included the removal and re-construction of the Freeview Tower to facilitate co-location. Telstra have not yet constructed the replacement monopole and there is some uncertainty as to when this is to occur. Whilst it may be an option to upgrade the existing Telstra structure on-site / co-locate the proposed Optus/ Vodafone structure with this structure, this is not the preferred option due to timeframes, coverage and uncertainty of development. Requirements (b) to (d) have been satisfied in this regard.
- The proponent investigated two alternative sites for the proposed development. After review of these locations, it was determined that co-location is not practicable as alternative locations did not meet the radio frequency coverage objectives, resulted in greater impacts to the natural environment and amenity, support was not provided from property owners for co-location and uncertainty exists relating to construction timeframes for existing development approvals. Requirement (e) has been satisfied in this regard.
- The proposed development incorporates a new monopole, therefore assessment against requirement (f) is not required.

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3. **Principle 3: Health standards for exposure to radio emissions must be met.**
- The proposed installation will comply with the Australian Communications and Media Authority (ACMA) regulatory arrangements with respect to electromagnetic radiation exposure (EME) levels. EME exposure levels from this site have been calculated in accordance with the ARPANSA prediction methodology and report format. The EME report submitted with the application shows that the maximum predicted EME levels will equate to 7.8% of the maximum exposure limit, which is well below the allowable exposure limit under the Australian Standard (100% which is still considered to be safe).
4. **Principle 4: Minimise disturbance and risk and maximise compliance.**
- The subject site is located more than 30km from Newcastle Airport and does not penetrate any obstacle limitation surface. It is also noted that the proposed height of the structure (28.5m) is below the 'Tall Structure' height of 110 metres, therefore referral to the Civil Aviation Safety Authority Australia is not required. Requirement (a) has been satisfied in this regard.
  - The proposed development has been designed to minimise any interference problems with other radio-based systems and complies with the requirements of the Australian Standards. Requirement (b) has been satisfied in this regard.
  - The proposed development has been designed and will be constructed in accordance with the applicable manufacturer's specifications. Requirement (c) has been satisfied in this regard.
  - Requirement (d) does not apply to the proposed development as it is not intended on being erected on a building or structure.
  - The proposed development will be located entirely within the boundaries of the subject site, with consent from the property owner, satisfying requirement (e).
  - Requirements (f) to (k) and (n) relate to construction being carried out with consideration made to erosion and sediment control, risks to pedestrian or vehicles, construction hours, traffic control measures, open trenching, disturbance to vegetation and restoration of existing facilities removed or damaged during construction. Conditions to this effect have been included in the recommended conditions of consent to be reported to Council.
  - The proposed development is located on a previously disturbed corner (northeast) of the subject site that does not contain significant flora or fauna. A condition is recommended relating to the protection of vegetation external to the property boundaries, and restoration of land to a condition that is similar that before the work was carried out. Requirement (l) has been satisfied in this regard.
  - A search of the AHIMs data base has been carried out in respect of the subject site, which determined that no artefacts or items of interest are located on or near the subject site. Requirement (m) has been satisfied in this regard.

In summary, the proposed development is consistent with the principles of the NSW Telecommunications Facilities Guidelines including Broadband.

#### **Local Environmental Plan**

Port Stephens Local Environmental Plan 2013 (LEP)

#### **Clause 2.3 – Zone Objectives and Land Use Table**

As noted above, the subject site is zoned SP1 Special Activities. Clause 115 of the ISEPP notes that development for the purposes of telecommunications facilities may be carried out by any

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person with consent on any land. The objectives of the zone include to provide for special land uses that are not provided for in other zones, facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land and to facilitate the provision of infrastructure provided by Hunter Water Corporation (HWC).

The proposed development seeks to establish telecommunications infrastructure that whilst can be carried out in other zones without consent under the ISEPP (i.e. IN1, IN2, IN3, RU1, RU2, RU3 or RU4 or an equivalent land use zone), the subject site provides for greater coverage and minimal environmental impact both on-site and surrounding land. The development is in keeping with the overall purpose of the subject site relating to the HWC reservoir, and does not prevent further HWC use of the site.

The height of the structure (28.5m) results in an inevitable visibility from Gan Gan Road and surrounds across Anna Bay and Boat Harbour. Due to the nature of telecommunications facilities, they must be located at an elevated position to gain the best coverage possible, which in turn results in potential negative visual impacts within the locality. Upon site inspection, it was noted that the proposed development may be visible from the immediately adjacent properties. However, given the design of the proposed structure, and being surrounded by bushland, the immediate visual impacts are not significantly intrusive. A photomontage is provided in **Figure 4** to demonstrate the visual impact of the development from Gan Gan Road. As shown within this figure, the proposed development is integrated with the height of the predominant vegetation and interface with the skyline, and therefore does not dominate the skyline or reduce the quality of vistas. The overall scale and proportion is appropriate for the streetscape and setting and does not increase visual unsightliness or clutter. In addition, the proposed development is slim line and will be coloured grey and white in an effort to neutralise the facility and ensures integration with the existing environment.



**Figure 4:** Photomontage of proposed development viewed from Gan Gan Rd

In this regard the development is consistent with the objectives of the SP1 Special Activities Zone.

#### **Clause 5.10 – Heritage**

An Aboriginal Heritage Information System (AHIMS) search (9 November 2016) was undertaken in respect of the subject site and which determined that no artefacts, sites or items of interest are located on or near the subject site. The proposed development shall be located within a portion of the subject site which is clear of vegetation and disturbed by existing infrastructure. In addition, the importation of fill to the site would be unlikely to disturb or destroy any items of Aboriginal Cultural Heritage significance should they be located on site. As such, the proposed development is not

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considered to result in adverse impacts to heritage and is therefore satisfactory having regard to clause 5.10.

**Clause 7.1 – Acid sulfate soils**

The subject site is identified as containing Class 5 acid sulfate soils (ASS), and is located within 500m of adjoining class 4 ASS. Works associated with the proposed development will result in excavation of 3.55m below the natural ground level for the establishment of footings. However, the land is not below 5m Australian Height Datum and is not likely to lower the water table. As such, the proposal is considered satisfactory in this regard.

**Clause 7.2 – Earthworks**

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. As noted above, excavation to a level of 3.55m below natural ground level is required to establish the monopole footings. In response to the objective of Clause 7.2, the proposed excavation is satisfactory against the matters for consideration under Clause 7.2(3), as it:

- Will not significantly disrupt or have a detrimental effect on drainage patterns and soil stability in the locality of the development;
- Will enable opportunity for the future use of the land;
- Will not require filling of land, however reuse of soil on-site will be restricted to VENM, ENM or any other waste-derived material the subject of a resource recovery exemption;
- Have minimal effect on the existing and likely amenity of adjoining properties;
- Will include restrictions and/or quality assurance requirements relating to the source of any fill material (if required);
- Has a low likelihood of disturbing relics; and
- Has a low likelihood of adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

To this extent, it is considered that development consent can be granted in accordance with Clause 7.2 of the LEP as the consent authority is satisfied that matters outlined in Clause 7.2(3) have been appropriately addressed, subject to recommended conditions relating to; erosion and sediment controls, soil stability and quality and source of fill. Conditions to this effect have been included in the recommended conditions of consent to be reported to Council.

**Clause 7.6 – Essential Services**

The proposed development will only require access to electricity supply as per clause 7.6(1)(b). The final electricity design including the capacity of the supply will be confirmed in the detailed design phase, however, a major upgrade is not anticipated. At this stage, the proposed development will be connected to the existing electrical distribution board using an underground power line from the existing meter board to the proposed equipment cabinets.

**s4.15(1)(a)(ii) – Any draft EPI**

There are no draft EPI's relevant to the proposed development.

**s4.15(1)(a)(iii) – Any DCP**

Port Stephens Development Control Plan 2014

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

**Section A.12 – Notification and Advertising**

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In accordance with the requirements of chapter A.12, the development application was originally notified and publically advertised for a period of 14 days between 7 February 2019 and 21 February 2019. The application was re-notified and advertised for a period of 14 days between 21 February 2019 and 7 March 2019 due to template and DA tracker errors.

**Section B3 – Environmental Management**

*Acid sulfate soils* – Following discussions against Clause 7.1 of the LEP above, the subject land is mapped Class 5 acid sulfate soils (ASS), and is located within 500m of adjoining class 4 ASS. Works associated with the proposed development will result in excavation of 3.55m below the natural ground level for the establishment of footings. However, the land is not below 5m Australian Height Datum and is not likely to lower the water table. As such, the proposal is considered satisfactory in this regard.

*Earthworks* – Following discussions against Clause 7.2 of the LEP above, the proposed development incorporates earthworks to facilitate the proposed development and is considered to be satisfactory when considered against the requirements of this section, subject to recommended conditions relating to; erosion and sediment controls, soil stability and quality and source of fill.

**Section B9 – Road Network and Parking**

Traffic generation as a result of the development will primarily occur during construction. The type of vehicles required to complete delivery of the materials required for construction include an 8 tonne and 20 tonne truck, 60 tonne crane, 4 tonne excavator, and one concrete truck to deliver concrete four times. The construction of the development in its entirety will take approximately six weeks, excluding external factors such as weather. A condition is recommended to be incorporated requiring the person having the benefit of the consent to repair any part of Clark Street that is damaged during the construction of the proposed development.

Upon completion of the project it is anticipated that traffic generation will be minimal and limited to approximately two and four maintenance visits per year and the facility would remain unmanned at all other times and therefore, there are no specific car parking requirements applicable to the proposal.

Access to the subject site is via an existing 'easement for access pipeline powerline and control cable (6m wide)' direct from the southern end of Clark Street. This easement was gazetted on 03/04/1974 NSW Government Gazette No. 43.

To this extent, the proposed development is satisfactory having regard to the requirements of section B9.

**s4.15(1)(a)(iiiia) – Any planning agreement or draft planning agreement entered into under section 7.4**

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

**s4.15(1)(a)(iv) – The regulations**

There are no matters prescribed by the regulations which apply to the proposed development.

**s4.15(1)(a)(v) – Any coastal management plan**

There are no coastal management plans applicable to the proposed development.

**s4.15(1)(b) – The likely impacts of the development****Social and Economic Impacts**

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The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) an Australian Government agency in the Health and Ageing portfolio, has established a Radiation Protection Standard specifying limits for general public exposure to radio frequency (RF) transmissions at frequencies used by wireless base stations. In Australia, the RF and electromagnetic energy (EME) exposure are mandated by the Australian Communications and Media Authority (ACMA). 100% EME is considered to be 'safe' under the Australian Standard AS1055. In this particular instance, the maximum EME level calculated is 7.8% of the public exposure limit. This estimate is based on worst-case scenario. The EME level at the early learning centre is 0.37%. The EME at the closest dwellings are approximately 2.24% and 3.71%. This is well below the maximum exposure limit of the standard.

Further, the proposed equipment incorporates the following features to minimise the amount of energy used and emitted:

- Dynamic/Adaptive Power Control is a network feature that automatically adjusts the power and hence minimises EME from the facility;
- Varying the facility's transmit power to the minimal required level, minimising EME from the network; and
- Discontinuous transmission, a feature that reduces EME emissions by automatically switching the transmitter off when no data is being sent.

To this extent, the proposal will result in positive social and economic impacts by enhancing access to critical mobile telecommunications services and mobile coverage, whilst maintaining compliance with the ARPANSA and ACMA requirements.

#### Impacts on the Built Environment

The height of the structure (28.5m) results in an inevitable visibility from Gan Gan Road and surrounds across Anna Bay and Boat Harbour. Due to the nature of telecommunications facilities, they must be located at an elevated position to gain the best coverage possible. The overall scale and proportion is appropriate for the streetscape and setting and does not increase visual unsightliness or clutter. In addition, the proposed development is slim line and will be coloured grey and white in an effort to neutralise the facility and ensures integration with the existing environment. Upon site inspection, it was noted that the proposed development may be visible from the immediately adjacent properties. However, given the design of the proposed structure, and being surrounded by bushland, the immediate visual impacts are not significantly intrusive. To this extent, the proposal will not result in significant adverse impacts on the amenity of surrounding areas and prevailing urban and built environment or form.

#### Impacts on the Natural Environment

The proposed development will involve minimal impact on the natural environment, as no vegetation is required to be removed to facilitate construction. A condition is recommended requiring erosion and sediment controls to be implemented for the duration of construction works. No waste which requires collection or disposal will be generated by the operation of the facility.

#### **s4.15(1)(c) – The suitability of the site**

The subject site is suitable for development due to the logical location for range accessibility and target reach, cleared area for construction and suitable access.

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**s4.15(1)(d) – Any submissions**

60 submissions inclusive of 38 pro-forma submissions and 22 standard submissions, with a total of 66 signatures were received during the notification and advertising period in relation to the proposed development.

Issue	Response
<p><u>Health risks and impacts</u></p> <ul style="list-style-type: none"> <li>- Perceived link between radiation and health impacts including cancer, sleep deprivation and fatigue.</li> <li>- Potential liability risks for Council should future health impacts occur or EME levels are tested in the future and are shown as falling outside of Australian Standards.</li> <li>- Long and short term implications associated with electromagnetic radiation.</li> <li>- The three services transmitting electromagnetic waves from the site will have an effect on health and also water supply and composition.</li> <li>- Evidence is required to demonstrate that the low radiation levels are guaranteed and are not linked to further health issues (such as cellular dysfunction and increased symptoms relating to mitochondrial disease).</li> </ul>	<ul style="list-style-type: none"> <li>- As noted elsewhere within this report, the EME generated by the proposed development is well below the maximum exposure limit. Notwithstanding this, a condition has been recommended on the consent requiring compliance with the Industry Code C564:2011 Mobile Phone Base Station Deployment, which applies in respect of siting and design requirements. In adopting this principle and having due regard to the surrounding context of sensitive land uses in close proximity, the proposal is considered to be suitable in the location proposed.</li> <li>- Whilst it is acknowledged that there are studies linking radiation levels to health impacts, there is also scientific evidence on the contrary, noting that the associated health impacts are unproven. Further, there are many radio signals in the community, not just from mobile telecommunications, including FM radio and TV which have been proven to make up a higher percentage of EME.</li> <li>- When assessed against all available policies, standards and requirements set by the State and Federal Government, the proposed development is satisfactory. Council liability is therefore not a factor to be taken into consideration as the assessment of the subject application has been carried out in good faith, against all available information.</li> </ul>
<p><u>Design</u></p> <ul style="list-style-type: none"> <li>- The DA does not specify the amount of 18 panel antennas proposed and does not specify whether this number can increase without consent from Council.</li> </ul>	<ul style="list-style-type: none"> <li>- The application specifies that the monopole will incorporate 18 antennas (6 per sector), no more than 2.5m in length as shown in <b>Figure 2</b> of this report. This is consistent with the ISEPP exempt and complying development requirements. Should any additional</li> </ul>

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<ul style="list-style-type: none"> <li>- The accuracy of information submitted with the DA is not certain or established. Council and residents need to be satisfied that the proposed installation will not exceed deemed levels.</li> </ul>	<p>antennas be proposed, consent may be given under the ISEPP exempt and complying should the development meet the applicable requirements.</p>
<p><u>Cost of development</u></p> <ul style="list-style-type: none"> <li>- The capital investment value (CIV) of the development \$180, 000 is low when compared to the Telstra DA valued at \$376, 000 in 2014.</li> </ul>	<p>The CIV of the proposed development is consistent with development of a similar type and scale, lodged within recent years. In this regard, the CIV is considered to be satisfactory.</p>
<p><u>Property values and visual impact</u></p> <ul style="list-style-type: none"> <li>- Diminution of property values due to negative visual impacts.</li> <li>- Council has an obligation to ensure property values are retained.</li> <li>- Council needs to determine compensation programs for nearby property owners.</li> <li>- Proposed development will not be able to be screened by natural high bearing vegetation.</li> <li>- Approval would significantly reduce the opportunity to develop the residential land in the immediate area of the proposed tower.</li> <li>- Development would be an eyesore on the natural landscape.</li> </ul>	<ul style="list-style-type: none"> <li>- The issue of impact to property prices is not a relevant planning consideration in the assessment of a development application.</li> <li>- Due to the nature of telecommunications facilities, they must be located at an elevated position to gain the best coverage possible. The overall scale and proportion is appropriate for the streetscape and setting and does not increase visual unsightliness or clutter. In addition, the proposed development is slim line and will be coloured grey and white in an effort to neutralise the facility and ensures integration with the existing environment. Upon site inspection, it was noted that the proposed development may be visible from the immediately adjacent properties. However, given the design of the proposed structure, and being surrounded by bushland, the immediate visual impacts are not significantly intrusive.</li> </ul>
<p><u>Location</u></p> <ul style="list-style-type: none"> <li>- Located within close proximity to sensitive receptors such as residences and a child care centre.</li> <li>- Lack of alternative sites investigated. Other sites could be better utilised.</li> <li>- Co-location with the Telstra tower approved under 16-2014-633-1 not chosen.</li> <li>- The development has not adhered to several sections of the Mobile Phone Base Station Deployment Code, i.e. it</li> </ul>	<ul style="list-style-type: none"> <li>- It is acknowledged that dwelling houses are located in proximity to the subject site, with the closest being approximately 70m in distance. Two alternative sites were investigated for location of the proposed development. It was determined that these locations were not practicable as they did not meet the radio frequency coverage objectives, resulted in greater impacts to the natural environment and amenity of the environment, support was not provided from property owners and uncertainty exists relating to</li> </ul>

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<p>must 'have regard to the likelihood of adjoining community sensitive locations'.</p> <ul style="list-style-type: none"> <li>- No written owners consent was provided with the DA for lodgement.</li> <li>- No approval from the Minister for National Parks was provided for access to the subject site.</li> </ul>	<p>construction timeframes for existing development approvals.</p> <ul style="list-style-type: none"> <li>- Consideration of the Mobile Phone Base Station Deployment Code was undertaken as part of the application, confirming that The EME level at the early learning centre (120m) is 0.37%. The EME at the closest dwelling is approximately 2.24%. Both levels are well below the maximum, whereby 100% is still considered to be safe.</li> <li>- Owners consent from Hunter Water Corporation was provided to enable DA lodgement.</li> <li>- Access to the subject site is via an existing 'easement for access pipeline powerline and control cable (6m wide)' direct from the southern end of Clark Street. This easement was gazetted on 03/04/1974 NSW Government Gazette No. 43. A lease or licence from the Minister under Section 153D National Parks and Wildlife Act 1974 is not required in this regard.</li> </ul>
<p><u>Community consultation and notification</u></p> <ul style="list-style-type: none"> <li>- Lack of community consultation in preparing the DA, which led to community confusion and lack of accountability, which could create accusations against Council.</li> <li>- The applicant has not adhered to the Mobile Phone Base Station Deployment Code, which requires notification to the occupiers of the premises in the immediate vicinity of the site.</li> <li>- The ACMA requires telecommunications carriers to inform and consult with the local community when planning, installing or upgrading base stations which has not occurred.</li> </ul>	<ul style="list-style-type: none"> <li>- Section 6 and 7 of the Mobile Phone Base Station Deployment Code relates to consultation requirements for installation at a new site without a DA. As the subject development required consent from Council via the DA process, notification and advertising of the DA was undertaken by Council in accordance with Council's adopted policies and procedures.</li> </ul>
<p><u>Existing development approval</u></p> <ul style="list-style-type: none"> <li>- A Telstra telecommunications tower was approved on the subject site under DA 16-2014-663-1. Residents were alerted to the fact that Telstra were intending on modifying this application and construction was anticipated to</li> </ul>	<ul style="list-style-type: none"> <li>- The subject DA is not directly linked to the DA approved under 16-2014-663-1. In this regard, the subject DA is required to be assessed on merit separately.</li> <li>- As the development under the abovementioned application has uncertainty surrounding its construction</li> </ul>

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<p>commence late March 2019. This will double the visual impact and increase the EME levels.</p> <ul style="list-style-type: none"> <li>- Community were denied the right for full participation in the approval process relating to the Telstra DA under 16-2014-663-1. In this regard, Council showed disregard for its endorsed 'Community Engagement Policy'.</li> <li>- Council should immediately cease the approved Telstra tower given no works have commenced, and only allow to recommence once the issue of co-location has been resolved.</li> </ul>	<p>occurrence, Council must proceed to assess the subject application on merit, against all applicable controls. It is worth noting that the facility approved in 2014 is co-located with the existing structure on-site and its maximum cumulative EME level at 1.5m above ground level was 0.0069% of the public exposure limit (which is 100%). If combined with the subject application, the total EME, based on the worst case scenario is 7.8%, which is still under the maximum allowable.</p> <ul style="list-style-type: none"> <li>- Community consultation requirements under the previous DA are not a relevant planning consideration in the assessment of a development application.</li> </ul>
<p><u>Traffic and road impacts</u></p> <ul style="list-style-type: none"> <li>- Increased traffic along Clark Street for construction and maintenance of the telecommunications facility will create maintenance issues and damage.</li> <li>- Will Clark Street be repaired after heavy machinery has ripped up the access to properties?</li> </ul>	<p>Traffic generation as a result of the development will primarily occur during construction. The type of vehicles required to complete delivery of the materials required for construction include an 8 tonne and 20 tonne truck, 60 tonne crane, 4 tonne excavator, and one concrete truck to deliver concrete four times. The construction of the development in its entirety will take approximately six weeks, excluding external factors such as weather. A condition is recommended to be incorporated requiring the person having the benefit of the consent to repair any part of Clark Street that is damaged during the construction of the proposed development.</p>
<p><u>Bushfire</u></p> <ul style="list-style-type: none"> <li>- The current DA fails to adequately address the recognised potential increased bushfire threat the tower may create due to electrical faults and/or lightning strikes.</li> <li>- No supporting documentation from the National Parks and Wildlife Services has been provided with the DA relating to any bushfire hazard reduction or management plan.</li> </ul>	<p>The proposed Optus telecommunications facility cannot accommodate a conventional bushfire Asset Protection Zone due to the limited space between the reservoir tank and the boundary nor can arrangements be made to incorporate an external APZ in the adjoining Tomaree National Park.</p> <p>An amended bushfire assessment was submitted which demonstrates how the development has been designed with mitigation measures that comply with PBP and 'Telecommunication Towers in Bush Fire Prone Areas' (February 2012). The proposed works will be within BAL FZ and have used design features (such as a fire rated wall) and material components to mitigate the risk.</p>



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	Further information is detailed under Section 4.15 of this report.
<p><u>Aboriginal consultation</u></p> <ul style="list-style-type: none"> <li>- Consultation with the Worimi Local Aboriginal Land Council should occur due to the potential visual impact of the proposed development on the headland.</li> </ul>	There is no nexus for this type of consultation to occur as no artefacts, sites or items of interest are known to be located on or near the subject site.
<p><u>Ecological impact</u></p> <ul style="list-style-type: none"> <li>- Site inspection to occur to determine whether any vegetation is required to be removed to facilitate the proposed development.</li> <li>- The subject site is located within an environmentally sensitive area and the application has total disregard for this.</li> </ul>	Site inspection confirmed that no vegetation is required to be removed to facilitate the proposed development. However, a condition has been recommended which confirms that no vegetation removal is approved under the development application. An advice will be recommended stating if vegetation removal is required, a separate approval or permit must be obtained from Council.

**s4.15(1)(e) – The public interest**

The proposal is in the public interest as it will provide an important community benefit by providing access to critical mobile telecommunications services and greatly improved mobile coverage in the area.



## APPLICATION DETAILS

<b>Application Number</b>	16-2018-386-1
<b>Property Address</b>	35 - 39 Donald Street NELSON BAY, 1 Yacaaba Street NELSON BAY
<b>Lot and DP</b>	Lots: 22 - 25 Sec: 5 DP: 17805
<b>Development Description</b>	Mixed use development – Residential flat building (56 residential units comprising a mix of one, two and three bedrooms), commercial premises (three units), basement car parking (109 spaces) and associated works including demolition of existing carpark
<b>Applicant</b>	ANCHOR PROPERTY GROUP PTY LTD
<b>Owners consent</b>	Yes - two director's signatures provided.
<b>Date of Lodgement</b>	13 June 2018
<b>Value of Works</b>	\$22,485,914
<b>Current Use</b>	Carpark
<b>Zoning</b>	B2 LOCAL CENTRE
<b>Site Constraints</b>	Acid Sulfate Soils – Class 4 and 5 Bushfire SEPP (Coastal Management) - Coastal Zone
<b>88B Instrument and Deposited Plan</b>	Nothing on the DP restricts the proposed development. There is no 88B instrument applicable to the site.
<b>Submissions</b>	Yes - 81 submissions received including 51 submissions in support and 30 submissions (from 34 signatories) in objection (third round of public exhibition).

**1. SITE DESCRIPTION**

The site comprises four separate allotments and is known as Nos. 35, 37 and 35 Donald Street, and No. 1 Yacaaba Street, Nelson Bay. The site is located on the corner of Donald and Yacaaba Streets and has a total area of approx. 2018 m<sup>2</sup>. The site is generally regular in shape having the following dimensions; a 40.23 m frontage to Donald Street, a 50.29 m frontage to Yacaaba Street, a 37.49 m eastern boundary and a 40.1 m southern boundary. The site is relatively flat with a gradual slope / cross fall from 14.77 metres AHD from the rear south-east corner to 11.54 metres AHD to the front north-west corner.

The site currently contains a bitumen carpark which is utilised by the public. The site is located within the Nelson Bay Town Centre and is approximately 300 metres to the south of the Nelson Bay Foreshore. The adjoining land to the north of the site comprises commercial and business premises and a multi-storey car parking facility. The land to the east of the site comprises a mix of residential accommodation including single storey dwellings and multi-dwelling housing. To the west there is a mix of commercial and retail premises, including cafes and restaurants. A mixed used development containing residential apartments and ground floor retail directly adjoins the site to the south.

A site inspection was carried on 2 April 2019. An aerial image and the site inspection photos are depicted in the images below:



**Image 1:** Aerial image of subject site.



Image 2: Yacaaba Street - view one



Image 3: Yacaaba Street - view two

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**Image 4:** Corner of Yacaaba Street and Donald Street



**Image 5:** Donald Street

## 2. PROPOSAL

The Applicant seeks approval for a mixed use development, to be known as the 'Manta Ray' (see fig 1 & 2 below which depict the Donald and Yacaaba Street elevations). The development is nine storeys above ground with two basement levels, and 30.6 m in height and comprises the following works:

1. Demolition of existing car park.
2. Earthworks – excavation to facilitate basement level parking.
3. Construction of mixed use development containing;
  - a. Fifty-six residential units:
    - i. Five x one bedroom units (floor area 77 m<sup>2</sup>),
    - ii. Twenty-seven x two bedroom units (floor area 80-84 m<sup>2</sup>), and
    - iii. Twenty-four x three bedroom units (floor area 104 m<sup>2</sup>).

Eleven of the proposed units are designed to be universal in configuration and include design features which allow for the changing needs of occupants, such as wider circulation spaces and level threshold transitions. The following universal configurations are proposed:

- Four x one bedroom units,
  - Three x two bedroom units, and
  - Four x three bedroom units.
- b. Three ground floor commercial units having a total gross floor area (GFA) of 422 m<sup>2</sup>:
    - i. Tenancy 1 - 123 m<sup>2</sup>,
    - ii. Tenancy 2 – 114 m<sup>2</sup>, and
    - iii. Tenancy 3 - 185 m<sup>2</sup>.
  - c. Car parking:
    - i. Two basement levels and ground floor car parking catering for 109 spaces, comprising:
      - 83 resident car parking spaces, including four accessible spaces (basement level 1 and 2),
      - 19 residential visitor spaces (basement level 1),
      - Eight commercial spaces (ground floor),
      - Seven motor bike spaces (basement level 1 and 2), and
      - 18 wall mounted bicycle racks for residential use (ground floor).

Entry to the car park is provided from the north-east corner of the site via a vehicle crossing from Donald Street, with the car park exit located at the south-

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west corner of the site via two vehicle crossings from Yacaaba Street (one facilitating vehicle egress from the ground level and one facilitating vehicle egress from basement level one). Vehicle access is controlled via security roller doors located within the lot boundary. Additional residential storage areas are also provided within the two basement levels.

- d. Communal spaces including pool and landscaping.
  - i. An outdoor pool and landscaped communal area have been provided along the eastern elevation of level 1.
  - ii. Landscaping has been provided along the full extent of the eastern boundary at level one. Plantings have also been provided to portions of the southern, northern and western boundaries at level one.
  - iii. Street trees at landscape treatment has been proposed along Donald and Yacaaba Street frontages.

Pedestrian access to the residential units is provided by Donald Street to the entry lobby. Direct access to the commercial tenancies is provided by Donald Street and Yacaaba Street.

Residential and commercial waste storage areas have been provided within at ground floor level. Kerbside collection is proposed with all waste equipment movements to be managed by the building manager and /or cleaners.



**Figure 1:** Yacaaba Street elevation



Figure 2: Donald Street elevation

### 3. DA HISTORY

The application was lodged on 13 June 2018. A number of requests for further information and three sets of amended plans / revised documents have been provided by the applicant through clause 55 amendments, as follows:

- 12 October 2018 – substantial design amendments including; amendments to building façade, redesign of residential unit configuration, and modifications to car parking (ground, basement level 1 and 2),
- 9 November 2018 – substantial design amendments including; amendments to building façade, reduction of residential units from 60 to 59, reduced building height (33.49m to 30.60m) and levels (10 stories to 9 stories), and reduction of commercial space (362m<sup>2</sup> GFA to 68 GFAm<sup>2</sup>), and
- 17 January 2019 – substantial design amendments including: amendments to building façade, reduction of residential units from 59 to 56, increase commercial space to three tenancies (68m<sup>2</sup> GFA to 422GFAm<sup>2</sup>).

A further set of amended plans were received proposing minor amendments outside the clause 55 process:

- 16 May 2019 – Conversion of proposed café (food and drink premises) to a commercial tenancy and amendments to car parking space allocation. These amended plans were not notified as the proposed modifications were minor in nature.



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It is noted that the amended plans and documents submitted in November 2018 were not placed on public exhibition, however these plans were considered by the UDCG where it was identified that further amendments were required. This assessment report considers the revised proposal submitted to Council in February 2019 and the minor amendments to car parking as submitted in May 2019.

The application was referred to the following external agencies / referral bodies for comment:

- Ausgrid – Due to proximity of works to electricity supply. No comment or objection was received from Ausgrid.
- Department of Planning and Environment - As the proposal includes a variation to the LEP building height provisions, the proposed development was referred to the Department of Planning and Environment for comment. The Department confirms Council can rely on the assumed concurrence of the Secretary in the determination of the application.
- Newcastle City Council's Urban Design Consultative Group (UDCG) – The application was referred to the UDCG on two occasions (15 August 2018 and 21 November 2018). The matters raised by the UDCG are discussed within this report as part of the assessment against State Environmental Planning Policy No. 65 (SEPP No. 65).

The application was referred to the following internal specialist staff for assessment and the responses provided have been incorporated into this assessment report:

- Building – Advised no objection to the proposed development subject to conditions.
- Development Engineering – Advised no objection to the proposed development subject to conditions.
- Development Contributions – Assessed the application against the Port Stephens Development Contributions Plan. A four lot credit applies to the existing allotments and would be applied to four of the proposed residential units. A contribution for the proposed commercial car parking shortfall also applies. In the event of an approval, conditions of consent imposing the applicable section 7.11 contributions have been recommended, totalling \$847,961.
- Vegetation Management – Advised no objection to the proposed development subject to conditions.
- Spatial Services – Applied addressing following 'hotel-style' principles and best practice standards outlined in the 'NSW Addressing User Manual' Section 6.5.5 – Multi-level sub-address allocation.
- Waste Management – Confirmed that the proposed development can be serviced by Council. Residential units will be provided with a twice weekly collection of 240L red bins (Monday and Friday) and weekly recycling (collection Friday). Commercial units can be serviced by Council upon request.

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#### 4. PLANNING ASSESSMENT

##### 4.2. Environmental Planning and Assessment Act 1979 (EP&A Act)

##### 4.2.1. *Section 4.46 - Integrated development*

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated development for the purposes of s.4.46 and does not require any approvals / permits from other approval bodies.

##### 4.2.2. *Section 4.15 – Matters for consideration*

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as follows:

##### ***Section 4.15(1)(a)(i) provisions of any environmental planning instrument***

The environmental planning instruments (EPIs) that relate to the proposed development are:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017,
- State Environmental Planning Policy (Infrastructure) 2007,
- State Environmental Planning Policy (Coastal Management) 2018,
- State Environmental Planning Policy No. 55 – Remediation of Land,
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, and
- Port Stephens Local Environmental Plan 2013.

An assessment of the proposed development against these EPIs is detailed below:

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units. A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

**State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP'), aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The Vegetation SEPP works in conjunction with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW.

Part 3 of the Vegetation SEPP contains provisions similar to those contained in the former (now repealed) clause 5.9 of Port Stephens Local Environmental Plan 2013 and provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

The development application seeks consent for the removal of an existing street tree located along the Donald Street frontage. The removal is supported as replacement street tree plantings are proposed by the applicant consistent with Council's landscape technical specifications.

**State Environmental Planning Policy (Infrastructure) 2007**

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) provides a framework to simplify the approvals process for the delivery of infrastructure and also identifies a consultation process with relevant public authorities for certain development types. Under Clause 104 of the ISEPP, the proposed development is not classified as traffic generating development as the proposed residential flat building does not exceed 200 units. Consequently, the application was not referred to RMS for comment.

**State Environmental Planning Policy (Coastal Management) 2018**

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) aims to promote an integrated and coordinated approach to land use planning in the coastal zone and gives effect to the objectives of the *Coastal Management Act 2016* by specifying how development proposals are to be assessed if they fall within the coastal zone.

The subject site is in an area mapped as a 'Coastal Environment Area' under the Coastal Management SEPP. The Coastal Environment Area includes land and waterbodies identified as being ecologically sensitive to impacts from coastal development activity. Clause 13 of the Coastal Management SEPP includes matters for consideration in respect to the granting of development consent. The proposed development has been assessed against the provisions of clause 13 as follows:

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Matter for consideration	Assessment comment
The integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.	<p>The proposed development is located approx. 300m from the coastal foreshore and is located on an existing developed site. It is noted that the stormwater management measures proposed as part of the development proposal have been designed to mitigate any adverse effects to adjoining or downstream sites.</p> <p>The development is not considered likely to adversely impact upon the integrity of the coastal environment area.</p>
Coastal environmental values and natural coastal processes.	<p>Whilst the development is located within an area mapped as Coastal Environment Area, the subject site is located within the Nelson Bay Town Centre and has been previously developed for the purpose of a car park. The proposal is considered to be in-fill development within an established commercial area. Furthermore, due to the proximity of the development to the coastal foreshore the proposal is not anticipated to result in any adverse impacts to coastal environmental values or natural coastal processes.</p>
The water quality of the marine estate, in particular the cumulative impacts of the proposed development on any sensitive coastal lakes.	<p>The proposed development is not located within proximity to any sensitive coastal lakes.</p>
Marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms.	<p>The subject site is not located within close proximity to the coastal foreshore and does not contain marine or other native vegetation, headlands or rock platforms.</p>
Existing public open space and safe access to and along the foreshore, beach, headland, or rock platform for members of the public, including persons with a disability.	<p>The subject site is not located within close proximity to the foreshore. The development will not impact upon public open space or access.</p>
Aboriginal cultural heritage, practices and places.	<p>The subject site has been previously disturbed and developed for the purposes of a car park. It is unlikely that the proposed development will impact upon</p>

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	<p>Aboriginal cultural heritage, practices or places.</p> <p>Notwithstanding, due to the extent of excavation proposed, a condition of consent has been recommended that requires works to cease and for Office of Environment and Heritage to be notified in the event that an item of Aboriginal heritage significance is located on site during works.</p>
The use of the surf zone.	Not applicable.

As outlined in the assessment table above the development is designed, sited and will be managed to avoid any adverse impacts to the key matters for consideration listed above. Accordingly, the proposed development is considered satisfactory having regard to the relevant provisions of the Coastal Management SEPP.

**State Environmental Planning Policy No. 55 - Remediation of Land**

State Environmental Planning Policy No.55 – Remediation of Land (SEPP No.55) aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 of SEPP No.55 provides that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated, and if the land is contaminated, is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

The development site has an historic residential use and is currently utilised for a car park. The site has not been identified as contaminated land on Council's record system. Furthermore, the applicant has confirmed that the Environmental Protection Authority (EPA) have not issued any notices for the site under the *Contaminated Land Management Act 1997*, nor have any licences been issued under the *Protection of the Environment Operations Act 1997*. On this basis, the land is not considered to be contaminated and is suitable for its intended purpose. Further investigation or site remediation is not required in this instance. The development is satisfactory having regards to the requirements of SEPP No.55.

**State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development**

State Environmental Planning Policy State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP No. 65) aims to improve the quality of residential apartment development and provides an assessment framework ('the Apartment Design Guide) to facilitate the assessment of 'good design'. SEPP No. 65 requires the consideration of any development

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application for residential accommodation meeting the application criteria, which includes residential flat buildings, against: nine design quality principles, the advice obtained from a design review panel and the Apartment Design Guide (ADG). In addition, clause 6A of SEPP 65 states that any of the following ADG provision supersedes DCP controls in respect of the following matters:

- a) visual privacy;
- b) solar and daylight access;
- c) common circulation and spaces;
- d) apartment size and layout;
- e) ceiling heights;
- f) private open space and balconies;
- g) natural ventilation; and
- h) storage.

The proposed development was considered by the Newcastle City Council Urban Design Consultative Group (UDCG) on two occasions (15 August 2018 and 21 November 2018). The UDCG identified a number of areas of the development which required amendment as follows:

- The proposal exceeds the existing 15 m height limitation. It was noted that Council had recently endorsed a policy seeking to introduce a 28 m height limit. Notwithstanding, the proposed development remains up to a full floor in excess of the 28 m height limit, and in the absence of any comprehensive consideration of the impacts of the exceedance, the UDCG would not support a proposal exceeding the 28 m height limit.
- The treatment of the street facades includes glass balustrading which was not considered to be an appropriate design response for the site. Further, the proposed planter boxes located within residential units in order to provide screening / façade treatment are not supported as are unlikely to be adequately maintained.
- Direct access for residents from the northern podium level lift lobby to the pool area would reduce the current impacts arising to the Bedroom of Unit 5, from pool patrons walking nearby the bedroom windows.
- Commercial uses should front the street given the sites location.
- Adjustable sun shading to the western façade should be introduced.
- Concern regarding the likely creation of an isolated lot (No. 33 Donald Street). It was recommended that the Applicant approach the adjoining land owner with a view to purchase the adjoining allotment. If securing the adjoining site was not achieved the development would need to be amended to step the podium near the boundary and introduce landscaping in order to ensure an appropriate transition between the development sites.
- The proposal to include PV solar generation was supported. Sun shading of glass windows and doors is necessary to create comfortable apartments.

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- Concerns were raised regarding the solar impacts upon the development located to the south, particularly living and private open space areas.
- The provision of public access from the commercial space is not considered to be a satisfactory outcome.
- The apartment mix was considered to provide a good cross-section of residents.
- A closed communal space should be provided.
- Photomontages that comply with the ADG were not provided and the 3D renderings submitted were misleading.

The applicant amended their design in order to respond to the matters raised by the UDCG and has submitted a Design Verification Statement (prepared by ADG Architects, revision 4, undated) in support of their application.

The proposed development has been assessed against the nine design quality principles and the ADG as outlined below.

<b>Apartment Design Guide</b>	
<b>Quality design principles</b>	
<b>Principle</b>	<b>Assessment</b>
Principle 1: Context and neighbourhood character	<p>Principle 1 identifies that good design responds and contributes to its context, with context being established by the key natural and built features of an area. Responding to context involves identifying the desirable element of an area's existing or future character.</p> <p>The site is located to the eastern edge of the B2 zoned land in the Nelson Bay town centre and has an existing height limit of 15 m. The area is currently a mixture of small retail shops and a mix of apartment buildings.</p> <p>The site immediately to its east, No.33 Donald Street is zoned R3 and currently has a modest mid-century cottage occupying it. To the immediate south of the site is a modern residential development of five storeys, above a small retail outlet (a bookshop). This neighbouring development at 3 Yacaaba Street, is sited on a narrow lot, and the building which runs east-west, is set only a short distance from its common boundary with the subject site.</p> <p>While there are a several large developments within proximity to the town centre, these tend to have a maximum height of five to six storeys. However, there have been a number of more recent applications, including DA No. 16-2016-631-1 (11-13 Church Street) which have granted approvals for residential flat buildings of up to eight storeys (32 metres). In addition, the NB Strategy identifies the following existing structures and approvals which exceed the 15m height limit as follows:</p> <ul style="list-style-type: none"> <li>○ 71 Victoria Parade, Nelson Bay (Commercial &amp; Residential) – six storeys (21m),</li> <li>○ 5B Talleen Road, Nelson Bay (The Landmark) – eight storeys (28m),</li> </ul>

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	<ul style="list-style-type: none"> <li>o 14 Magnus Street, Nelson Bay (Residential) – six storeys (21m), and</li> <li>o 29-45 Magnus Street, Nelson Bay (Marina Resort) – six storeys (22m).</li> </ul> <p>The development has a proposed height of 30.6 m, which is not in keeping with the existing character of the area. However, it is noted that on 25 September 2018 Council adopted the 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program ('NB Strategy') which endorsed a 28 m height limitation for the site. The proposed development still exceeds the future envisaged height for the area by 2.6 m. It is noted that the UDCG did not support the proposed variation to the existing or proposed height limitations.</p> <p>The Planning Proposal (PP) which seeks to deliver three of the adopted actions from the NB Strategy, including the adoption of the identified increased building heights for the Nelson Bay Town Centre was submitted to the Department of Planning and Environment (DPE) in May for Gateway determination. The PP will not be publically exhibited until such time that DPE issue the Gateway determination. Until a PP has been publically exhibited it does not form a relevant consideration for a consent authority in the determination of a development application.</p> <p>It is noted that had the PP been publically exhibited, it is likely that the 2.6m or 8.87% variation to the proposed 28m height limit could have been supported on its merits.</p> <p>With the exception to the proposed height variation with the current 15m control, the design and form of the building is considered to be appropriate to the context of the site and the desired future character of the area.</p>
<p>Principle 2: Built form and scale</p>	<p>Principle 2 identifies that good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>As detailed above the proposed development exceeds the existing 15 m height limitation under Council's LEP and also exceeds the 28 m height limitation endorsed under the NB Strategy (which has not yet been implemented through a Planning Proposal). However, it is noted that the bulk of the building is focused to the corner of Donald and Yacaaba Streets with generous setbacks being provided to the eastern and southern elevations.</p> <p>The design includes articulation and changes in colours and finishes in order to adequately address the developments overall bulk and scale. The upper two storeys have increased setbacks and are proposed to be finished in a dark grey cladding. This change in material form to the upper levels of the development provides visual recessing of this aspect of the development. The curved residential balconies comprise a mix of solid and semi glazed balustrading. A vertical material treatment breaks ups the</p>

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	<p>horizontal length of the balconies providing visual relief in the design.</p> <p>With the exception to the variation to the existing height control the development is considered satisfactory.</p>
Principle 3: Density	<p>Principle 3 stipulates that good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Council's LEP has not adopted a floor space ratio (FSR) provision and accordingly density is controlled through the application of, height, setback and landscaping controls. It is noted that the NB strategy identifies a FSR of 3.0:1.</p> <p>The proposed FSR of the development is 2.84:1 which is below the maximum allowable FSR identified in the NB strategy. In this respect, the UDCG identified that subject to a reduction in height, which would also reduce the overall density of the proposal, the development would be acceptable.</p> <p>The UDCG also noted concerns that the development of the subject site would result in the isolation of the adjoining land holding at No. 33 Donald Street. The applicant has provided written documentation demonstrating that an offer was made to the adjoining land owner and was not accepted.</p> <p>Failing amalgamation of the adjoining lot with the subject site the UDCG noted that adequate treatment would be required to this elevation to ensure an appropriate transition between the two developments. The applicant has provided a landscape buffer along the first floor elevation which provides screening to the communal area and subject to conditions of consent is considered an acceptable solution. The second floor has been setback from this boundary to provide an adequate distance to ensure visual privacy and solar access can be maintained.</p> <p>With the exception to the variation to the existing height control the development is considered satisfactory.</p>
Principle 4: Sustainability	<p>Principle 4 identifies that good design combines positive environmental, social and economic outcomes. Further, that good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents.</p> <p>A valid BASIX certificate has been submitted with the development. It is also noted that the applicant has proposed the use of PV solar generation which was supported by the UDCG. The applicant has also introduced screened elements to the north, west and east to reduce solar gains and increase thermal control of the apartments and internal elements of the building. The proposed development is considered acceptable with respect to Principle 4. The applicant has identified that the development will provide 11 residential apartments to SILVER level standard under the 'Liveable Housing Guidelines'. This provides for future flexibility and adaptability of units in order to</p>

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	<p>reduce or avoid the costs associated with retrofitting a home to improve access in the future should it be required at a later date.</p>
Principle 5: Landscape	<p>Principle 5 specifies that good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>The applicant proposes the provision of street tree plantings and landscaping at ground level of an appropriate scale to the development, which will ensure the appearance of the development is 'softened' when viewed from the public domain. Should Council resolve to approve the development, conditions of consent would be recommended to specify the species required for the street tree plantings.</p> <p>In addition adequate landscape treatment has been proposed to level one to provide for screening to the adjoining eastern property boundary. Landscaping within the communal open spaces is sufficient. The UDCG have noted that landscaping within communal areas are able to be adequately maintained. Subsequent to the UDCG meeting the applicant provided a detailed landscape plan which was determined to be satisfactory. Should Council resolve to approve the development, conditions of consent would be recommended in respect to the provision of landscaping, including requirements for street tree plantings and a requirement to maintain landscaping in perpetuity.</p>
Principle 6: Amenity	<p>Principle 6 provides that good design positively influences internal and external amenity for residents and neighbours. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.</p> <p>The UDCG noted that with the exception of unit 02 (prev. unit 05) the design does not result in any associated conflict between apartment bedrooms and common circulation areas. It is noted that the bedroom window of unit 02 is adjacent to an external entry to the communal area. Landscape treatment has been provided to this area which creates a buffer between the affected bedroom window and the communal pathway. Whilst not ideal the solution is considered acceptable.</p> <p>The amenity of the proposed development is acceptable, providing for an appropriate level of solar access, natural ventilation, privacy and outlook. In addition, the layout of the proposed residential units is considered appropriate and generally compliant with the criteria specified by the ADG as outlined further below.</p>
Principle 7: Safety	<p>Principle 7 identifies that good design optimises safety and security within the development and public domain.</p>

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	<p>The development is appropriately designed in relation to safety with passive surveillance of Donald and Yacaaba Streets achieved via the balconies and living areas of the proposed residential units. Passive surveillance is also provided to communal open space areas. In addition the windows of the commercial tenancies face towards the street and provide passive surveillance during opening hours.</p> <p>The UDCG identified that the ground floor layout permits public access from the commercial space to the residential lobby, which is unsatisfactory. The Applicant subsequently submitted amended plans which separates access from the commercial space to the residential lobby.</p> <p>The applicant has submitted a Crime Prevention Through Environmental Design (CPTED) report (prepared by Monteath &amp; Powys and dated 19 December 2017) which makes the following recommendations:</p> <ul style="list-style-type: none"> <li>• Lighting is to be installed to areas where potential anti-social behaviour may occur including; residential building entrance, basement car parking (particularly to the access stairs and lifts).</li> <li>• External lighting is to be provided to ensure pedestrians have sufficient light and clear sight lines. External lighting must be vandal resistant and should satisfy the relevant Australian Standards.</li> <li>• Access to the car park is to be controlled through a card or remote system.</li> <li>• Access to the lobbies is to be secured through an intercom system.</li> <li>• Service rooms shall be well lit and the door furniture shall be self-locking in accordance with the relevant Australian standard.</li> <li>• Mailboxes are to be located so as to be accessible only from within the building.</li> <li>• Surveillance security cameras (CCTV) must also be installed and sign posted throughout the development to monitor; external area at ground level, internal lobbies, communal areas, and car park areas.</li> <li>• Entry statements and signage identifying the site as private property should be installed to delineate the residential / private areas of the development. Entrances to the development must also be surfaced with a different surface material to clearly identify the private from public areas.</li> <li>• Any graffiti or vandalism must be removed within 24 hours.</li> <li>• Entrances are to be managed to ensure clear sight lines are maintained.</li> </ul>
<p>Principle 8: Housing diversity and social interaction</p>	<p>Principle 8 specifies that good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>The proposed development includes an appropriate apartment mix which will be suitable to cater for a cross-section of future</p>

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	<p>residents. The proposal includes eleven units of universal configuration which include design features which allow for changing needs of occupants, such as wider circulation spaces and level threshold transitions.</p> <p>The UDCG recommended that the applicant provide an internal communal space connected to the external communal space area. This has not been provided. However, the external communal space, which includes a swimming pool and seating area, is considered adequate.</p>
Principle 9: Aesthetics	<p>Principle 9 provides that good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design also uses a variety of materials, colours and textures.</p> <p>With the exception to the building height exceedance, the overall aesthetics of the development are of good quality with the inclusion of range of materials, textures and colours. The range of materials and colours in conjunction with the articulation and modulation of building facades visually reduce the perception of the bulk and scale of the development to ensure consistency with surrounding development.</p>
<b>Assessment Criteria</b>	
<b>Control / Requirement</b>	<b>Proposed</b>
<b>Compliance / Comment</b>	
<p><i>3A-1 – Site analysis</i></p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.</p>	<p>Site analysis plan submitted.</p>
<p><i>3B-1 Orientation</i></p> <p>Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p>	<p>The development has been orientated to both Yacaaba and Donald Street frontages and to maximise the orientation of the development to the north.</p>
<p><i>3B-2 Orientation</i></p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	<p>The development provides setbacks to adjoining properties and has a northerly orientation.</p> <p>A shadow analysis has been provided which demonstrates that the development will overshadow adjoining properties to the south, in particular No. 3 Yacaaba Street. However, the living</p>
	<p>No – the proposed development is designed and orientated to minimise overshadowing of neighbouring properties mid-winter.</p> <p>However, a 15.6m non-compliance with</p>

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	<p>areas of the apartments located in No. 3 Yacaaba street are positioned within the eastern and western elevations of the building. As such, the apartments located to the east in No. 3 Yacaaba Street receive 3 hrs of solar access from 9am to 12pm mid-winter. The units to the west also receive 3 hrs of solar access from 12pm to 3pm mid-winter.</p> <p>Notwithstanding, the 15.6m non-compliance with the maximum height control results in a development which has significantly increased overshadowing impact to adjoining properties in comparison to a compliant design.</p>	<p>the maximum height control results in a development with increased overshadowing impacts in comparison to a compliant design.</p>
<p><i>3C-1 Public Domain Interface</i></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	<p>Commercial tenancies and residential access provided at street level.</p> <p>The development fronts both Donald and Yacaaba Streets and provides active street frontages through the commercial tenancies located at ground level.</p> <p>The transition between the private and public domains is achieved through a separate direct access to the residential component of the development. In the event of an approval conditions of consent have been recommended requiring that a clear entry feature and change in surface entry paving be provided to delineate the private domain from the public domain.</p>	<p>Yes – Subject to conditions, the development is considered to achieve a reasonable balance between privacy and security.</p>
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>Planting of street trees and the provision of pavement to Council specifications.</p> <p>The amenity of the public domain will be enhanced through the provision of</p>	<p>Yes – complies.</p>

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	landscape treatment and activation of the streetscape through commercial tenancies.	
<p><i>3D-1 Communal and Public Open Space</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• Communal open space has a minimum area equal to 25% of the site area.</li> <li>• Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).</li> </ul>	<p>Communal open space is provided on the podium level with pool and communal facilities.</p> <p>The site has an area of 2025 m<sup>2</sup> and therefore requires 506.25 m<sup>2</sup> of communal open space. The development has approximately 650 m<sup>2</sup> of communal open space.</p> <p>At least 50% of the principal usable part of the communal open space will achieve a minimum of 2 hours direct sunlight between 9am and 3pm on June 21 (mid-winter).</p>	Yes – complies.
<p><i>3D-2 Communal and Public Open Space</i></p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p>	<p>The proposed communal open space will provide for a range of activities and includes areas for seating as well as active areas, such as the proposed pool.</p>	Yes – complies.
<p><i>3D-3 Communal and Public Open Space</i></p> <p>Communal open space is designed to maximise safety.</p>	<p>The proposed communal open spaces are well defined and overlooked by the proposed apartments.</p> <p>Should Council elect to approve the development, recommended conditions of consent would be prepared requiring lighting and CCTV the proposed communal open space is adequately designed to ensure the safety of users.</p>	Yes – complies subject to conditions.
<p><i>3D-4 Communal and Public Open Space</i></p>	<p>Public open space is not required to be provided as part of the proposed development.</p>	N/A.

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<p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.</p>		
<p><i>3E-1 Deep Soil Zones</i></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• Site area greater than 1,500 m<sup>2</sup> – minimum dimension 6m and 7% of site area.</li> </ul> <p>However, the design criteria may not be possible on some sites including:</p> <ul style="list-style-type: none"> <li>• Central business district.</li> <li>• Constrained sites.</li> <li>• High density areas.</li> <li>• Commercial centres.</li> <li>• Where there is 100% site coverage or non-residential uses at ground floor.</li> </ul>	<p>The application does not include deep soil zones and proposes planting on structures.</p> <p>However, an acceptable alternative solution per the ADG has been proposed. The development is located in a commercial centre and proposes commercial uses and car parking at ground floor.</p> <p>Given the location and building typology the proposed development cannot reasonably achieve the numerical design requirement for deep soil planting.</p> <p>An acceptable stormwater management treatment system has been provided (subject to conditions of consent) and alternative forms of planting have been provided (planting on structure and street trees).</p>	<p>Yes - Acceptable alternative solution.</p>
<p><i>3F-1 Visual Privacy</i></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• Building height up to 12m (4 storeys):             <ul style="list-style-type: none"> <li>• Habitable rooms and balconies - 6m.</li> <li>• Non habitable rooms – 3m.</li> </ul> </li> <li>• Building height up to 25 metres (5-8 storeys):             <ul style="list-style-type: none"> <li>• Habitable rooms and balconies - 9m.</li> </ul> </li> </ul>	<p>The proposed development has been designed so that the majority of apartments front Donald and Yacaaba Street and as such achieve the required levels of external and internal visual privacy. It is noted that solid walls are provided between balconies.</p> <p>There is a 9m setback (windows to habitable rooms and balconies) to levels 1 to 6 from the southern boundary. The balconies of levels 7 and 8 are generally setback 9 to 10m from the southern boundary, with the exception of the balcony of unit 51 and 56 which are setback 8.5m</p>	<p>No – minor non-compliance to eastern boundary (levels 7 and 8). Variation supported.</p>

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<ul style="list-style-type: none"> <li>• Non habitable rooms – 4.5m.</li> <li>• Building height over 25m (9+ storeys):             <ul style="list-style-type: none"> <li>• Habitable rooms and balconies - 12m.</li> <li>• Non habitable rooms – 6m.</li> </ul> </li> <li>• No separation is required between blank walls.</li> <li>• An additional 3 m separation is required when adjacent to a different zone which permits lower density residential development to provide a transition in scale and increased landscaping.</li> </ul>	<p>due to a protrusion of the proposed BBQ area. The minor variation is supported.</p> <p>Windows to habitable rooms and balconies have been setback 9m from the eastern boundary to levels 1 to 6. Balconies to level 7 -8 are setback approx. 10m to the eastern boundary.</p> <p>The UDCG recommended increase setbacks (i.e. +3m) be applies to the eastern boundary to provide an appropriate transition. It is noted the adjoining site is currently zoned R3 with a maximum allowable height of 15m. However, under the NB strategy the endorsed height limit is 17.5m (five storey). This triggers the need for an additional 3m separation.</p> <p>Level 7 is approximately 23.5m in height and therefore a 12m setback is required to the eastern boundary. Level 8 exceeds 25m in height and therefore a 15m setback is required.</p> <p>There is only a minimal variation to the increased transitional setback to the eastern boundary as follows:</p> <ul style="list-style-type: none"> <li>• The bedroom balcony to unit 47 on level 7 – variation 2m, however landscape screening provided, and</li> <li>• The bedroom window and bedroom balcony of unit 52 on level 8 – variation 5m.</li> </ul> <p>As the variation relates to one unit on level 7 and 8 only (two units in total), and the non-compliant balconies / windows relate to proposed bedrooms, the privacy impacts will be negligible. Notwithstanding, should</p>	
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	<p>Council resolve to approve the development a condition of consent would be recommended requiring privacy screening be provided to the eastern elevation of the bedroom balcony to unit 52.</p> <p>It is also noted that appropriate setbacks have been provided internally to the development and habitable windows and balconies have been offset to blank walls to maintain satisfactory visual privacy.</p>	
<p><i>3F-2 Visual Privacy</i></p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	<p>The development incorporates a number of features including; orientation, siting, setbacks, privacy screens and window offsets, to achieve a reasonable level of privacy without compromising solar access and ventilation.</p>	Yes – complies.
<p><i>3G-1 Pedestrian Access and Entries</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain.</p>	<p>The proposed residential building entry provides pedestrian access to Donald Street.</p> <p>The commercial tenancies provide pedestrian access to both Donald and Yacaaba Streets and adequately addresses the public domain.</p>	Yes – complies.
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>The proposed lobbies will be visible from the public domain.</p> <p>Should Council resolve to approve the development conditions requiring the provision of an intercom system and way finding maps at key locations should be imposed.</p>	Yes – complies subject to conditions of consent.
<p><i>3G-3 Pedestrian Access and Entries</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations.</p>	<p>The proposed development does not require the provision of a pedestrian link through the site.</p>	N/A

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<p><i>3H-1 Vehicle Access</i></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>Access is provided via one-way entry via Donald Street and one-way exit via Yacaaba Street. The proposed access arrangements reduces the length of delays experienced by through traffic at Donald street and is considered satisfactory.</p> <p>The entry / exit points are located away from the Donald / Yacaaba Street intersection, an area of high pedestrian activity. Should Council resolve to approve the development, conditions of consent would be recommended regarding signage to the entry / exit points to further mitigate potential conflicts.</p>	<p>Yes – subject to conditions of consent.</p>
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	<p>The site is located within the Nelson Town Centre which is zoned B2. The site is not located within proximity to land zoned B3 Commercial Core or B4 Mixed Use.</p>	<p>N/A.</p>

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<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>Motorcycle and bicycle parking facilities are provided within the proposed basement area.</p>	<p>Yes – complies.</p>
<p><i>3J-3 Bicycle and Car Parking</i></p> <p>Car park design and access is safe and secure</p>	<p>The proposed basement car parks will be secured by doors and provide reasonable sight lines throughout (including to the proposed lifts). Ramp configuration is mainly via a one-way system with traffic signals to control movements between basement level 1 and basement level 2.</p> <p>Should Council resolve to approve the development, conditions requiring lighting, use of CCTV monitoring, and definition of key circulation areas through colour/line marking would be recommended.</p>	<p>Yes – complies subject to conditions of consent.</p>
<p><i>3J-4 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>The visual and environmental impacts of the proposed basement car park have been minimised. Entry and exit points are located on different street frontages and screened by security roller doors located within the property boundary.</p>	<p>Yes – complies.</p>
<p><i>3J-5 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of on-grade car parking are minimised.</p>	<p>No on-grade car parking is proposed.</p>	<p>N/A</p>
<p><i>3J-6 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of above ground enclosed car parking area minimised.</p>	<p>No above ground car parking is proposed.</p>	<p>N/A</p>
<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary</p>	<p>The applicant has demonstrated that 83% of units receive three or more hours of direct sunlight to living rooms and private open spaces. Further, only 14% of</p>	<p>Yes – complies.</p>

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<p>windows and private open space.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• In all other areas (i.e. areas outside Sydney metropolitan area, Newcastle and Wollongong local government areas), living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter</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>	<p>units receive no direct sunlight between 9am and 3pm in mid-winter.</p>	
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>The development provides opportunities for reflected light through north facing balconies that act as light shelves.</p>	<p>Yes – complies.</p>
<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</p>	<p>A number of design features have been incorporated including; balconies that extend far enough to shade summer sun but still enable winter sun to penetrate living areas, shading devices such as eaves, awnings, balconies, plantings, and horizontal shading to north facing windows.</p>	<p>Yes – complies.</p>
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	<p>The buildings orientation maximises capture and use of prevailing breezes for natural ventilation to habitable rooms.</p> <p>A total of 69% of residential units are cross ventilated and the maximum overall depth of a cross-over or cross through apartment is 18m which facilitates natural ventilation.</p> <p>All units have unobstructed window openings with more than 5% of the floor area served.</p>	<p>Yes – complies.</p>

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<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>Apartment depths for habitable areas have been limited to 7.83m (2.7m x 3m). Further, natural ventilation has been achieved to single aspect apartments by stack effect ventilation.</p>	<p>Yes – complies.</p>
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for Residents.</p> <p>Numerical design criteria:</p> <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>	<p>The development achieves 69% of apartments being cross-ventilated.</p> <p>The maximum overall depth of a cross-over or cross through apartment is 18m.</p>	<p>Yes – complies.</p>
<p><i>4C-1 Ceiling Heights</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p> <p>Numerical design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> <li>• Habitable rooms – 2.7m.</li> <li>• Non-habitable rooms – 2.4m,</li> <li>• Two storey apartments – 2.7m for main living area floor and 2.4 m for second floor where it does not exceed 50% of the apartment area.</li> <li>• Attic spaces – 1.8m at the edge of the room with a 30 degree minimum ceiling slope.</li> <li>• If located in mixed use areas – 3.3m for ground floor and first floor to promote future flexibility of use.</li> </ul>	<p>The following ceiling heights have been provided:</p> <p>Habitable room - 2.7 m, Non-habitable - 2.4 m, and Ground floor – 5.1 m.</p> <p>There are no two storey apartments or attic spaces proposed.</p>	<p>Yes – complies.</p>

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<p><i>4C-2 Ceiling Heights</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>This objective has been achieved through compliance with the numerical requirements of control 4C-1 as outlined above.</p>	<p>Yes – complies.</p>
<p><i>4C-3 Ceiling Heights</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>An increased ceiling height of 5.1m has been proposed to the ground level which provides for the flexible use of the building over time. The residential ceiling heights comply with control 4C-1 and are considered satisfactory.</p>	<p>Yes – complies.</p>
<p><i>4D-1 Apartment Size and Layout</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>Numerical design criteria: Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> <li>• Studio – 35 m<sup>2</sup></li> <li>• One bedroom – 50 m<sup>2</sup></li> <li>• Two bedroom – 70m<sup>2</sup></li> <li>• Three bedroom – 90m<sup>2</sup></li> <li>• An additional 5m<sup>2</sup> is required for apartments with more than one bathroom.</li> <li>• An additional 12m<sup>2</sup> is required for a fourth, and further additional bedrooms.</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 the room. Daylight and air may not be borrowed from other rooms.</li> </ul>	<p>The following minimum internal areas have been proposed:</p> <ul style="list-style-type: none"> <li>• One bedroom – 77 m<sup>2</sup>,</li> <li>• Two bedroom – 80-84 m<sup>2</sup>, and</li> <li>• Three bedroom – 104 m<sup>2</sup>.</li> </ul> <p>All of the proposed apartments comply with the minimum areas required by the design criteria. All habitable rooms will have a window in an external wall.</p>	<p>Yes – complies.</p>
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p>	<p>All habitable rooms, with the exception of open plan layouts are less than 6.75m in depth which equates to 2.5-2.7 x the ceiling height.</p> <p>In open plan layout apartment the maximum habitable room</p>	<p>No - Minor non-compliance is supported.</p>

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<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 layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</li> </ul>	<p>depth does not exceed 8m from a window (with the exclusion of walk-in pantries).</p>	
<p><i>4D-3 Apartment Size and Layout</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Numerical design criteria:</p> <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>- One bedroom apartments - 3.6m.</li> <li>- Two or three bedroom apartments – 4m.</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>	<p>Proposed master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup>, with a minimum dimension of 3m (excluding wardrobe space).</p> <p>All living rooms have a minimum width of 4m and the width of cross-over or cross-through apartments are at least 4m.</p>	<p>Yes – complies.</p>
<p><i>4E-1 Private Open Space and Balconies</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Numerical design criteria – all apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> <li>Studio apartments – 4m<sup>2</sup>.</li> <li>One bedroom apartments – 8m<sup>2</sup> with a depth of 2m.</li> <li>Two bedroom apartments – 10m<sup>2</sup> with a depth of 2m.</li> </ul>	<p>The proposed development generally provides unit balconies as follows:</p> <ul style="list-style-type: none"> <li>One bedroom unit – minimum area 8-10m<sup>2</sup> and average depth 2.7m,</li> <li>Two bedroom unit – minimum area 10 m<sup>2</sup> and average depth 2.4 to 3.0m, and</li> <li>Three bedroom unit – minimum area 12m<sup>2</sup> and average depth 2.4m.</li> </ul> <p>It is noted that due to the curved design of the balconies the width to some</p>	<p>Yes – minor variation supported.</p>

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<ul style="list-style-type: none"> <li>• Three + bedroom apartments – 12m<sup>2</sup> with a depth of 2.4m.</li> <li>• For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m</li> </ul>	<p>areas of the balconies are less than 2m. Despite this, compliance with the control has been generally achieved.</p> <p>Whilst level 1 apartments are located on a podium structure they have been provided with a balcony, primarily fronting Donald / Yacaaba Streets rather than a private open space area. The podium level has been utilised for provision of communal open space areas which is considered an acceptable outcome.</p>	
<p><i>4E-2 Private Open Space and Balconies</i></p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p>	<p>The proposed balconies are located adjacent to living areas, therefore extending the living spaces of the apartments. Insofar as is reasonably possible, the proposed balconies and terraces will face north, north-east, and east.</p>	<p>Yes – complies.</p>
<p><i>4E-3 Private Open Space and Balconies</i></p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>	<p>The balcony design has been appropriately integrated into the architectural form of the building. A combination of solid and glazed balustrading has been incorporated which provides opportunity for screening of residential structures such as clothes drying areas.</p> <p>Should Council resolve to approve the development, conditions requiring the design integration of air-conditioning units, clothes drying areas and water and gas outlets should be imposed.</p>	<p>Yes – complies subject to conditions of consent.</p>
<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>The proposed balcony design achieves an adequate level of safety.</p>	<p>Yes – complies.</p>



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<p><i>4F-1 Common Circulation and Spaces</i></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• For buildings less than ten storeys in height the maximum number of apartments off a circulation core on a single level is eight.</li> </ul>	<p>The development includes two lifts / fire stairs resulting in two circulation cores (north and south). Two units per level are accessed from the northern core, whilst a maximum of four units per level are accessed from the southern core.</p>	<p>Yes – complies.</p>
<p><i>4F-2 Common Circulation and Spaces</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>Should Council resolve to approve the development conditions requiring lighting, CCTV monitoring, apartment numbers and signage should be imposed.</p>	<p>Yes – subject to conditions.</p>
<p><i>4G-1 Common Circulation and Spaces</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens, bathrooms and bedrooms the following storage is provided:</p> <ul style="list-style-type: none"> <li>• Studio apartments – 4m<sup>2</sup>.</li> <li>• One bedroom apartments – 6m<sup>2</sup>.</li> <li>• Two bedroom apartments – 8m<sup>2</sup>.</li> <li>• Three + bedroom apartments – 10m<sup>2</sup>.</li> <li>• At least 50% of the required storage is to be located within the apartment.</li> </ul>	<p>Storage has been provided within the proposed units, supplemented with storage within the basement levels.</p> <p>Storage provided to all units exceeds the minimum requirements.</p>	<p>Yes – complies.</p>
<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>Secure and accessible resident storage will be located in the proposed basements via storage rooms.</p>	<p>Yes – complies.</p>

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<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>Noise transfer will be minimised through apartment design and separation together with the location of service areas in the proposed basements.</p>	<p>Yes – complies.</p>
<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>The proposed layouts will adequately mitigate any potential noise impacts within apartments.</p>	<p>Yes – complies.</p>
<p><i>4J-1 Noise and Pollution</i></p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p>	<p>The proposed development is not located in a noisy or hostile environment, such as near a major road, rail line or beneath a flight path.</p>	<p>N/A.</p>
<p><i>4J-2 Noise and Pollution</i></p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>The proposed development is not located in a noisy or hostile environment, such as near a major road, rail line or beneath a flight path.</p>	<p>N/A</p>
<p><i>4K-1 Apartment Mix</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	<p>A range of apartment types and sizes have been provided, from one bedroom to three bedroom units, which adequately caters for different household types.</p>	<p>Yes – complies.</p>
<p><i>4K-2 Apartment Mix</i></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The apartment mix is suitably distributed throughout the development.</p>	<p>Yes – complies.</p>
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	<p>No ground floor apartments proposed.</p>	<p>N/A</p>
<p><i>4L-2 Ground Floor Apartments</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>No ground floor apartments proposed.</p>	<p>N/A</p>

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<p><i>4M-1 Facades</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>The proposed building facades will provide visual interest along the adjoining public streets through the use of additional upper floor building setbacks, curved and projecting balconies and a use of a range of finishes and materials.</p>	<p>Yes – complies.</p>
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	<p>Building entries will be clearly defined.</p>	<p>Yes – complies.</p>
<p><i>4N-1 Roof Design</i></p> <p>Roof treatments are integrated into the building designed and positive respond to the streets.</p>	<p>The development adopts a skillion roof design which is proportionate to the overall building size, scale and form.</p> <p>An extended parapet wall is proposed to screen the buildings lift overrun, mechanical ventilation, master antenna and other services.</p> <p>Should Council determine to approve the development a condition of consent should be imposed to ensure that all roof mounted equipment is concealed within the external walls of the development or adequately screened so as not to be visible from a public place.</p>	<p>Yes – subject to conditions.</p>
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>The development does not utilise roof space for residential accommodation or open space.</p>	<p>N/A.</p>
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	<p>PV solar panels are proposed at roof level. Roof overhangs will assist in shading lower level apartments and roof insulation will maximise the passive thermal comfort of the ninth floor apartments.</p>	<p>Yes – complies.</p>

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<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>The development incorporates street tree plantings and landscaping to the podium level.</p> <p>Council staff have assessed the proposed landscaping design and consider it appropriate for the site and area.</p> <p>Should Council resolve to approve the development, conditions requiring specific street tree plantings and the submission of a detailed landscape plan (including construction detail) prior to issue of Construction Certificate should be imposed.</p>	<p>Yes – complies subject to conditions.</p>
<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	<p>Subject to the recommended conditions of consent the proposed landscape design is considered to contribute to the streetscape.</p>	<p>Yes – subject to conditions.</p>
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The applicant has provided preliminary landscape plans and specifications by 'A Total Concept Landscape Architects &amp; Swimming Pool Designers' which demonstrate appropriate soil profiles are provided.</p> <p>Subject to conditions of consent the proposed planting on structures is considered appropriate.</p>	<p>Yes – subject to conditions.</p>
<p><i>4P-2 Planting on Structures</i></p> <p>Plant growth is optimized with appropriate selection and maintenance.</p>	<p>The applicant has provided preliminary landscape plans and specifications by 'A Total Concept Landscape Architects &amp; Swimming Pool Designers' which demonstrate appropriate soil profiles are provided.</p> <p>Subject to conditions of consent the proposed planting on structures is considered appropriate.</p>	<p>Yes – subject to conditions.</p>

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<p><i>4P-3 Planting on Structures</i></p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	<p>Subject to conditions of consent, the proposed landscape design is considered to include appropriate planting on structures in communal open space areas.</p>	<p>Yes - complies.</p>
<p><i>4Q-1 Universal Design</i></p> <p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• A benchmark of 20% of the total apartments incorporate the Liveable Housing Guidelines silver level universal design features.</li> </ul>	<p>The development provides 11 residential units that comply with the silver level Liveable Housing Guidelines. This equates to a total of 19.6% of the total development.</p>	<p>No – minor variation supported.</p>
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable designed are provided.</p>	<p>Accessible car parking spaces have been provided.</p> <p>Should Council resolve to approve the development, a condition should be imposed to ensure that at least 10% of the total apartments will be adaptable.</p>	<p>Yes – subject to conditions of consent.</p>
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	<p>The proposed development includes a variety of apartment types and sizes.</p>	<p>Yes – complies.</p>
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<p>The proposed development does not involve any additions to existing buildings.</p>	<p>N/A</p>
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	<p>The proposed development does not involve any additions to existing buildings.</p>	<p>N/A</p>

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<p><i>4S-1 Mixed Use</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.</p>	<p>The proposal is a mixed use development and is located within the Nelson Bay Town Centre. Active street frontages are provided through commercial tenancies and the development has been designed and sited to front the street.</p>	<p>Yes – complies.</p>
<p><i>4S-2 Mixed Use</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	<p>The residential elements of the building have been integrated within the overall design. Access to the residential lobby of the development cannot be obtained through the commercial development maximising safety for residents. Subject to inclusion of the recommendations of the Applicant's CPTED report the proposal is satisfactory.</p>	<p>Yes – subject to conditions of consent</p>
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	<p>Awnings to the commercial tenancies have been suitably integrated into the design.</p>	<p>Yes – complies.</p>
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	<p>Signage is not proposed under this application. Future signage would be subject to exempt development requirements or a separate development application.</p> <p>Should Council resolve to approve the development a condition requiring that all conditioned identification and way finding signage be integrated into the design of the overall development should be imposed.</p>	<p>Yes – subject to conditions of consent.</p>
<p><i>4U-1 Energy Efficiency</i></p> <p>Development incorporates passive environmental design.</p>	<p>A valid BASIX certificate has been submitted. Adequate natural light will be provided to habitable rooms.</p> <p>Should Council resolve to approve the development a condition requiring the incorporation of screened outdoor clothes drying areas</p>	<p>Yes – subject to conditions of consent.</p>

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	for each unit should be imposed.	
<i>4U-2 Energy Efficiency</i> Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	A valid BASIX certificate has been provided. The development is considered to incorporate sufficient passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	Yes – complies.
<i>4U-3 Energy Efficiency</i> Adequate natural ventilation minimises the need for mechanical ventilation.	The proposed development is generally compliant with the ADG's design criteria for 4B-3 Natural Ventilation.	Yes – complies.
<i>4V-1 Water Management and Conservation</i> Potable water use is minimised.	A valid BASIX certificate has been provided. Should Council resolve to approve the development a condition of consent requiring compliance with the BASIX requirements should be imposed.	Yes – complies subject to conditions of consent.
<i>4V-2 Water Management and Conservation</i> Urban stormwater is treated on site before being discharged to receiving waters.	The proposed development includes a stormwater treatment system to ensure that stormwater is appropriately treated prior to discharge.	Yes – complies.
<i>4V-3 Water Management and Conservation</i> Flood management systems are integrated into the site design.	A stormwater detention tank is proposed at ground level and an OSD rainwater tank is provided at basement level 1. The detention and rainwater tanks have been appropriately integrated into the design.	Yes – complies.
<i>4W-1 Waste Management</i> Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	Adequate residential and commercial bin storage areas have been provided within the ground floor car park area. A waste management plan has been submitted with the application. The development can be serviced by Council.	Yes – complies.
<i>4W-2 Waste Management</i>	Adequate residential and commercial bin storage areas	Yes – complies.

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Domestic waste is minimised by providing safe and convenient source separation and recycling.	have been provided within the ground floor car park area.	
<i>4X-1 Building Maintenance</i>  Building design detail provides protection from weathering.	Robust materials have been proposed and design solutions such as use of roof overhangs to protect walls have been incorporated.  Should Council resolve to approve the development, a condition requiring drip lines to be detailed on horizontal edges to avoid staining and that planter boxes be designed to avoid leaching should be imposed.	Yes – complies, subject to conditions of consent.
<i>4X-2 Building Maintenance</i>  Systems and access enable ease of maintenance.	Accessible services areas have been proposed.	Yes – subject to conditions.
<i>4X-3 Building Maintenance</i>  Material selection reduces ongoing maintenance costs.	Robust materials that will weather well have been proposed.  Should Council resolve to approve the development, conditions requiring sensors to control artificial lighting in common spaces, graffiti removal and robust and durable materials in common circulation areas and lift interiors should be imposed.	Yes – complies, subject to conditions of consent.

**Port Stephens Local Environmental Plan 2013 (LEP2013)**

The applicable clauses of LEP2013 have been considered below:

Clause 1.3 – Land to which Plan applies

Port Stephens LEP2013 applies to land identified upon the 'Land Application Map'. The subject development occurs upon land located within the land application. LEP2013 applies to the development.

Land use table - zoning

The subject land is zoned B2 Local Centre under LEP2013. The proposed development is a mixed use development comprising land uses defined as 'residential flat building' and 'commercial premises'. Both land uses are permissible in the B2 Local Centre with consent.

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The objectives of the B2 Local Centre zone are as follows:

- To provide a range of retail, business, entertainment and community uses that service the needs of people who live in, work in and visit the local area,
- To encourage employment opportunities in accessible locations, and
- To maximise public transport patronage and encourage walking and cycling.

The proposed development is considered to satisfy the zone objectives through the provision of three commercial tenancies (at ground level) comprising a total of 422 m<sup>2</sup> GFA. The commercial tenancies provide opportunity for retail and business uses to cater for the needs of the local community and employment opportunities within the Nelson Bay Town Centre.

Clause 1.9A – Suspension of covenants, agreements and instruments

Clause 1.9A provides that for the purpose of enabling development on land in any zone to be carried out, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply, to the extent necessary to achieve enable the development to occur. Clause 1.9A does not apply to covenants imposed by Council or other instruments such as bio-banking agreements.

There are no applicable covenants, agreements and instruments, accordingly, relevant to the development, accordingly clause 1.9A does not apply.

Clause 2.7 – Demolition requires development consent

Clause 2.7 identifies that the demolition of a building or work may be carried out only with development consent, unless identified as exempt development under an applicable environmental planning instrument.

The proposed development requires the demolition of the existing car park. Should Council determine to approve the development conditions of consent could be provided in order to mitigate potential impacts to adjoining properties and the locality during demolition works.

Clause 4.1B – Minimum lot sizes for dual occupancies, multi-dwelling housing and residential flat buildings

Clause 4.1B specifies the minimum lot size required to facilitate development for the purposes of dual occupancies, multi dwelling housing and residential flat buildings in order to achieve planned residential density in certain zones. Clause 4.1B does not apply to land zoned B2 Local Centre and therefore does not apply.

Notwithstanding, the subject site has an total area of approximately 2018m<sup>2</sup> which provides sufficient area to facilitate the proposed development.

Clause 4.3 – Height of buildings

Clause 4.3 aims to ensure that the height of buildings is appropriate for the context and character of the area, and to ensure that building heights reflect the hierarchy of centres and land use structure. To achieve these aims, clause 4.3(2) specifies

that the height of a building on any land is not to exceed the maximum height shown for the land on the 'Height of Buildings Map' (HBM). The HBM identifies a 15m height limit applies to the subject development.

The proposed development has a maximum height of 30.60m and exceeds the height limit by 15.6m or 68.42%. However, as identified earlier in this report the 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program ('NB Strategy') was adopted by Council at its meeting of 25 September 2018. The NB Strategy endorsed a 28m building height for the subject site. The proposed development exceeds the endorsed 28m building height by 2.6m or 8.87%.

However, the Planning Proposal (PP) which seeks to deliver three of the adopted actions from the NB Strategy, including the adoption of the identified increased building heights for the Nelson Bay Town Centre was submitted to the Department of Planning and Environment (DPE) in May for Gateway determination. The PP will not be publically exhibited until such time that DPE issue the Gateway determination. Until a PP has been publically exhibited it does not form a relevant consideration for a consent authority in the determination of a development application. Accordingly, the current 15m building height as identified on the HBM is the relevant height control applicable to the subject development.

Notwithstanding, the maximum building height of 15m prescribed under clause 4.3 is a development standard and may be varied in accordance with clause 4.6 of the PSLEP2013. As such, the applicant has submitted a clause 4.6 seeking to vary the maximum building height development standard, as outlined below.

#### Clause 4.6 – Exceptions to development standards

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

However, clause 4.6(3) provides that development 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.'*

In addition, clause 4.6(4) specifies that development consent must not be granted for development that contravenes a development standard unless:

- a. *the consent authority is satisfied that:*

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- i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b. the concurrence of the Secretary has been obtained'*

The applicant has submitted a clause 4.6 variation request, prepared by Monteath and Powys and dated 17 January 2019, to clause 4.3 (height of buildings) which nominates a maximum height limit of 15m for the subject site. The proposed development has a maximum height of 30.60m and exceeds the height limit by 15.6m or 68.42%. The assessment of the applicant's clause 4.6 variation request is set out below:

*Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary*

The applicant's clause 4.6 variation request provides that compliance with clause 4.3 (building heights) is unreasonable or unnecessary. The key reasons provided by the applicant have been summarised below:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- The subject site is located within part of the Nelson Bay Town Centre which is identified for renewal and intensification. Future development within the immediate vicinity of the site will be of similar height to the proposed development.
- The proposed building height reinforces the position of the subject site resulting in a development that reinforces the future urban design considerations of the area. The development is consistent with the development expectations of the site.
- The proposal is in keeping with local attributes and with the surrounding established character of the area. The development is of a high quality urban form and responds to the constraints of the site. Further the development promotes an attractive and active street frontage.
- The proposed height is appropriate to the context and character of the area, particularly having regard to the 28m height limited endorsed within the NB Strategy. In the future the proposal will not be out of character with the area or context of the major town centre.
- Whilst the proposal results in additional overshadowing to the adjoining buildings, this is considered to be a consequence of the orientation of the site as opposed to the exceedance to the height control.

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- Council has varied LEP standards in the past, including one approval which exceeds the 28m height limited proposed for the site under the NB Strategy (11-13 Church Street).
- Proposed future development will exceed the height of the subject development.

*Clause 4.6(3)(b) – Sufficient environmental planning grounds*

In addition, the applicant suggests that the environmental impacts of the proposed increase in height will be satisfactory. It is stated that the development addresses the site constraints and will not result in any unreasonable environmental impact. In this respect, the applicant submits that the additional height will not cause significant overshadowing impacts, or other environmental impact (such as impacts to ecology, heritage and the like). Design considerations such as solar access and cross ventilation and noted to be compliant. Further, the proposed height is consistent with the NB Strategy and desired future vision for the town centre.

The applicant also submits that the prominent location of the subject site, its locational context within the surrounding area, the availability of local infrastructure and its position to public transport services all support the development outcomes sought for the site. The development is identified by the applicant as creating a landmark development which contextually unites and visually integrates into the surrounding built form and character of the locality, particularly when having regard to the future vision proposed under the NB Strategy.

*Clause 4.6(4) – Matters to be considered by consent authority*

As outlined above, clause 4.6(4) requires that the consent authority is satisfied that the following preconditions are satisfied prior to the granting of consent to a development that contravenes a development standard:

- The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3),
- The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- The concurrence of the Secretary has been obtained.

These matters are considered in detail below:

*Adequacy of the applicant's request*

The applicant's justification for the clause 4.6 variation to the 15m building height control is not considered to have adequately demonstrated that; a) compliance with the development standard is unreasonable or unnecessary, or b) sufficient environmental planning grounds exist to justify contravening the development standard.

The applicant's justification for the variation is primarily reliant upon the identified 28m height limit endorsed within the NB Strategy. Whilst it is acknowledged that Council resolved to adopt the NB Strategy at its meeting of 25 September 2018, at this time a Planning Proposal (PP) giving effect to the recommended height increase has not been publically exhibited. As such, in accordance with the current legislative framework, the proposed 28m height limit does not form a relevant consideration during the assessment of the application. Had the PP been publically exhibited, it is likely that the proposed 2.6m or 8.87% variation to the 28m height limit could have been supported on its merits.

However, Council staff are required to assess the proposed clause 4.6 variation request against the current development standards. Therefore, the proposed exceedance must be demonstrated to be reasonable having regard to the current 15m height limitation. In this respect it is noted that the applicant proposes to exceed the current height limit by 15.6m or 68.42%. The only reason that the applicant has presented to justify the variation is reliance on the proposed 28m height limit under the NB Strategy.

In *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), the Land and Environment Court identified five ways in which request to vary a development standard may be determined to be well founded. These reasons include:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,
2. The underlying objective or purpose of the development standard is not relevant to the development,
3. The objective or purpose of the development standard would be defeated or thwarted if compliance was required,
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as applied to the land.

Having regard to the first test set down in *Wehbe* it is noted that the objectives of clause 4.3 is to ensure that that the height of buildings is appropriate for the context and character of the area. Clause 4.3 also seeks to ensure that building heights reflect the hierarchy of centres and land use structure. The 15m height

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control is reflective of the height of buildings considered to be appropriate for the context and character of the area under the current legislative planning framework. Therefore, having regard to the context and character of the area, as set by the existing planning framework, it cannot be reasonably determined that the objectives of the development standard (building height) are achieved by the development. Again, had the PP which seeks to increase the height limit to 28m been publically exhibited, this would have formed a relevant consideration in the assessment of the application and in such circumstances a different view may have been formed with respect to the first test set down in *Wehbe*.

The second, third, fourth and fifth tests set down in *Wehbe* are not considered relevant to the current application, for the reasons set out below:

- a. The underlying purpose and objective of the height control are relevant to the development,
- b. The objective or purpose of the development standard would not be defeated or thwarted if compliance was required,
- c. Whilst it is acknowledged that the height control has been varied on occasion it is not considered to have been abandoned or destroyed. The threshold test required to demonstrate that a development standard has been abandoned or destroyed requires evidence of a 'pattern of abandonment such that the development standard can no longer be said to represent the existing and/or desired character of the locality' (*Abrams v The Council of the City of Sydney* (No 2) [2018] NSWLEC), and
- d. The zoning of the subject site is suitable.

The applicant's clause 4.6 variation request also fails to adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the standard. The applicant predominately relies on the future height increase to justify the non-compliance to the current standard. However, as outlined elsewhere within this report, the proposed heights under the NB Strategy do not have determining weight in the assessment of the current application. As outlined in *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* [2003] NSWCA 289 (*Terrace Tower*) it is not until a PP is in draft form (i.e. publically exhibited), and its provisions have a perception of imminence, that it will have significant weight in the determination of a development application.

Furthermore, the applicant's submission provides that the additional height will not cause significant overshadowing impacts, or any other environmental impact. Whilst, despite Council's request, the applicant has not provided a shadow analysis demonstrating the extent of increased impact arising from the non-compliance with the 15m height control, it is clear that the additional 15.6metres of height will cast significantly increased shadows upon the adjoining land holdings. In this regard, the applicant did provided a shadow analysis which compares a 28m height compliance building with the proposal and illustrates an

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increased shadow impact arising from the additional 2.6m. The existing development located at No. 3 Yacaaba Street is considered likely to be significantly impacted in respect to overshadowing as a result of the non-compliance with the 15m height control.

The development as proposed would also have an increased impact to adjoining properties in respect to: bulk and scale, natural ventilation, privacy, and amenity, in comparison to a development that was compliant with the 15m height controls. Furthermore, the additional 15.6 metre height facilitates an increased residential yield and density on the site in comparison to what could be achieved by a compliant design. Whilst the proposed development has been considered on merits to be satisfactory with respect to traffic and parking, a compliant design would arguably have a reduced impact with respect to these matters than the development as proposed.

*Public interest – consistency with objectives of the standard and objectives of the zone*

For the reasons outlined above the proposed development is not considered to be consistent with the objectives of the building height standard.

The development is however considered to be consistent with the objectives of the B2 Zone as the proposed commercial tenancies provide an opportunity for a range of retail and business uses to serve the needs of people who live in, work in and visit the local area. The commercial component of the development also encourages employment opportunities in accessible locations. In addition, the location of the development and its design provides opportunity to maximise public transport patronage and encourages walking and cycling.

*Concurrence of the Secretary*

Concurrence of the Secretary is provided in accordance with the planning system circular PS 17-006 'Variations to development standards' (published by the Department of Planning (DPE) and dated 15 December 2017). In accordance with clause 64 of the *Environmental Planning and Assessment 2000* (EP&A Regs), PS 17-006 provides Council with the Secretary's assessment concurrence for exceptions to development standards for applications made under clause 4.6. However, only a full council can assume the Secretary's concurrent where the variation to a numerical standard is greater than 10% or the variation is to a non-numerical standard.

Due to the significant variation proposed, and despite the assumed concurrence provided pursuant to PS 17-006, the application was referred to the DPE for comment. DPE confirmed that Council could rely on the assumed concurrence of the Secretary in the determination of the application.

For the reasons outlined above the applicant's clause 4.6 variation request is not supported.

Clause 7.1 – Acid sulfate soils

The site is mapped as containing potential Class 4 & 5 Acid Sulfate Soils (ASS). As the proposed development is anticipated to entail excavations below 5m. Should Council determine to approve the development conditions of consent should be imposed to require the undertaking of a geotechnical assessment prior to issue of Construction Certificate to determine whether the works will disturb ASS. Should ASS be encountered within the zone of works an ASS Management Plan will be required to be prepared prior to commencement of works.

Clause 7.2 – Earthworks

Clause 7.2 aims to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The development results in the excavation of two levels of up to six metres and an additional cut of up to 3.5 metres to facilitate construction of the ground floor level. Excavation works are largely contained within the footprint of the building. The proposed excavation works extend laterally to the property boundary and therefore adjoining existing development including the Residential Flat Building located at No.3 Yacaaba Street. In order to address the potential impacts of the excavation works to adjoining buildings the management of construction dewatering will be required during excavation works. The applicant has submitted a Dewatering Management Strategy (prepared by Monteath and Powys, undated) in respect to dewatering and subject to recommended conditions of consent it has been identified that the proposed excavation works can be undertaken without impact to adjoining properties. However, should Council resolve to determine the application a condition of consent should also be imposed requiring the undertaking of a dilapidation report prepared by a structural engineer.

In addition, the subject site has been previously developed for the purposes of a public car park. Due to the extent of existing disturbance to the site it is unlikely that the proposed earthworks will impact upon Aboriginal relics. Notwithstanding, should Council resolve to approve the development a condition of consent should be imposed providing that works should cease and that Office of Environment and Heritage be notified in the event that any Aboriginal relics are encountered during works.

Clause 7.6 – Essential services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and



hard stand areas can be catered for in accordance with Council's requirements. The subject land also maintains direct access to Donald / Yacaaba Street, meeting the requirements of this clause. A condition is proposed that requires the provision of evidence that all essential services are available, prior to the issue of an occupation certificate.

***Section 4.15(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

Draft Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No.55)*. The draft SEPP, which was exhibited from 25 January to 13 April 2018, is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including: outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under the SEPP No.55 discussion elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

***Section 4.15(1)(a)(iii) - provisions of any development control plan***

**Port Stephens Development Control Plan 2014 (DCP2014)**

Chapter A – Introduction

*Control A11 – Development Notification*

The proposal was advertised and notified in accordance with the EP&A Act, EP&A Regs, and Chapter A of DCP2014. Due to the applicant submitting amended plans the application was placed on public exhibition a total of three times as follows:

- for a period of 21 days from 21 June 2018 to 13 July 2018 (extended by one week due to misprint),
- for a period of 14 days from 1 November 2018 to 15 November 2018, and
- for a period of 14 days from 28 February 2019 to 14 March 2019.

The third round of public exhibition related to the current proposed development. In response to this round of public exhibition, Council received 81 submissions including 51 submissions in support and 30 submissions in objection from 34 signatories. A detailed assessment of the submissions received is outlined elsewhere within this report.

Chapter B – General Provisions*Part B1 – Tree Management*

The site is clear of any existing vegetation having been previously developed for the purposes of a car park.

*Part B2 – Natural Resources*

The site is clear of any existing vegetation. The proposed development is not considered likely to impact upon any area of environmental significance. Due to the nature, scale and location of the proposed development within the existing Nelson Bay CBD the proposed development, subject to conditions of consent, is not considered likely to have any adverse impacts upon the natural environment.

*Part B3 – Environmental Management*Acid Sulfate Soils

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

Noise

The separation distances incorporated into the development will limit any significant impacts on the adjoining development. The impacts of the development during construction could be limited through conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regards to noise management.

Earthworks

As discussed at clause 7.2 above the proposed development involves extensive earthworks in order to facilitate the proposed basement level car parking. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Waste

To ensure ongoing waste is managed responsibly, the development includes a waste storage areas catering for both residential and commercial waste, at the ground floor level. The development can be serviced by Council for waste collection.

Should, Council resolve to approve the development conditions of consent should be imposed that require waste from demolition and building works to be separated

into recyclable and non-recyclable materials, the reuse of materials on-site where possible, and the disposed of all other materials at an approved facility.

*Part B4 – Drainage and Water Quality*

The proposed drainage strategy comprises a detention tank at ground floor level with gravity discharge/overflow to the street. The detention tank is proposed to detain and discharge all flows from roof and podium areas. Stormwater runoff from the ground floor, and any nuisance flows from basement levels 1 and 2 are captured in a drainage sump on basement level 2 and pumped to the ground floor detention tank for water quality treatment and discharge to the street. Downpipes for the roof and podium areas are sized to convey the 1%AEP. Further, the applicant has submitted water quality modelling (MUSIC model) which demonstrates the proposal is satisfactory having regard to Council's water quality targets. Therefore, subject to conditions of consent, the developments proposed stormwater management system is considered satisfactory.

*Part B6 – Essential services*

As detailed in the clause 7.6 LEP2013 discussion above, the proposed development provides for the satisfactory provision of essential services.

*Part B9 – Road Network*

The potential impacts of the development to the local road network have been assessed and it has been determined that subject to conditions of consent the development is satisfactory. The applicant submitted a Traffic Impact Assessment, prepared by SECA Solution (dated 27 September 2018) which included the results of traffic surveys undertaken at the intersection of Donald Street and Yacaaba Street. Council's assessment has identified that a satisfactory level of service 'A' relating to delay and queuing at the Donald Street and Yacaaba Street intersection will be maintained for the projected 2028 growth and 50% increase for holiday periods. In addition, the proposed one-way entry to the site via Donald Street and exit via Yacaaba Street is considered to reduce the length of delays experienced by through traffic at Donald Street had a two-way entry been proposed. In this respect, the development is considered to be satisfactory with regards to access and traffic.

Chapter B9 figure BT identifies the on-site parking requirements for the development as follows:

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Development type	DCP requirement	Parking requirement	Proposed
Office premises and business premises	<ul style="list-style-type: none"> <li>One space per 40m<sup>2</sup> floor area.</li> <li>One bike space per 200m<sup>2</sup> floor area.</li> <li>One accessible space per 30 spaces.</li> </ul>	<p>Commercial tenancy (No.1) – 123 m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>Three spaces, and</li> <li>One bike space.</li> </ul> <p>Commercial tenancy (No.2) – 114 m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>Three spaces, and</li> <li>One bike space.</li> </ul> <p>Commercial tenancy (No.3) – 185 m<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>Five spaces, and</li> <li>One bike space.</li> </ul> <p>Note: As all commercial premises are located within the one building only one accessible spaces is required as there is less than 30 spaces required in total for the end uses.</p> <p><b>Total required:</b> 11 spaces, including one accessible parking space, and three bike spaces.</p>	<p>Eight commercial spaces have been provided at ground floor level to cater for the proposed commercial tenancies.</p> <p>A total of 11 spaces and three bike spaces are required for these uses.</p> <p>A shortfall of three spaces (including one accessible spaces) and three bike spaces is proposed. Should Council resolve to approve the application a s.7.11 contribution would be applicable to address this shortfall (totalling \$45,705).</p>
Residential flat building	<ul style="list-style-type: none"> <li>One car space for one and two bedroom <i>dwelling</i>s.</li> <li>Two car spaces for three &gt; bedroom <i>dwelling</i>s.</li> <li>One visitor space for every three <i>dwelling</i>s.</li> </ul>	<p>Residential units:</p> <ul style="list-style-type: none"> <li>Five x one bedroom units – five spaces.</li> <li>27 x two bedroom units – 27 spaces.</li> <li>24 x three bedroom units – 48 spaces.</li> <li>Visitor spaces – 19 spaces (rounded from 18.6).</li> </ul> <p><b>Total required:</b> 99 spaces, comprising – 80 residential and 19 visitor spaces.</p>	<p>83 resident car parking spaces, including four accessible spaces (basement level 1 and 2).</p> <p>19 residential visitor spaces (basement level 1 and ground floor).</p> <p>Seven motor bike spaces (basement level 1 and 2), and</p>

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			18 wall mounted bicycle racks (ground floor).
<b>Total spaces required for development:</b>	<p>110 car parking spaces comprising:</p> <ul style="list-style-type: none"> <li>• 11 commercial spaces (one accessible),</li> <li>• 80 residential spaces, and</li> <li>• 19 visitor spaces.</li> </ul> <p>Plus three bike spaces.</p>	<p>109 spaces comprising:</p> <ul style="list-style-type: none"> <li>• Eight commercial spaces,</li> <li>• 83 residential spaces (including four accessible spaces), and</li> <li>• 19 visitor spaces.</li> </ul> <p>Plus seven motor bike spaces and 18 bicycle spaces.</p>	
<p><b>Comment:</b></p> <p>The development exceeds the parking requirements for the residential component of the proposal, an additional five residential spaces and one visitor space has been provided. Residential motor bike parking has also been provided in addition to the DCP requirements.</p> <p>However, a shortfall of three spaces (including one accessible space) and three bike spaces are proposed in respect to the three commercial tenancies.</p> <p>Car parking shortfalls for commercial / retail development within the Nelson Bay Commercial/Retail and Foreshore Area are captured under Council's Development Contribution Plan 2007. The Development Contribution Plan recognises that there is restricted opportunities for car parking within the Commercial/Retail and Foreshore district, and that on-street parking facilities are limited. Further, it is acknowledged that the provision of on-site car parking in many cases would restrict the ability to develop viable commercial / retail premises. As such, the Development Contribution Plan provides a mechanism for the levying of a monetary contribution in lieu of the provision of off-street car parking for new commercial / retail development within the Nelson Bay Commercial/Retail and Foreshore Area.</p> <p>The proposed commercial car parking shortfall generates a development contribution payment of \$45,705 (subject to CPI). Should Council determine to approve the proposed development a condition of consent would be recommended to capture the required payment of this development contribution prior to the issue of any Construction Certificate.</p>			

*Part B10 – Social Impact*

The proposed development provides additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Nelson Bay Town Centre. The development provides a range of apartment mix, including apartments of universal design, to cater for a range of housing needs.

The proposed commercial tenancies will create opportunities for employment once the development is completed. Further, during construction the development will generate short term employment opportunities. The development is considered satisfactory having regard to Part B10.

Chapter C – Development Types

The proposed development is that of a residential flat building. As such, refers to SEPP 65 Design Quality of Residential Flat Development as discussed elsewhere within this report.

**Section D – Specific Areas – Nelson Bay Centre**D5.A - General Precinct Provisions*D5.1 Significant Vistas*

The significant vistas applicable to the Nelson Bay Centre are shown in Figure DJ of the DCP. The main vista located in close proximity to the development site is located at the corner of Donald and Yacaaba Streets, looking both up and down Yacaaba Street. The vista provides a view corridor along the public domain and the natural setting beyond. Due to the topography of the locality, which is a natural basin formation, the proposed development will not adversely impact the identified vista and view corridor.

*D5.2 Street Layout*

The proposed development does not alter the existing road layout.

*D5.3 Roof Design*

As outlined within the SEPP 65 and ADG assessment, the roof design is considered to have architectural merit and will not have significant impact on the public domain.

*D5.4 NSW Coastal Planning Guidelines*

As outlined within the SEPP 65 and ADG assessment, the proposed materials, colours and architectural elements of the development are acceptable.

D5.C Desired Character – Town Living and Commercial

With the exception to the variation of height, the proposal complies with the desired character of the area by providing a wide range of housing options, creating critical mass in the Nelson Bay CBD and incorporates appropriate landscaping including street trees.

***Section 4.15(1)(a)(iii) - any planning agreement or any draft planning agreement***

No planning agreement relates to the site or proposed development

***Section 4.15(1)(a)(iv) - the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

The *Environmental Planning and Assessment Regulations 2000* (EP&A Regs) requires the consent authority to consider the provisions of the National Construction Code – Building Code of Australia (BCA). Should the application be approved, recommended conditions of consent have been provided requiring compliance with the BCA.

***Section 4.15(1)(b) - the likely impacts of the development , including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***Social and economic impacts

If approved the proposal will result in additional residential development in the LGA through the provision of a wide range of accommodation units. It would result in a large capital investment in the local economy and will create a number of short and indirect long term employment opportunities. Furthermore, if approved the development would attract development contributions which will be used to create and improve community facilities, public open space, sport facilities, and infrastructure and the like, further adding to the positive economic impact of this development.

The proposed development would also provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Nelson Bay Town Centre. The development provides a range of apartment mix, including apartments of universal design, to cater for a range of housing needs.

However, despite these positive social and economic impacts the development has been recommended for refusal as the proposed 15.6m variation to Council's maximum building height development standard cannot be supported by Council staff.

Impacts on the built environment

The overall aesthetics of the development are of good quality with the inclusion of a range of materials, textures and colours. The range of materials and colours in conjunction with the articulation and modulation of building facades visually reduce the perception of the bulk and scale of the development to ensure consistency with surrounding development. The development will also result in the activation of both Donald and Yacaaba Streets.

However, as outlined elsewhere within this report the development results in a 15.6m exceedance to the existing 15m height limitation applicable to the site. The additional height results in a development which has increased impacts, primarily in respect to overshadowing, in comparison to a compliant design. As such, the impacts of the development upon the built environment are considered unacceptable.

Impacts on the natural environment

The development includes water quantity and quality control devices to reduce the impact of the development on the natural environment. The existing site is devoid of any natural habitat or native vegetation and there are no anticipated adverse impacts on the natural environment.

View sharing

The primary property affected by the development with respect to potential view loss is No. 3 Yacaaba Street. Views obtained from this property are only likely to be achieved from the higher levels of the existing development and are likely to be distant and obstructed views of the foreshore and bay. The views would be obtained primarily from bedrooms and bedroom balconies as a result of the orientation of the units within the development. Further, the views are obtained across private property.

It is likely that even a compliant design (i.e. a 15 metre high development) would result in obstruction of any views obtained from No. 3 Yacaaba Street. On this basis, and in accordance with the planning principles set out by the Land and Environment Court in *Tenacity Consulting v Warringah* [2004] NSWLEC 140, the proposed development is not considered to significantly or unreasonably reduce the amenity enjoyed by occupants of adjoining residential land.

In addition, the Nelson Bay Town Centre and Foreshore Strategy (dated 2012) identifies view corridors within the public realm which should be protected. View corridor No.12 which traverses the length of Yacaaba Street and is located within proximity to the subject land. The proposed development does not encroach upon the identified view corridor and a direct line of sight is maintained ensuring that views enjoyed from the public domain are not adversely impacted. As such, the proposed development is satisfactory with respect to view sharing.



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**Section 4.15(1) (c) - the suitability of the site for the development**

With the exception of height, the proposed development has been designed in line with the applicable planning controls including SEPP No.65 and the ADG. The proposed development is a permitted use and the commercial tenancies incorporated into the design present an active street frontage to the corner of Donald and Yacaaba Streets. Further, and again with the exception of the height variation and resulting bulk and scale, the design is appropriate regard to the subject sites attributes and constraints.

However, the current height limit applicable to the site is 15m and the development proposes a 15.6m variation to this control. Therefore, based upon the current planning framework, the site is not considered suitable for the development.

**Section 4.15(1)(d) any submissions made in accordance with this act or the regulations**

Public Submissions

The proposal was advertised and notified in accordance with the EP&A Act, EP&A Regs, and Chapter A of DCP2014. Due to the applicant submitting amended plans the application was placed on public exhibition a total of three times as follows:

- for a period of 21 days from 21 June 2018 to 13 July 2018,
- for a period of 14 days from 1 November 2018 to 15 November 2018, and
- for a period of 14 days from 28 February 2019 to 14 March 2019.

The third round of public exhibition related to the current proposed development (the subject of this report). In response to this round of public exhibition, Council received 81 submissions including 51 submissions in support of the proposal. Submissions in support noted that the proposed development was considered to be a good design outcome and provided investment and revitalisation opportunities in the Nelson Bay CBD.

A total of 30 submissions in objection to the proposal were received from 34 signatories, the key issues raised in these objections are outlined below:

Summary of objections raised:	Response:
<p>Height and site suitability:</p> <p>Submissions noted concerns with the extent of the proposed height variation.</p> <p>Submissions noted that the proposal is currently double the current LEP height limit and also exceeds Council's endorsed strategy limits.</p>	<p>As outlined within this assessment report the applicant's clause 4.6 variation has not been supported by Council staff. The application has been recommended for refusal on this basis.</p> <p>Whilst the applicant seeks to rely on the 28m height limit proposed under the NB Strategy, the application must be assessed against the current 15m height control. The proposed 15.6m variation is not supported for the reasons detailed within the clause 4.6 discussion section of this report.</p>

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<p>It was suggested that the development would create a precedent and further that the site was unsuitable for the development.</p>	<p>Notwithstanding, the subject site is zoned B2 Local Centre and mixed use development incorporating commercial premises and residential units are permissible with consent from Council. Had the proposed development complied with Council's current 15m height control, or in the alternative had the Planning Proposal to increase the height limit been progressed to a point that they had perceived certainty, the subject development would have been considered.</p>
<p>Density and FSR:  Submissions raised issues in respect to the overall density and floor space ratio (FSR) of the proposal.</p>	<p>PSLEP2013 does not currently contain a control relating to FSR. The NB Strategy however proposes a 3.0:1 FSR control corresponding to areas where the 28m height control will apply. The proposed development has a FSR of 2.87:1.  Notwithstanding, it is noted that due to the proposed height variation (15.6m) the overall density of the proposal does exceed the density that would be achieved with a compliant design. Council staff have recommended the application be refused on this basis.</p>
<p>Design including visual impact and impacts to character of Nelson Bay:  Submissions raised concern with the overall design of the proposed development, including that the proposal was of poor architectural merit and lacked design excellence. Submissions also identified that the proposal was out of keeping with the existing and desired character of Nelson Bay.</p>	<p>The earlier revisions of the application were considered by the UDCG on two occasions and, with the exception of the non-compliance with Council's LEP height control, was considered on merit to be of high quality architectural design.  The development has been assessed against SEPP No.65 and the ADG and has been determined to be satisfactory.  The applicant is not seeking to rely on any design excellence provisions under Council's LEP.</p>
<p>Non-compliance with the Apartment Design Guide (ADG):  Submissions raised concerns that the development failed to comply with the ADG requirements in respect to:</p> <ul style="list-style-type: none"> <li>• Ceiling heights,</li> <li>• Habitable separation, and</li> <li>• Setbacks.</li> </ul>	<p>The proposed development has been assessed against the provisions of SEPP No.65 and the ADG and with the exception of height has been determined to be generally compliant with the applicable controls.  Ceiling heights - the development provides a ceiling height of 2.7m to habitable rooms and 2.4m to non-habitable rooms within the proposed residential units. A ceiling height of 5.1m is provided to the proposed commercial tenancies. The development therefore complies with the numerical ceiling height requirements of the ADG.  Habitable separation and setbacks: – the development is largely compliant with the numerical design criteria prescribed within the ADG in relation to habitable separation. The proposal does result in a non-compliance to the eastern boundary at levels 7 and 8. In accordance with the increased separation to transitional</p>

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	<p>zones recommended by the ADG a 12m setback is required to level 7 and a 15m setback to level 8. However, the variation only applies to the bedroom balcony of unit 47 on level 7 (resulting in a 2m non-compliance), and the bedroom window and balcony of unit 52 on level 8 (resulting in a 5m non-compliance). The variation has been supported on its merits as the non-compliance is not considered likely to result in any unreasonable adverse impacts to adjoining properties.</p>
<p><b>Landscaping:</b></p> <p>Submissions noted concerns with: insufficient landscaping being provided, the lack of deep soil planting provided, maintenance required and impacts to adjoining properties as a result of the proposed landscaping.</p>	<p>The proposed development is located within the Nelson Bay Town Centre and in accordance with the ADG a numerical requirement for landscape treatment does not apply. Notwithstanding, the development is considered to incorporate sufficient landscape treatment through provision of on structure planting and street trees.</p>
<p><b>Solar access:</b></p> <p>Submissions raised concerns that the proposed development would adversely impact adjoining properties with respect to solar access.</p> <p>A number of submissions also noted that the proposed development failed to achieve the required solar access to its internal communal open spaces.</p>	<p><b>Adjoining properties:</b> The development will overshadow adjoining properties to the south, in particular No. 3 Yacaaba Street. However, the living areas of the apartments located in No. 3 Yacaaba street are positioned within the eastern and western elevations of the building. As such, the apartments located to the east in No. 3 Yacaaba Street receive 3 hrs of solar access from 9am to 12pm mid-winter. The units to the west also receive 3 hrs of solar access from 12pm to 3pm mid-winter. This satisfies compliance with the ADG requirements.</p> <p>Notwithstanding, the 15.6m non-compliance with the maximum height control results in a development which has significantly increased overshadowing impact to adjoining properties in comparison to a compliant design. On this basis, Council staff have recommended refusal of the application.</p> <p><b>Internal compliance:</b> The proposed development achieves compliance with the ADG requirements for solar access to internal units. The communal open space is also considered to achieve adequate solar access.</p>
<p><b>Privacy :</b></p> <p>Submissions identified that the proposed development would adversely impact the privacy of adjoining properties.</p>	<p>The development has been designed so that the proposed residential units and associated balconies primarily front Donald and Yacaaba Streets. This provides passive surveillance opportunities and minimises the opportunity for overlooking of adjoining properties.</p> <p>Further, the development is generally compliant with the ADG requirements for setbacks of habitable spaces which further ensures that the proposed development will not result in unreasonable impacts to the privacy of adjoining properties.</p>

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**ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

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<p>View loss:</p> <p>Submissions identified that the proposed development would result in view loss from adjoining properties.</p>	<p><i>Tenacity Consulting v Warringah</i> [2004] NSWLEC 140 sets out the planning principles established by the Land and Environment Court for assessing the impact of development upon views enjoyed from private property (i.e. the principles of view sharing).</p> <p>The planning principles establish that the assessment of view loss requires consideration of the following: identification of the nature and scope of existing views to be affected, consideration of where the views are obtained, and assessment of the extent of impact.</p> <p>The primary property affected by the development with respect to potential view loss is No. 3 Yacaaba Street. Views obtained from this property are only likely to be achieved from the higher levels of the development and are likely to be distant and obstructed views of the foreshore and bay. The views would be obtained primarily from bedrooms and bedroom balconies as a result of the orientation of the units within the development. Further, the views are obtained across private property. It is likely that even a compliant design (i.e. 15metre development) would result in obstruction of any views obtained from No. 3 Yacaaba Street.</p> <p>On this basis the proposal is not considered to significantly or unreasonably reduce the amenity enjoyed by occupants of adjoining residential land.</p>
<p>Traffic and parking:</p> <p>Submissions noted concerns with regards to the impact of the development upon traffic in parking within the Nelson Bay Town Centre, including the use of multiple vehicular crossings to access and exist the proposed car park.</p> <p>Further, submission identified that the proposal provided insufficient car parking. The loss of the existing car park was also noted as being an issue.</p>	<p>The applicant submitted a Traffic Impact Assessment, prepared by SECA Solution (dated 27 September 2018) which included the results of traffic surveys undertaken at the intersection of Donald Street and Yacaaba Street. Council's assessment has identified that a satisfactory level of service 'A' relating to delay and queuing at the Donald Street and Yacaaba Street intersection will be maintained for the projected 2028 growth and 50% increase for holiday periods. In addition, the proposed one-way entry to the site via Donald Street and exit via Yacaaba Street is considered to reduce the length of delays experienced by through traffic at Donald Street had a two-way entry been proposed. In this respect, the development is considered to be satisfactory.</p> <p>The development exceeds the car parking requirements for the proposed residential use, however a shortfall of three commercial car spaces results. The car parking shortfall is addressed through the levying of development contributions in accordance with Council's Development Contribution Plan 2007. The Development Contribution Plan provides a mechanism for the levying of a monetary contribution in lieu of the provision of off-street car parking for new commercial / retail development within the Nelson Bay Commercial/Retail and Foreshore Area as it is recognised that the provision of off-street car parking can restrict the ability to develop commercial / retail premises.</p>

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**ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

16-2018-386-1

	<p>The proposed commercial car parking shortfall generates a development contribution payment of \$45,705 (subject to CPI). Should Council determine to approve the proposed development a condition of consent would be recommended to capture the required payment of this development contribution prior to the issue of any Construction Certificate. The levying of contributions for the shortfall is considered to adequately address this issue.</p> <p>The existing car park is located on private property and its retention does not form a relevant consideration for Council in the assessment of this application. Notwithstanding, it is noted that Property Services have advised that an alternative site of comparable size has been secured to replace the current car park.</p>
<p>Impacts during construction:</p> <p>Submissions identified that the proposed development will have adverse impacts during construction including: noise, traffic and potential impact to adjoining properties during excavation of the proposed car park due to dewatering.</p>	<p>The impacts of the development during construction have been considered during the assessment. The existing road network can sufficiently cater for traffic movements arising during construction and subject to standard conditions of consent noise impacts can be adequately mitigated.</p> <p>In particular it is noted that the applicant submitted a Dewatering Management Strategy which demonstrates that the proposed excavation works can be undertaken without adversely impacting adjoining properties.</p> <p>Should Council elect to approve the proposed development conditions of consent could be recommended which would adequately mitigate any potential impacts arising from the development during construction.</p>
<p>Adequacy of information provided :</p> <p>Submissions raised concerns with the adequacy of the information provided with the proposal including the photomontages and cost of works</p>	<p>The information provided with the application was sufficient to facilitate a detailed assessment of the proposed development. The cost of works was provided in the form of a quantity surveyor report and is considered to adequately address Council's lodgement requirements.</p>
<p>Commercial and financial viability:</p> <p>Submissions identified that the proposed development may not be financially viable, and noted a lack of market demand for residential and commercial space within the Nelson Bay Town Centre.</p>	<p>This is not a relevant consideration for Council in the assessment of the application. The commercial and financial viability will be market driven.</p>

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**Section 4.15(1)(e) the public interest**

The proposed development does not raise any significant general public interest considerations beyond the matters already discussed in this report. With the exception of height, the development is generally compliant with the applicable planning controls.

However, due to the proposed 15.6m variation to the existing 15m maximum height control and the associated impact to adjoining properties, the proposed development is not considered to be in the public interest.

**4.2.3. Section 7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

Council's Development Contribution Plan 2007 applies to the subject development. Should the development be approved a monetary contribution would be payable to Council for the provision of 55 additional units and a car parking shortfall of three commercial spaces. A four lot credit has been calculated to the payment of development contributions to account for the existing allotments. The credit has been applied to four of the proposed residential units. The total development contribution payable, including the car parking shortfall is \$847,961.

**4.2.4. Other relevant plans and policies**

Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program ('NB Strategy')

The subject site is located within the NB Strategy area. As discussed elsewhere within this report the NB Strategy identifies a 28m height limit for the subject site. Whilst the NB Strategy has been adopted by Council and the associated Planning Proposals (PP) have been submitted to the Department of Planning and Environment (DPE), the PP have not been publically exhibited and are not currently perceived as being imminent or certain. As such, the increase to the existing height limit applicable to the subject site as proposed by the NB Strategy and associated PP does not form a relevant consideration, nor have determining weight, during the assessment of the development application.

**5. RECOMMENDATION**

An assessment of the application has been carried out under section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposed development is considered unsatisfactory in terms of the relevant matters for consideration under the Act and the development application is recommended for refusal.

**ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP.**



<b>Outstanding</b>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/11/2017	Meyn, Janet	Ground Lease over Part of 4 Leisure Way, Raymond Terrace for Telecommunications Facility	31/07/2019	29/11/2017	
1 297		Foster, Carmel				17/236078
27 Jun 2019 Comment: The Development Application has been determined and passed through Council. The Property team have reviewed documentation from Local Government Legal. The documentation is now sitting with the Executive Team to review and sign.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Meyn, Janet	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	31/07/2019	28/03/2018	
13 066		Foster, Carmel				18/66656
27 Jun 2019 Comment: A compulsory acquisition application was submitted to the Office of Local Government in December 2018. There is nothing further to report at this time.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/07/2018	Meyn, Janet	398 CABBAGE TREE ROAD, WILLIAMTOWN	29/11/2019		
2 221		Foster, Carmel				18/151411
27 Jun 2019 Comment: The documentation is currently with the National Bank of Australian (NAB) to execute and process. Nothing further to report at this time.						

**ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP.**



<a href="#">Outstanding</a>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
<a href="#">Action Sheets Report</a>	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/08/2018	Meyn, Janet	Proposed Partial Road Closure - The Close, Raymond Terrace for future Development of Terrace Central Shopping Centre	31/10/2019	15/08/2018	
1		Foster, Carmel				18/179364
254						
27 Jun 2019						
Comment: The application has been lodged with the Office of Local Government. Council now awaiting plan registration.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/02/2019	Meyn, Janet	King Street, Raymond Terrace Easements	31/05/2020	14/02/2019	
3		Foster, Carmel				19/39843
27 Jun 2019						
Comment: Documents to acquire the land have been submitted to The Office of Local Government for processing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/05/2019	Meyn, Janet	DEBT RECOVERY	24/12/2019	15/05/2019	
1		Foster, Carmel				19/136619
099						
27 Jun 2019 - 10:06 AM - Lauren McIntosh						
Comment: Council is currently holding discussions with Local Government Legal in relation to adding additional make good costs into the debt recovery.						



**ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP.**



<a href="#">Outstanding</a>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
<a href="#">Action Sheets Report</a>	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Meyn, Janet	PROPOSED ACQUISITION OF FORMER FIRE STATION SITE - 51 WILLIAM STREET, RAYMOND TERRACE	29/11/2019	29/05/2019	
5		Foster, Carmel				19/148388
109						
27 Jun 2019						
Comment: The matter is ongoing and currently sitting with the Office of Local Government. No further action to report at this time.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Meyn, Janet	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	30/08/2019	29/05/2019	
6		Foster, Carmel				19/148388
110						
27 Jun 2019						
Comment: The application has been lodged with the Office of Local Government. No further action to report at this time.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/06/2019	Meyn, Janet	Naming of Reserve - Bower Reserve, Medowie	27/09/2019	12/06/2019	
3		Foster, Carmel				19/160026
121						
27 Jun 2019						
Comment: The application has been lodged with The Office of Local Government. No further action to report at this time.						

**ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP.**



<a href="#">Outstanding</a>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
<a href="#">Action Sheets Report</a>		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/06/2019	Meyn, Janet	Sale of Biobanking Credits from the Karuah Biobanking Site	30/08/2019	12/06/2019	
4		Foster, Carmel				19/160026
122						
27 Jun 2019						
Comment: The Property Team are reviewing the application to Transfer Biodiversity Credits.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/06/2019	Foster, Carmel	Donald Street East car park, Nelson Bay.	31/08/2019		
2		Foster, Carmel				19/171142
137						
27 Jun 2019						
Comment: An Options Report is being prepared to present to Council in August 2019.						

**ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP.**



<b>Outstanding</b>	<b>Division:</b> Development Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/02/2018	Peart, Steven	Aircraft Noise Planning Map	27/02/2018	14/02/2018	
1		Crosdale, Timothy				18/32353
025						
28 Jun 2019						
Comment: Post-exhibition DCP report going forward to Council meeting on 9 July 2019.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/02/2019	Peart, Steven	Draft Amendment to the Port Stephens Development Control Plan 2014 - Chapter D13 Rees James Road, Raymond Terrace	12/07/2019	27/02/2019	
2		Crosdale, Timothy				19/54534
30 June 2019						
Comment: On public exhibition until 11/04/2019. Submission received - Report back to Council 27 August 2019.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Peart, Steven	Draft Fern Bay and North Stockton Strategy	24/09/2019	29/05/2019	
1		Crosdale, Timothy				19/148388
105						
30 June 2019						
Comment: It was resolved that Council defer Item 1 at the request of Newcastle City Council. A joint NCC and PSC Councillor workshop is proposed for 8 August 2019 – Newcastle City Council is yet to confirm. Report back to Council meeting in late September 2019.						

**ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP.**



<b>Outstanding</b>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/10/2017	Maretich, John	Lemon Tree Passage Swimming Pool Net	30/09/2019	25/10/2017	
2 269		Kable, Gregory				17/210300
27 Jun 2019 Comment: A risk assessment has been received and options are being reviewed prior to reporting back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/02/2018	Maretich, John	SPORTS GROUND IRRIGATION SYSTEMS	30/11/2019	14/02/2018	
2 026		Kable, Gregory				18/32353
27 Jun 2019 Comment: Irrigation assets to be reviewed as per the Strategic Asset Management Plan.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Malloy, Aaron	Lease of grounds of 43, 45, 47 and 47A Tanilba Avenue Tanilba Bay (Lot 238, Lot 270 and Lot 271 DP753194, Lot 342 DP704442) to Calvary Retirement Communities Hunter-Manning Limited ACN 102625212.	30/06/2019	28/03/2018	
14 067		Kable, Gregory				18/66656
30 June 2019 Comment: Council and Calvary Care Board have agreed to all key terms. Hunter Legal doing final review in context of change to Crown Lands Act. Final phase is to have the Minister for Crown lands to sign off.						

**ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP.**



<b>Outstanding</b>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b> Ordinary Council	<b>Date To:</b> 25/06/2019
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 1 July 2019

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/04/2018	Maretich, John	BOBS FARM DRAINAGE	31/12/2020	11/04/2018	
2		Kable, Gregory				18/75830
084						
27 Jun 2019						
Comment: It was proposed that the SRV were to fund taking ownership of these assets. Currently examining funding options to determine if Council can adopt these as public assets.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/05/2019	Maretich, John	Policy: Foreshore Dinghy Storage Policy	24/07/2019	15/05/2019	
7		Kable, Gregory				19/136619
092						
27 Jun 2019						
Comment: Submission received after Public Exhibition period. Submissions will be reported to Council on 23 July 2019.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/06/2019	Kable, Gregory	Funding for Proposed Community Projects	30/08/2019		
1		Kable, Gregory				19/171142
136						
27 Jun 2019						
Comment: Community consultation arranged over 6 nights during month of July 2019. Meeting arranged internally on 8 June 2019 to scope and look at funding allocation for each project. Councillors Strategic Workshop to be held in July 2019.						